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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AH56

Cost-of-Living Allowances (Nonforeign Areas); Partnership Pilot Project

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations to establish a pilot project in which OPM will form partnerships with agencies and employees in administering the nonforeign area cost-of-living allowance (COLA) program. Under the project, COLA partnership committees will be established in Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands, and possibly in the Washington, DC, area, to assist OPM in designing, conducting, and reviewing the results of COLA surveys as well as in reviewing and improving the COLA program. Involvement in the committees should help OPM, affected agencies, and their employees better understand issues relating to the compensation of Federal employees in these areas. The regulations also make a technical amendment to clarify the term "agency" as it applies to the COLA program.

EFFECTIVE DATE: These regulations become effective on November 21, 1996.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606-2838.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii,

Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM published proposed rules on August 12, 1996 (61 FR 41746), to initiate a COLA Partnership Pilot Project that would provide for greater agency and employee involvement in the COLA program through the use of COLA partnership committees composed of representatives of OPM, other agencies, and labor organizations in Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands. OPM proposed that committees advise and assist OPM in planning COLA surveys, observe data collection during the surveys advise and assist OPM in the review of survey data, advise OPM on the COLA program and other compensation issues relating to the allowance areas, and assist OPM in dissemination of information to affected employees about the COLA surveys and the COLA program. In addition, OPM proposed a technical amendment to define "agency" under the definitions section of 5 CFR part 591, subpart B, and to remove a corresponding reference in § 591.203 to agencies covered by the subpart.

Earlier this year, OPM briefed agency and employee representatives in the Washington, DC, area and Anchorage, Honolulu, San Juan, Guam, and the U.S. Virgin Islands on the proposed pilot project. During and subsequent to these briefings, OPM received several comments on the project, and we took these into consideration in drafting the proposed regulations. In response to the publication of the proposed regulations, we received additional comments. Most of the comments OPM received endorsed the major elements of the proposed pilot project while making suggestions for change or identifying issues that need clarification. Four commenters objected to the pilot project overall. In the discussion that follows, we address all comments received.

Agency and Employee Representation on Partnership Committees

Two commenters suggested that one of the members of the committee represent the Federal Executives Association (FEA) or Federal Executive Board (FEB) in each area that has an FEA or FEB. Two other commenters made similar suggestions concerning the COLA Defense Committees, and a third commenter believed OPM should

include a representative from the Federal Managers Association (FMA). Other commenters expressed concerns that their agency or union would not be represented on the committees. One commenter suggested that all Federal labor unions be allowed to have a representative on the COLA partnership committees. These comments echoed several that OPM heard earlier this year when it briefed agency and employee representatives.

OPM tried to find a balance between effective representation and effective committee operation. The pilot project regulations provide for committees with five agency representatives, five employee representatives, and one or more OPM representatives, plus additional members as recommended by the committee and approved by OPM. These are large committees, and we are concerned that if they become much larger they will not function effectively. Therefore, OPM is not expanding the size of the basic committee.

To accommodate the FEA/FEB suggestion without expanding the committee, we modified the regulations so that FEA/FEBs will be offered the agency rotational position in areas where there is an FEA or FEB. In areas where there is no FEA or FEB or if the FEA or FEB declines, we will use the process originally proposed—i.e., sampling with probability proportional to the size of the agency.

Although OPM wants to prevent the committees from becoming so large that they will be unwieldy, OPM notes that the regulations allow each partnership committee to recommend additional members to OPM, including persons representing the FMA, COLA Defense Committees, and other organizations. OPM will try to accommodate such requests if it appears practical to do so.

In addition, OPM will make the meetings open to the public and establish systems of communication (e.g., via mail, telephone, facsimile, computer bulletin boards, and/or Internet) so that agencies and employee groups can attend these meetings, hear the discussions, and make their views known. We will also use the same systems of communication so that those not directly on the committee or in attendance at the meetings can have access to the information provided and the issues under discussion.

One commenter suggested that OPM choose all agency representatives at random and rotate the committee positions among agencies on a 6-month basis. The commenter noted that this could be cumbersome, since new members would be joining the committee every 6 months. OPM agrees that this procedure would be cumbersome and that it would not ensure that the views and interests of the major Federal employers in each area are represented on the committee. Therefore, OPM is not adopting this approach.

Another commenter recommended that OPM not use OPM staff from outside the allowance area. The commenter believed OPM's own representatives within the allowance areas could serve on the committee or as data collectors if their work and activities were reviewed properly. Under 5 CFR part 2635, Federal employees must avoid engaging in activities where there is the appearance of a conflict of interest. Thus, we believe it is preferable to use OPM staff from outside the allowance area for the pilot project.

Identifying Largest Federal Unions and Employers by Area

Two commenters stated that OPM did not have correct information regarding the number of employees in bargaining units in each area. OPM received similar comments earlier when it briefed agency and employee representatives on the proposal. For these briefings, OPM used materials that showed the number of employees by bargaining unit as reported in the Central Personnel Data File (CPDF)—a census of Government workers reported to OPM by Federal agencies. The CPDF is the best source of Governmentwide information on the number of employees in bargaining units; however, OPM will attempt to supplement CPDF data with other information provided by agencies and/or unions if the counts by agency/union are such that relatively small changes could make a difference in the composition of a committee.

Another commenter believed OPM had classified the Puerto Rico Federal Executives Association as an employee organization because, in its briefing materials, OPM had listed "FEA" among the major labor organizations in Puerto Rico. The "FEA" listed in the briefing materials refers to the Federal Educators Association, a major labor organization in Puerto Rico. OPM recognizes that Federal Executives Associations are not labor organizations, although we also agree with the commenter that Federal Executives Associations are concerned

with the interests of both the agencies and the employees.

A third commenter expressed concern that the civilian agencies would be under-represented on the partnership committees because the military departments (e.g., Army, Navy, and Air Force) would have three of the five seats in most areas. Although it was suggested during our earlier briefings that OPM consider the military departments as separate agencies for the purpose of committee membership, the proposed and final regulations use the term "Executive agency," as defined in 5 U.S.C. 105. Under section 105, the Department of Defense (DOD) is defined as an Executive agency and is considered to be a single agency. Therefore, DOD will have no more than one agency representative on any COLA partnership committee.

Release of Employee Representatives

Two commenters objected to and one commenter expressed serious concerns about the way employee representatives were to be selected for the committees. Under the proposed regulations, agencies would select agency committee representatives, but employee organizations would nominate representatives and OPM would select committee representatives from among the nominations in consultation with the employing agencies. The commenters noted that it is very important for employees to have as their representatives persons of their own choosing. OPM agrees, but it cannot require agencies to release specific employees for committee duties if the employees' work at their jobs is critical to the mission of the agency. One commenter suggested that OPM adopt language similar to that used in section 532.229(b)(6) of title 5, Code of Federal Regulations, which addresses the release of employee representatives for work on Federal Wage System surveys. These regulations state in part that "[e]mployers shall cooperate and release appointed employees for committee proceedings unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs." OPM agrees that such a provision is appropriate and has included parallel language in the final pilot project regulations.

Another commenter stated that OPM failed to recognize Federal union representatives as full-time Federal employees while these employees are in a leave without pay status from their Federal jobs. The commenter said that by creating its own criteria, OPM was

prohibiting certain Federal union representatives from being on the COLA partnership committees.

The regulatory requirement that all members of the COLA partnership committees be Federal employees stems from the requirements of the Federal Advisory Committee Act (FACA) (Public Law 92-463) and Executive Order 12838. FACA applies to committees established by the Federal Government that have as their membership one or more persons who are not full-time Federal employees. Executive Order 12838 prohibits agencies from establishing committees subject to FACA unless required by law or "compelled by considerations of national security, health or safety, or similar national interests." Therefore, OPM cannot establish COLA partnership committees if they would be subject to FACA. Since FACA does not apply to committees composed solely of full-time Federal employees, OPM's final regulations require that all COLA partnership committee members be full-time Federal employees. A person who is on leave without pay is not considered a full-time Government employee during that period of time for the purpose of applying FACA and will not be able to serve on a COLA partnership committee while in a nonpay status.

U.S. Postal Service and Its Employee Representatives

In its comments, the U.S. Postal Service (USPS) stated that its collective bargaining agreements did not allow it to pay USPS union members for work performed on the partnership committees. USPS said, however, that it could grant union representatives leave without pay for committee work. As discussed above, COLA partnership committee members must be full-time Federal employees in the pay of the Federal Government during the time they are performing committee work. Therefore, unless USPS agrees to pay its union representatives for partnership committee work, the union representatives will not be eligible to serve on the committees because (as explained above) they would not be full-time Federal employees during such periods of work for the purpose of applying FACA. Since it would not be equitable to have USPS represented on the committee but not its employees, OPM has modified its regulations to make USPS participation in the pilot project conditional upon the involvement of both USPS and its unions.

Experience and Training

Several commenters noted the importance of having committee representatives and data collection observers with technical experience concerning COLA issues, and two commenters suggested that OPM select committee members and observers based on the nominees' qualifications. Although technical experience certainly could be an asset, we believe committee members and observers with broad ranges of experience can provide valuable insights and advice concerning COLA's, compensation, and recruitment and retention issues. Also, as noted above, we believe agencies and employees should be represented by persons of their own choosing, rather than by others selected through some other means. Therefore, we do not plan to adopt these suggestions.

Nevertheless, OPM agrees that training, experience, and support are important for effective committee participation, and we will work with the committees to provide the resources and information necessary. We note, however, that while some aspects of the COLA methodology are complex, the fundamental principles involved in survey design and execution (e.g., item and outlet selection and data collection) are based on common consumer behavior—experiences that we all have. Therefore, we believe the committee members and observers will be able to make valuable contributions toward improving the surveys while they acquire more technical expertise and background in the COLA program.

One commenter stated that unless all participants in the COLA partnership process had jointly received employee involvement training, the partnership committees could become dysfunctional. The commenter recommended that such training be provided in advance of the first committee meetings. OPM believes many of the representatives who will serve on the COLA partnership committees will have had employee involvement training, and timing and budget considerations make it difficult to provide such training in advance of the initial meetings. If the lack of employee involvement training threatens to undermine the pilot project, OPM will revisit this issue and determine how such training might be provided.

Data Collection Observers

One commenter questioned whether the proposed role of the data collection observer was an efficient use of manpower resources. The commenter

suggested expanding the role to include actual data collection or dropping the role entirely. OPM believes the role of the data collection observer is important because it will provide integrity to the data collection effort. This integrity cannot be achieved if either OPM or the COLA recipients were to collect the data alone. Furthermore, we do not expect the observer to stand by silently and offer no comments or suggestions during the surveys. We expect that observers will provide valuable insights both during and after the data collection process and that these insights will be very useful as the COLA partnership committees work to improve surveys from one year to the next.

COLA Committee in the DC Area

Two commenters suggested that OPM involve agency and employee representatives from the Washington, DC, area in the pilot project. OPM agrees that the integrity of the program could benefit from such involvement in the DC area survey, and we have modified the regulations to allow this. OPM will explore the issue further with agency and employee representatives in the DC area and will establish a DC area committee if it appears practical to do so.

Subcommittees

One commenter stated that subcommittees in the allowance areas in Alaska should be required by regulation rather than simply permitted at the discretion of OPM and the COLA partnership committees. We agree that subcommittees will be valuable assets to the partnership committees and to OPM in the conduct of the survey. Therefore, we certainly will encourage the committees to establish a subcommittee in each of the COLA survey areas. Although OPM could make these subcommittees mandatory, we did not adopt this change because we do not think it will be necessary. We also note that under the regulations OPM can establish additional partnership committees if necessary.

During our briefings of agency and employee representatives, it was suggested that OPM establish two types of COLA committees—a COLA policy committee and a COLA survey subcommittee. OPM agrees that it may well be valuable to have subcommittees that focus on specific issues, processes, and/or geographic interests, and the regulations allow for this at the recommendation of the COLA partnership committees as approved by OPM. We anticipate that subcommittees will be established for various purposes during the pilot project.

Review of Pilot Project

One commenter suggested that the pilot project be reviewed periodically to determine whether it represents an efficient use of resources, and another commenter asked how the effectiveness of the pilot project would be measured. OPM agrees that the effectiveness of the pilot project should be evaluated during and at the end of project. Certainly, if it becomes clear that the pilot project is not effective, OPM will discontinue it. However, based on the majority of the comments we have received to date, we believe this is an unlikely prospect.

Expenses Related to Committee Activities

One commenter noted that the commentary that preceded the proposed regulations suggested that agency committee representatives would have their travel costs paid by the Government, but that employee representatives would not. That is not what we intended. To clarify this, we have revised the regulations to state clearly that employees serving as committee or subcommittee members are considered to be on official assignment to an interagency function. Therefore, such employees, without regard to whether they are agency or employee representatives, will be entitled to reimbursement for travel expenses related to COLA partnership committee work. However, as we noted in the commentary on the proposed rule, we expect such expenses to be minimal because all non-OPM committee and subcommittee members will be residents of the immediate area, and non-local travel will therefore be unnecessary in most cases.

Another commenter believed OPM should provide the budgetary resources necessary for COLA partnership and not rely on agency support. In developing this pilot project, OPM tried to minimize its budget impact. We also consulted with the major Federal employers in the allowance areas and discussed the potential impact with them. Although they recognized that the pilot project would be a new resource requirement, most of the agencies found merit in the proposal and agreed to support the project in terms of the staff time and related expenses associated with the program.

Committee Charters

One commenter asked whether COLA partnership committees would be chartered. Although charters are not required for these committees, OPM believes that charters would be beneficial and plans to encourage

committees to develop charters. These charters could provide additional detail on and clarify committee objectives and scope, membership requirements, agency support, reports, OPM and other agency support, etc.

Issues Relating to COLA Surveys

One commenter believed prices in Puerto Rico were higher in the fall than in the January through March time frame during which OPM will conduct the COLA surveys. The commenter recommended changing the timing of the survey or using a factor to adjust for any price differences. On May 11, 1995, OPM published in the *Federal Register* (60 FR 25150) for comment a notice that said it planned to change the timing of the surveys of Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands to the first quarter of the calendar year. OPM received no comments opposing that change. Nevertheless, timing of the COLA surveys is one of the issues that COLA partnership committees could consider as they advise OPM on the COLA program.

One commenter suggested that OPM take into consideration other measures of relative living costs, such as those reported by certain private sector companies, and another commenter suggested that OPM consider varying COLA rates by income level. OPM believes these are valuable suggestions and are certainly topics that the COLA partnership committees could consider.

Opposition to Proposed Pilot Project

Four commenters objected to the proposed pilot project overall. Their comments and our analyses and responses are noted below.

Procedure for selecting employee representatives: As noted earlier, two commenters objected to the procedure for selecting employee representatives for the committees. In response to these concerns, OPM modified the regulations to ensure that employee organizations are represented by persons of their own choosing, except when the affected work unit's mission requires the employee's presence on his or her regular job.

One commenter criticized the proposal because it involved agencies in a technical process that could affect their budgets. The commenter said that the agencies' right to select their representatives and consult with OPM concerning the selection of employee representatives gives the agencies the ability to improperly influence the survey results. The COLA program was established to provide a compensation tool that helps agencies recruit and retain a well-qualified work force.

Therefore, we believe agencies must be involved in any effort to improve the administration of the COLA program. Furthermore, as discussed earlier, OPM has modified its regulations to address issues relating to the selection of employee representatives. We believe this change will strengthen the composition of the committee and guarantee the free exchange of ideas and issues from all perspectives.

Another commenter believed the process of selecting only the largest unions in terms of the number of COLA recipients they represent would promote conflict and competition among labor organizations. OPM's experience working with labor organizations under the Federal Wage System for over 20 years has shown that Federal labor organizations work cooperatively in these situations. Therefore, we do not believe the COLA partnership process will be jeopardized by union conflict and competition.

Nature of the partnership committees: Two commenters believed the committees should not be called "partnerships" because the committees would be advisory in nature. One commenter was concerned that the committees might be expected to "rubber stamp" OPM's unilateral actions, and that if this were to happen, participating organizations might be "tainted." Another commenter believed committee members would be "turned off" if they did not have the ability to influence decisions that affect them.

No two partnerships look exactly alike, and OPM believes that establishment of these committees will result in a more collaborative relationship among affected agencies and employees with respect to this complex and often contentious program. By statute and Executive order, however, OPM has the final authority for conducting COLA surveys and administering the COLA program. If a consensus cannot be reached on an issue or if the views of one COLA committee differ from those of another on the same issue, OPM must still conduct surveys and set COLA rates. Nevertheless, this does not mean that we cannot use partnership to improve the COLA program.

OPM plans to accommodate suggestions whenever practical and consistent with the laws and regulations that govern the COLA program. We certainly do not expect the committees to "rubber stamp" our proposals. Instead, we plan to listen carefully to and seriously consider all of the information and advice that will be provided. We know there is much we can learn that will help us improve the

surveys and the way we administer the program, and we look forward to having frank and open discussions with the other committee members. It is our hope that we can reach a consensus on the vast majority of issues that will face us. As several commenters said, the partnership process will not work unless there is a sincere commitment from all parties, including OPM, to share ideas, listen to others, learn from what is said, and find areas of agreement. OPM is committed to this process.

Agency impact: Another commenter objected to the proposal on the basis that it seemed to set up a new bureaucracy to deal with COLA issues and that this was not an efficient use of resources in a time of downsizing. The commenter appeared to suggest that OPM consider using a different approach to compensation, such as the locality pay provisions of the Federal Employees Pay Comparability Act of 1990 (Public law 101-509). OPM recognizes that the pilot project will require staff time of a limited number of agencies and employee representatives in each area and that this comes at a time when many agencies have had staff-level reductions. Therefore, in developing the pilot project, OPM strived to limit the number and size of the committees while trying to ensure that there is adequate representation and a sufficient number of people to do the work. We do not believe we are creating a bureaucracy, but rather furthering National Performance Review objectives concerning management and employee partnership.

Memorandum of understanding and COLA partnership: Two commenters objected to the proposal because of perceived conflicts between COLA partnership work and the work to be performed under a memorandum of understanding (MOU) between the Government and the plaintiffs in *Alaniz v. Office of Personnel Management and Karamatsu v. United States*. The commenter felt that the pilot project would undermine the MOU and dilute the parties' resources to work on it. One commenter suggested that the pilot project be postponed and reconsidered at the end of the "Safe Harbor" process envisioned by the MOU. The same commenter also suggested that OPM delete or amend several of the functions of COLA partnership committees, as described in § 591.212(d) of the proposed regulations. The other commenter believed the pilot project duplicated and conflicted with the Safe Harbor process.

While we agree that both the MOU and the COLA partnership pilot project are major undertakings, we do not

believe they will deplete the resources necessary to participate effectively in both processes. Furthermore, we see the MOU and pilot project as two distinctly different processes that, while having similar overall goals, will not conflict with one another. The MOU is designed to engage the parties in *Alaniz* and *Karamatsu* in a collaborative process through which the parties will attempt to reach agreement on issues that have long been contested in the COLA program and to help OPM in connection with its report to Congress, which is required by Public Law 102-141, as amended. The COLA pilot project is designed to use partnerships of agency and employee representatives to assist OPM in designing, conducting, and reviewing results of annual COLA surveys; to improve the COLA program and OPM's administration of the program; and to explore issues relating to the compensation of Federal employees in the allowance areas. As with the MOU, the information and experience that OPM will gain through the pilot project will also be helpful in preparing our report to Congress. OPM believes the MOU and COLA partnership will complement each other as they provide information on different aspects of the COLA program. This information will be very beneficial to Congress as it reviews and considers the COLA program. Therefore, we believe it would be undesirable to postpone the pilot project until the MOU process is complete or to modify the functions of the COLA partnership committees.

Training, expertise, and resources: One of the commenters also believed the partnership committees would have insufficient resources, experience, and training to participate effectively. The commenter felt that the COLA Defense Committees would be able to participate more effectively and criticized OPM for not explicitly including representatives from the COLA Defense Committees on the COLA partnership committees.

As discussed above, the regulations allow for the COLA partnership committees to expand their membership in consultation with OPM, and OPM intends to be open to such requests. Therefore, if any COLA partnership committee believes it would be appropriate to include representatives from a COLA Defense Committee, OPM will try to support such a request, provided that the size of the committee does not threaten its effectiveness.

As also discussed above, OPM agrees that training, experience, and support are important, and we plan to provide the resources and information necessary for effective involvement. Although there may be individuals in each area

who have more experience with COLA issues, we believe there is much to be gained from the involvement of a wide range of views and interests, and we also believe effective experience concerning COLA issues can be gained quickly through participation in the COLA partnership pilot project.

Waiver of 30-Day Delay in Effective Date

Pursuant to section 553(d)(3) of title 5, United States Code, OPM finds that good cause exists to make these regulations effective in less than 30 days. The regulations are being made effective immediately in order to provide sufficient time for the COLA partnership committees to organize and prepare for the surveys to be conducted during the first quarter of calendar year 1997.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management
James B. King,
Director.

Accordingly, OPM amends 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Section 591.201 is amended by adding a definition of "agency" in alphabetical order to read as follows:

§ 591.201 Definitions.

* * * * *

Agency means an Executive agency as defined in section 105 of title 5, United States Code, but does not include Government-controlled corporations. For the purposes of § 591.212, "agency" also includes the United States Postal Service.

* * * * *

3. Section 591.203 is amended by revising the section heading and the introductory text to paragraph (a) to read as follows:

§ 591.203 Employees covered.

(a) This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an agency. The following pay plans are covered by this subpart:

* * * * *

4. Section 591.212 is added to read as follows:

§ 591.212 COLA Partnership Pilot Project.

(a) **Purpose and duration of COLA Partnership Pilot Project.** The COLA Partnership Pilot Project is designed to assess the efficacy of a plan to increase agency and employee involvement in the allowance program. The pilot project shall be in effect for a period not to exceed 2 years from November 21, 1996.

(b) **Purpose and establishment of committees.** To assist OPM in reviewing and improving the allowance program and to help OPM, affected agencies, and their employees better understand issues relating to the compensation of Federal employees in the allowance areas, OPM may establish one or more COLA partnership committees in the allowance areas and in the Washington, DC, area. Committees established under this section function at the discretion of OPM and may be disestablished at any time. A committee may represent agencies and employees in more than one allowance area and will meet from time to time as requested by OPM.

(c) **Composition of committees.** Each committee shall be composed of one or more representatives of Federal agencies and labor organizations. All committee members shall be current full-time Federal employees performing official business of the Federal Government and will serve at their agencies' and OPM's discretion. All non-OPM committee members shall be from the area represented by the committee. The representatives shall be selected as follows:

(1) **Agency representatives.** (i) OPM will identify the largest agencies (in terms of allowance recipients) in the area represented by the committee. For the Washington, DC, area committee, if established, OPM will identify the largest agencies in terms of allowance recipients in all of the allowance areas. OPM will invite up to four agencies each to designate a representative to serve on the committee. In areas where a Federal Executive Association (FEA) or Federal Executive Board (FEB) is located, OPM will invite the FEA or FEB to nominate an FEA or FEB member employed by an agency not otherwise represented on the committee, and OPM will select the nominee in consultation with the nominee's employing agency.

In areas where there is no FEA or FEB, or where an FEA or EB declines to participate, OPM will invite one additional agency selected from among the other agencies in each committee area to designate a representative to serve on the committee on a 1-year rotational basis. To select this agency, OPM will use sampling with probability proportional to the size of the agency. If mutually agreeable among the agencies, they may select representatives using other means and may rotate committee positions among agencies on other than a 1-year rotational basis.

(ii) OPM will appoint one or more of its employees to serve on each COLA partnership committee.

(2) *Employee representatives.* OPM will identify the largest labor organizations (in terms of allowance recipients) in the area represented by the committee. For the Washington, DC, area committee, if established, OPM will identify the largest labor organizations in terms of allowance recipients in all of the allowance areas. OPM will invite up to four labor organizations each to nominate a representative to serve on the committee. OPM will further invite one additional labor organization selected from among the other labor organizations in each committee area to nominate a representative to serve on the committee on a 1-year rotational basis. To select this labor organization, OPM will use sampling with probability proportional to the size of the labor organization. If mutually agreeable among the labor organizations, they may nominate representatives using other means and may rotate committee positions among labor organizations on other than a 1-year rotational basis. OPM will select committee members from among the nominees in consultation with the nominees' employing agencies.

(3) *Postal Service.* No committee shall have a representative from the United States Postal Service (USPS) unless USPS labor organizations have the opportunity to participate as provided by paragraph (g) of this section. No committee shall have more than one employee representative from USPS labor organizations.

(4) *Other members.* In consultation with the committee members, OPM may invite other current full-time Federal employees to serve on the committees. OPM will coordinate such invitations with the employing agencies.

(d) *Functions of committees.* COLA partnership committees may—

(1) Advise and assist OPM in planning living-cost surveys;

(2) Provide or arrange for observers for data collection during living-cost surveys;

(3) Advise and assist OPM in the review of survey data;

(4) Advise OPM on its administration of the COLA program, including survey methodology and other issues relating to the compensation of Federal employees in the allowance areas; and

(5) Assist OPM in the dissemination of information to affected employees about the living-cost surveys and the COLA program.

(e) *Data collection observers.* In consultation with the committees, OPM will determine the number of observers required to accompany OPM officials during the collection of living-cost data. All observers shall be from the local area and shall be full-time Federal employees performing official business of the Federal Government. The committees will nominate observers, and OPM will select from among these nominations in consultation with the nominees' employing agencies.

(f) *Subcommittees.* In consultation with the committees, OPM may establish one or more subcommittees to advise the committee on issues relating to the allowance areas and survey areas within the geographic area represented by the committee. If such subcommittees are established, they shall be composed of up to two agency representatives and two employee representatives from the local area, as well as one or more OPM representatives. OPM may, in consultation with the committee and subcommittee, invite additional Federal employees to serve on the subcommittee. Subcommittee agency and employee representatives shall be nominated and appointed in the same manner as committee members. All subcommittee members shall be current full-time Federal employees performing official business of the Federal Government.

(g) *Agency release of employees for committee/subcommittee activities.* Employers shall cooperate and release nominated employees for committee/subcommittee proceedings and activities unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as committee or subcommittee members are considered to be on official assignment to an interagency function, rather than on leave.

[FR Doc. 96-29773 Filed 11-20-96; 8:45 am]
BILLING CODE 3225-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV96-057-1 FIR]

Domestic Dates Produced or Packed in Riverside County, CA; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the California Date Administrative Committee (Committee) under Marketing Order No. 987 for the 1996-97 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of domestic dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-9918, FAX 202-720-5698, or Maureen Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209-487-5901, FAX 209-487-5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-2491; FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12565.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning October 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 producers of California dates in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as

those whose annual receipts are less than \$5,000,000. The majority of California date producers and handlers may be classified as small entities.

The California date marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on July 18, 1996, and by a vote of 8 to 1 recommended 1996-97 gross operating expenditures of \$60,000 and an assessment rate of \$0.0556 per hundredweight of dates. Included in the gross operating expenditures is a \$40,000 surplus account contribution, resulting in net operating expenditures of \$20,000. In comparison, last year's net budgeted expenditures were \$774,218, after a \$42,000 surplus account contribution was deducted. The assessment rate of \$0.0556 is \$2.1944 lower than last year's established rate. The budgeted expenditures and assessment rate are significantly lower than last year because most of the Committee's promotional activities will be conducted by the California Date Commission (Commission). Over the past year, the industry formed the Commission, a State organization that will be conducting promotional activities for the industry. The no vote on the budget came from a grower who opposed formation of the Commission and has expressed a concern that the organization is composed of handlers only and no growers. Major expenditures recommended by the Committee for the 1996-97 crop year include \$43,586 for salaries and benefits and \$14,766 for office expenses. Budgeted expenses for those items in 1995-96 were \$121,500 and \$33,300, respectively. Included in the \$60,000 gross operating budget is a \$40,000 surplus account contribution, for a net operating budget of \$20,000, \$98,000 less than last year.

Under the Federal marketing order, the Committee's staff manages a surplus pool for low quality dates. The expenses incurred for this activity are paid for with proceeds from the sale of such dates, not assessment income.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dates. Date shipments for the year are estimated at 360,000 hundredweight, which should provide \$20,016 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers.

An interim final rule regarding this action was published in the September 24, 1996, issue of the Federal Register (61 FR 49955). That rule provided for a 30-day comment period. No comments were received.

This action will reduce the assessment rate to be imposed on handlers during the 1996-97 crop year. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the *Federal Register* because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 crop year began October 1, 1996, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (3) handlers are aware of this action which was recommended by a vote of 8 to 1 by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action which provided a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

Note: This section will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 987 which was published at 61 FR 49955 on September 24, 1996, is adopted as a final rule without change.

Dated: November 12, 1996.

Eric M. Forman,
Acting Director, Fruit and Vegetable Division.
[FR Doc. 96-29728 Filed 11-20-96; 8:45 am]
BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AWP-3]

Establishment of Class E Airspace; Grand Canyon-Valle Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Grand Canyon-Valle Airport, AZ. The development of a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 19 and a Global Positioning System (GPS) SIAP to RWY 01/19 at Grand Canyon-Valle Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Grand Canyon-Valle Airport, AZ.

EFFECTIVE DATE: 0901 UTC January 30, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

SUPPLEMENTARY INFORMATION:

History

On October 8, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace area at Grand Canyon-Valle Airport, AZ (61 FR 52734). This action will provide adequate controlled airspace to accommodate a VOR/DME RWY 19 and GPS RWY 01/19 SIAP at Grand Canyon-Valle Airport, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Grand Canyon-Valle Airport, AZ. The development of a VOR/DME and GPS SIAP to Grand Canyon-Valle Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the VOR/DME RWY 19 and GPS RWY 01/19 SIAP at Grand Canyon-Valle Airport, AZ.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that his rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005: Class E airspace area extending upward from 700 feet or more above the surface of the earth.

AWP AZ 85 Grand Canyon-Valle Airport, AZ [New]

Grand Canyon-Valle Airport, AZ
(lat. 35°39'03"N, long. 112°08'47"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Valle Airport and within 1.4 miles each side of the 021° bearing from the Valle Airport extending from the 6.4-mile radius of the Valle Airport to 8 miles northwest of the Valle Airport and within 2 miles each side of the 201° bearing from the Valle Airport extending from the 6.4-mile radius of the Valle Airport to 10 miles southwest of the Valle Airport. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 35°42'00"N, long. 112°00'03"W; to lat. 35°18'30"N, long. 112°00'03"W; to lat. 35°24'00"N, long. 112°21'00"W; to lat. 35°34'00"N, long. 112°20'30"W; to lat.

35°38'00"N, long. 112°17'00"W; to lat. 35°38'00"N, long. 112°07'03"W; to lat. 35°42'00"N, long. 112°07'03"W, thence to the point of beginning.

Issued in Los Angeles, California, on November 4, 1996.

Sabra W. Kaulia,
Assistant Manager, Air Traffic Division,
Western-Pacific Region.

[FR Doc. 96-29818 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 71

[Airspace Docket No. 96-AWP-16]

Establishment of Class E Airspace; Phoenix, Deer Valley Municipal Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation and description of a final rule that was published in the *Federal Register* on October 7, 1996 (61 FR 52283), Airspace Docket No. 96-AWP-16.

EFFECTIVE DATE: 0901 UTC December 5, 1996.

FOR FURTHER INFORMATION CONTACT:

William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96-25607, Airspace Docket No. 96-AWP-16, published on October 7, 1996 (61 FR 52283), established a Class E airspace area at Phoenix-Deer Valley Municipal Airport, AZ. An error was discovered in the airspace designation and description in the Phoenix-Deer Valley Municipal Airport, AZ, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation and description for the Class E airspace area at Phoenix-Deer Valley Municipal Airport, AZ, as published in the *Federal Register* on October 7, 1996 (61 FR 52283), (Federal Register Document 96-25607; page 52283, columns 2 and 3), are corrected as follows:

§ 71.1 [Corrected]

On page 52283, in the second column, in the second paragraph, in the seventh line "paragraph 6002" should read "paragraph 6004."

On page 52283, in the third column, in the fourth paragraph, under § 71.1 [Amended], "Paragraph 6002 Class E airspace areas designated as a surface area for an airport" should read "Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area."

AWP AZ E4 Phoenix, Deer Valley Municipal, AZ [Corrected]

Phoenix, Deer Valley Municipal Airport, AZ
(lat. 33°41'18"N, long. 112°04'56"W)

On page 52283, the third column, the airspace description for Phoenix, Deer Valley Municipal, AZ, is corrected to read as follows:

Within 3 miles south and 2 miles north of the 287° bearing from the Deer Valley Municipal Airport extending from the 4.4-mile radius of the Deer Valley Municipal Airport to 9.2 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on November 4, 1996.

Sabra W. Kaulia,
Assistant Manager, Air Traffic Division,
Western-Pacific Region.

[FR Doc. 96-29819 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-12-M

FEDERAL TRADE COMMISSION

16 CFR Part 21

Guides for the Mirror Industry

AGENCY: Federal Trade Commission.

ACTION: Final rules; Recision of the guides for the mirror industry.

SUMMARY: The Guides for the Mirror Industry were promulgated in 1962 to prevent deception in the sale and marketing of mirrors for decorative and utilitarian uses with respect to the material content of the glass from which mirrors were made and the method by which the backing was affixed to mirrors. When the Mirror Guides were adopted, the process used to manufacture glass for mirrors was not uniform and there were no industry standards that regulated quality, reflectivity, or durability of mirrors. Since that time, the glass industry, and as a result the mirror industry, have undergone significant changes. First, mirrors are no longer made from "plate glass" or "sheet glass," both of which produced mirrors with a high level of

distortion. Today, all commercial glass manufacturers use the Pilkington process to manufacture float glass. This process produces high quality glass that is almost distortion-free. Second, industry standards have been promulgated that govern the quality, acceptable levels of distortion, reflectivity and durability of glass suitable for use in mirrors. Third, the process used to affix copper backing to mirrors has undergone significant technological improvement that lessens, if not eliminates, the potential for deception as to the type of backing used. Finally, due to technological changes, industry participants consider much of the terminology used in the Mirror Guides to be obsolete. These facts appear to make the Mirror Guides obsolete and unnecessary. Because of these changes, the Commission has determined that it is in the public interest to rescind the Guides for the Mirror Industry.

EFFECTIVE DATE: November 21, 1996.

ADDRESS: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jessica D. Gray, Attorney, Federal Trade Commission, Washington, D.C. 20580, (202) 326-2025.

SUPPLEMENTARY INFORMATION: The Mirror Guides, promulgated by the Commission on June 30, 1962, and amended on September 13, 1972 (37 FR 18448), and February 27, 1979 (44 FR 11183), give guidance about acceptable and unacceptable claims made in advertising or promotional materials used in the sale or distribution of mirrors.

Specifically, under these Guides it is an unfair or deceptive act or practice for any industry member, in connection with the sale, offering for sale, or distribution of mirrors, to use any advertisement or representation which is false or has the tendency to mislead purchasers or prospective purchasers with respect to the type, grade, quality, quantity, use, size, design, material, finish, strength, backing, silvering, thickness, composition, origin, preparation, manufacture, value, or distribution of any mirror.

Under the Mirror Guides it is also an unfair or deceptive act or practice for any member of the industry to sell, offer for sale, or distribute any mirror under any representation or circumstance having the capacity to mislead or deceive purchasers or prospective purchasers with regard to the type or

kind of glass contained in any mirror or the type of backing affixed thereto.

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. On January 22, 1996, the Notice of the Commission's intent to request public comment on the rules and guides selected for regulatory review during 1996 appeared in the *Federal Register*, 61 FR 1538-44. A notice inviting comments on the Mirror Guides was published on March 15, 1996, 61 FR 10708-10. The comment period ended on April 15, 1996. One comment, from the North American Association of Mirror Manufacturers (NAAMM), was received after the comment period closed. This comment characterized the Mirror Guides as obsolete and recommended that the Guides be amended or rescinded. Specifically, NAAMM stated that there is consensus within the industry that the Guides are "almost totally inaccurate" and that the process for manufacturing glass for mirrors is no longer an issue.

At the time the Mirror Guides were promulgated, mirrors were made from "plate glass," which was made by grinding and polishing a ribbon of glass between two rolls. The glass produced by this process contained a high occurrence of distortions and other imperfections. The quality problems that resulted from the manufacturing process gave rise to pervasive misrepresentations or deceptive acts or practices by some manufacturers, distributors, and resellers of mirrors. Today, the grinding and polishing process has been displaced by the "float" technology, which produces glass with greater clarity and almost no distortions. Consequently, misrepresentations that mirrors contain "crystal" or "crystalline," "window," or "plate" glass are no longer a concern.

In the 1960s, some industry members engaged in the practice of deceptively marketing mirrors as being "copper backed" when the copper had simply been painted on and had not been applied by an electroplating process. Mirrors that had copper backing painted on them did not have the same quality and durability as mirrors to which the copper backing had been applied by electroplating. The Mirror Guides were promulgated in part to prevent this deceptive practice. Today, a different

process for applying copper backing to mirrors called "electro-chemical reaction" is used and appears to have displaced both "electroplating" and the painting on of copper backing. Therefore the quality and durability concerns that prompted the adoption of the Mirror Guides no longer exist.

The glass and mirror industries have also made significant progress toward standardization. The American Society for Testing and Materials has promulgated standards that set parameters for quality, levels of defects and durability of glass. In addition, the American National Standards Institute has promulgated several standards that govern the reflectivity of mirrors used in automobiles.

These recent changes in the glass and mirror industries have rendered the Mirror Guides obsolete and ineffectual. Accordingly, the Commission has determined that it is in the public interest to eliminate the Mirror Guides.

List of Subjects in 16 CFR Part 21

Advertising, Glass and glass products, Trade practices.

PART 21—(REMOVED)

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends Chapter I of Title 16 of the Code of Federal Regulations by removing Part 21.

By direction of the Commission.

Benjamin L. Berman,

Acting Secretary.

[FR Doc. 96-29798 Filed 11-20-96; 8:45 am]
BILLING CODE 4750-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

(Public Notice 2463)

Visas: Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule amends the numbering system for the Department's visa regulations in order to facilitate implementation of the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996", hereinafter referred to as "the Act." Among other things, the Act revises a number of the

current grounds of visa ineligibility under the Immigration and Nationality Act (INA) and adds new grounds of visa ineligibility. The Act also modifies certain definitions and waiver provisions set forth in the INA. As a consequence of these additions and revisions, it is necessary for the Department to amend the numbering of 22 CFR Part 40.

EFFECTIVE DATE: This rule takes effect November 21, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202-663-1203.

SUPPLEMENTARY INFORMATION:

Public Law 104-208 Background

The President signed Pub. L. 104-208, the Department of Defense Appropriations Act, 1997, on September 30, 1996. Division C of Pub. L. 104-208 is the Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("the Act"). The Act revises several grounds of visa ineligibility, certain definitions and makes other significant changes to the Immigration and Nationality Act (INA).

Changes

As most of the Act's amendments to the INA merely revise the current text, much of the early numbering of the CFR remains the same. However, the insertion by the Act of a new INA 212(a)(9), the Act's renumbering of INA 212(a)(9) as 212(a)(10), and the Act's addition of several new grounds of ineligibility make it necessary for the Department to revise the current numbering of the visa regulations, which are designed to correlate to the INA's numbering. As a result of other INA amendments, which required the restructuring of part 40, and in the expectation that additional changes in the regulations will be required, the Department is also taking this opportunity to reserve additional sections for future use. The following derivation table for 22 CFR part 40 is provided as a guide to users of this part. The new numbering system is indicated in the table as "NEW." The "RELATIONSHIP TO OLD" column indicates whether the new section corresponds to a prior section, will be reserved for future use, or will be a new section added because of recent changes in the law. Regulations on new or amended sections will be promulgated as necessary.

DERIVATION TABLE: 22 CFR PART 40

New	Relationship to old	INA section
40.1	40.1	101(a)
40.2	40.2	101(a)(21) & (22)
40.3	40.3	101(a)(38)
40.4	40.4	222(f)
40.5	Reserved	
40.6	40.6	221(g)
40.7 & 40.8	Reserved	
40.9	40.9	212(a)
40.11	40.11	212(a)(1)
40.12-40.19	Reserved	
40.21(a)	40.21(a)	212(a)(2)(A)(i)(I)
40.21(b)	40.21(b)	212(a)(2)(A)(i)(II)
40.22	40.22	212(a)(2)(B)
40.23	40.23	212(a)(2)(C)
40.24	40.24	212(a)(2)(D)
40.25	40.25	212(a)(2)(E)
40.26-40.29	Reserved	
40.31	40.31	212(a)(3)(A)
40.32	40.32	212(a)(3)(B)
40.33	40.33	212(a)(3)(C)
40.34	40.34	212(a)(3)(D)
40.35(a)	40.35(a)	212(a)(3)(E)(i)
40.35(b)	40.35(b)	212(a)(3)(E)(ii)
40.36-40.39	Reserved	
40.41	40.41	212(a)(4)
40.42-40.49	Reserved	
40.51	40.51	212(a)(5)(A)
40.52	40.52	212(a)(5)(B)
40.53	New	212(a)(5)(C)
40.54-40.59	Reserved	
40.61	40.61	212(a)(6)(A) Amended
40.62	40.62	212(a)(6)(B) Amended
40.63	40.63	212(a)(6)(C)
40.64	40.64	212(a)(6)(D)
40.65	40.65	212(a)(6)(E)
40.66	40.66	212(a)(6)(F)
40.67	New	212(a)(6)(G)
40.68 & 40.69	Reserved	
40.71	40.71	212(a)(7)(A)
40.72	40.72	212(a)(7)(B)
40.73-40.79	Reserved	
40.81	40.81	212(a)(8)(A)
40.82	40.82	212(a)(8)(B)
40.83-40.89	Reserved	
40.91	New	212(a)(9)(A)
40.92	New	212(a)(9)(B)
40.93	New	212(a)(9)(C)
40.94-40.99	Reserved	
40.101	40.91	212(a)(10)(A)
40.102	40.92	212(a)(10)(B)
40.103	New	212(a)(10)(C)
40.104	New	212(a)(10)(D)
40.105	New	212(a)(10)(E)
40.106-40.110	Reserved	
40.201	40.101	221(g)
40.202	40.102	212(e)
40.203	40.103	214(b)
40.204	40.104	212(o)
40.205	40.105	203(c)(2)
40.206	New	208
40.207-40.210	Reserved	
40.301	40.111	212(d)(3)(A)

Final Rule

Because these amendments to the regulations are merely non-substantive organizational changes, and do not affect the visa application process, the Department has determined that it is

unnecessary to publish a proposed rule or to solicit comments from the public. See, 5 U.S.C. 553(b)(B).

This rule is not subject to the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping

action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12988. This rule is exempted from the

requirements of E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 40

Aliens, Definitions, Ineligibilities.

In view of the foregoing, title 22 of the Code of Federal Regulations part 40 is amended as follows:

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 40 is revised to read as follows:

Authority: 5 U.S.C. 1104.

2. Section 40.9 of subpart A is added to read as follows:

§ 40.9 Classes of inadmissible aliens.

Subparts B through L describe classes of inadmissible aliens who are ineligible to receive visas and who shall be ineligible for admission into the United States, except as otherwise provided in the Immigration and Nationality Act, as amended.

§§ 40.12 through 40.19 [Added and reserved]

3. Sections 40.12 through 40.19 are added to subpart B and reserved.

§§ 40.26 through 40.29 [Added and reserved]

4. Sections 40.26 through 40.29 are added to subpart C and reserved.

§§ 40.36–40.39 [Added and reserved]

5. Sections 40.36 through 40.39 are added to subpart D and reserved.

§§ 40.42 through 40.49 [Added and reserved]

6. Sections 40.42 through 40.49 are added to subpart E and reserved.

§ 40.53 Uncertified foreign health-care workers. [Reserved]

7. The heading of § 40.53 is added to subpart F to read as follows and the section is reserved:

§§ 40.54–40.59 [Added and reserved]

8. Sections 40.54 through 40.59 are added to subpart F and reserved.

9. The heading of § 40.63 of subpart G is revised to read as follows:

§ 40.63 Misrepresentation; Falsely claiming citizenship

10. The heading of § 40.67 is added to subpart G to read as follows and the section is reserved:

§ 40.67 Student visa abusers. [Reserved]

§§ 40.68–40.69 [Added and reserved]

11. Sections 40.68 through 40.69 are added to subpart G and reserved.

§§ 40.73 through 40.79 [Added and reserved]

12. Sections 40.73 through 40.79 are added to subpart H and reserved.

§§ 40.83–40.89 [Added and reserved]

13. Sections 40.83 through 40.89 are added to subpart I and reserved.

Subpart J—Aliens Previously Removed

14. Subparts J, K, and L are redesignated as subparts K, L, and M, and the sections in those subparts are redesignated as set forth below.

Old CFR unit	New CFR unit
Subpart J	Subpart K
§ 40.91	§ 40.101
§ 40.92	§ 40.102
§ 40.93	§ 40.103
Subpart K	Subpart L
§ 40.101	§ 40.201
§ 40.102	§ 40.202
§ 40.103	§ 40.203
§ 40.104	§ 40.204
§ 40.105	§ 40.205
Subpart L	Subpart M
§ 40.111	§ 40.301

15. A new subpart J is added to read as follows:

Subpart J—Aliens Previously Removed

Sec.
40.91 Certain aliens previously removed. [Reserved]
40.92 Aliens unlawfully present. [Reserved]
40.93 Aliens unlawfully present after previous immigration violations. [Reserved]
40.94–40.99 [Reserved]

16. The headings of §§ 40.91 through 40.99 are added to subpart J to read as set forth above and the sections are reserved.

17. The headings of §§ 40.104 through 40.106 are added to redesignated subpart K to read as follows and the sections are reserved.

§ 40.104 Unlawful voters. [Reserved]

§ 40.105 Former citizens who renounced citizenship to avoid taxation. [Reserved]

§ 40.106–40.110 [Reserved]

18. Sections 40.106 through 40.110 are added to redesignated Subpart K and reserved.

19. The heading of § 40.206 is added to redesignated subpart L to read as follows and the section is reserved.

§ 40.206 Frivolous applications [Reserved]

§ 40.207–40.210 [Added and reserved]

20. Sections 40.207 through 40.210 are added to redesignated Subpart L and reserved.

Dated: October 30, 1996.

Donna J. Hamilton,
Acting Assistant Secretary for Consular Affairs.

[FR Doc. 96–29564 Filed 11–20–96; 8:45 am]

BILLING CODE 4710–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5553–3]

National Oil and Hazardous Substances; Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Louisiana-Pacific Superfund Site (EPA ID # CAD065021594) from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Louisiana-Pacific Superfund Site located in Oroville, California, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of California Department of Toxic Substances Control have determined the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: November 21, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Schaffler, Remedial Project Manager, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, Mail Code H-7-2, San Francisco, California 94105, (415) 744–2359.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Louisiana-Pacific Corporation site, Oroville, California.

A Notice of Intent to Delete for this site was published August 27, 1996 (61 FR 44025). The closing date for comments on the Notice of Intent to Delete was September 26, 1996. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. In accordance with NCP § 300.425(e)(3), any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 1, 1996.

John Wise,

Acting Regional Administrator, U.S. EPA Region 9.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Louisiana-Pacific Corporation site, Oroville, California.

[FR Doc. 96–29657 Filed 11–20–96; 8:45 am]

BILLING CODE 5500–55–7

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 301

[FTR Amendment 52]

RIN 3090–AF98

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be undated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases the standard CONUS maximum per diem rate from \$66 to \$80, which represents a \$10 increase in the maximum lodging amount, and a \$4 increase in the meals and incidental expenses (M&IE) rate. This rule also increases/decreases the maximum lodging and M&IE amounts in certain existing per diem localities; removes the \$26 M&IE rate. This rule also adds one additional M&IE rate of \$42 for certain per diem localities; and adds new per diem localities, deletes a number of previously designated per diem localities because of the increased lodging amount in the standard CONUS rate, and changes the table in § 301–7.12(a)(2)(i) to reflect the additional M&IE rate of \$42 for use when making deductions from meals furnished an employee without charge or at a nominal cost by the Federal Government.

DATES: This final rule is effective on January 1, 1997, and applies for travel performed on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

Appendix A To Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under § 301–7.3(a) of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–7 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate ⁴ (c)
CONUS, Standard rate	\$50		\$30		\$80

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–7

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR 301–7 is revised to read as follows:

PART 301–7—PER DIEM ALLOWANCES

1. The authority citation for part 301–7 continues to read as follows:

Authority: 5 U.S.C. 5701–5709.

2. Section 301–7.12 is amended by revising the table in paragraph (a)(2)(i) to read as follows:

§ 301–7.12 Reductions in maximum per diem rates when appropriate.

(a) * * *
(2) * * *
(i) * * *

	M & IE Rates			
	\$30	\$34	\$38	\$42
Breakfast	\$6	\$7	\$8	\$9
Lunch	6	7	8	9
Dinner	16	18	20	22
Incidentals	2	2	2	2

3. Appendix A to chapter 301 is revised to read as follows:

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302-2, 302-4, and 302-5 of this subtitle.)			
Alabama:			
Birmingham, Jefferson	55	38	93
Gulf Shores, Baldwin:			
(May 1-September 30)	102	34	136
(October 1-April 30)	73	34	107
Huntsville, Madison	61	34	95
Mobile, Mobile	56	38	94
Montgomery, Montgomery	56	30	86
Arizona:			
Casa Grande, Pinal:			
(January 1-April 30)	55	30	85
(May 1-December 31)	50	30	80
Chino, Apache:			
(April 1-October 31)	83	30	113
(November 1-March 31)	63	30	93
Flagstaff, All points in Coconino County not covered under Grand Canyon per diem area:			
(April 1-October 31)	79	34	113
(November 1-March 31)	60	34	94
Grand Canyon, all points in the Grand Canyon National Park and Kaibab National Forest within Coconino County	105	38	143
Kayenta, Navajo:			
(April 1-October 31)	93	30	123
(November 1-March 31)	62	30	92
Phoenix/Scottsdale, Maricopa:			
(October 1-May 14)	105	38	143
(May 15-September 30)	65	38	103
Prescott, Yavapai	54	34	88
Tucson, Pima County; Davis Monthan AFB:			
(November 1-May 31)	77	34	111
(June 1-October 31)	61	34	95
Yuma, Yuma	64	30	94
Arkansas:			
Hot Springs, Garland	59	30	89
Little Rock, Pulaski	65	30	95
California:			
Clearlake, Lake:			
(April 1-September 30)	61	34	95
(October 1-March 31)	52	34	86
Death Valley, Inyo	93	42	135
Eureka, Humboldt:			
(May 15-October 14)	67	34	101
(October 15-May 14)	56	34	90
Fresno, Fresno	68	34	102
Gualala/Point Area, Mendocino	124	42	166
Los Angeles, Los Angeles, Kern, Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake	97	42	139
Mammoth Lakes/Bridgeport, Mono:			
(November 1-April 30)	72	42	114
(May 1-October 31)	59	42	101
Merced, Merced	54	34	88
Modesto, Stanislaus	58	34	92
Monterey, Monterey:			
(June 1-October 31)	79	38	117
(November 1-May 31)	71	38	109
Napa, Napa:			
(November 1-March 31)	76	42	118
(April-October 31)	63	42	105
Oakhurst/Madera, Madera	56	30	86
Oakland, Alameda, Contra Costa and Marin	77	34	111
Ontario/Victorville/Bartow, San Bernardino	64	38	102
Palm Springs, Riverside:			
(November 1-May 31)	79	38	117
(June 1-October 31)	62	38	100
Palo Alto/San Jose, Santa Clara	105	42	147
Redding, Shasta	55	34	89
Sacramento, Sacramento	72	38	110

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
San Diego, San Diego	84	38	122
San Francisco, San Francisco	114	42	156
San Luis Obispo, San Luis Obispo	71	38	109
San Mateo/Redwood City, San Mateo	85	38	123
Santa Barbara, Santa Barbara	98	34	132
Santa Cruz, Santa Cruz:			
(June 1-September 30)	95	38	133
(October 1-May 31)	81	38	119
Santa Rosa, Sonoma	59	38	97
South Lake Tahoe, El Dorado (See also Stateline, NV)	126	38	164
Stockton, San Joaquin	51	34	85
Tahoe City, Placer	57	38	102
Visalia, Tulare	64	38	102
West Sacramento, Yolo	60	30	90
Yosemite Nat'l Park, Mariposa:			
(April 1-October 31)	99	42	141
(November 1-March 31)	84	42	126
Colorado:			
Aspen, Pitkin:			
(January 15-March 31)	175	42	217
(April 1-January 14)	82	42	124
Boulder, Boulder:			
(May 1-October 31)	93	38	131
(November 1-April 30)	81	38	119
Colorado Springs, El Paso			
(April 1-October 31)	70	30	100
(November 1-March 31)	54	30	84
Cortez, Montezuma:			
(May 1-September 30)	65	30	95
(October 1-April 30)	52	30	82
Denver, Denver, Adams, Arapahoe and Jefferson	92	34	126
Durango, La Plata:			
(June 1-October 31)	92	34	126
(November 1-May 31)	61	34	95
Fort Collins/Loveland, Larimer:			
(May 1-September 30)	57	30	87
(October 1-April 30)	52	30	82
Glenwood Springs, Garfield	56	34	90
Grand Junction, Mesa	57	30	87
Gunnison, Gunnison:			
(June 1-September 30)	62	30	92
(October 1-May 31)	50	30	80
Keystone/Silverthorne, Summit:			
(February 1-August 31)	167	42	209
(September 1-January 31)	128	42	170
Montrose, Montrose:			
(June 1, September 30)	55	30	85
(October 1-May 31)	50	30	80
Pagosa Springs, Archuleta	53	30	83
Pueblo, Pueblo:			
(June 1-September 30)	60	30	90
(October 1-May 31)	51	30	81
Steamboat Springs, Routt:			
(December 1-March 31)	114	34	148
(April 1-November 30)	740	34	108
Telluride, San Miguel:			
(November 1-March 31)	145	38	183
(April 1-October 31)	102	38	140
Trinidad, Las Animas:			
(June 1-September 30)	67	30	97
(October 1-May 31)	50	30	80
Vail, Eagle:			
(November 1-March 31)	181	42	223
(November 1-March 31)	181	42	223
(April 1-October 31)	189	42	131
Connecticut:			
Bridgeport/Danbury, Fairfield	86	38	124
Hartford, Hartford and Middlesex	75	30	105
New Haven, New Haven	75	30	105
New London/Groton, New London:			
(June 1-October 31)	86	34	120
(November 1-May 31)	57	34	101

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Putnam/Danielson, Windham	53	30	83
Salisbury/Lakeville, Litchfield	78	34	112
Vernon, Tolland	55	30	85
Delaware:			
Dover, Kent	52	34	86
Lewes, Sussex:			
(June 1-September 14)	78	38	116
(September 15-May 31)	51	38	89
Wilmington, New Castle	83	38	121
District of Columbia:			
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (See also Maryland and Virginia)	124	42	166
Florida:			
Altamonte Springs, Seminole	74	34	108
Bradenton, Manatee:			
(January 1-May 14)	69	30	99
(May 15-December 31)	50	30	80
Cocoa Beach, Brevard	75	34	109
Daytona Beach, Volusia:			
(February 1-August 31)	73	34	107
(September 1-January 31)	54	34	88
Fort Lauderdale, Broward:			
(December 15-April 30)	86	34	120
(May 1-December 14)	65	34	99
Fort Myers, Lee:			
(January 1-April 30)	95	34	129
(May 1-December 31)	68	34	100
Fort Pierce, Saint Lucie:			
(December 1-April 30)	60	30	90
(May 1-November 30)	50	30	80
Fort Walton Beach, Okaloosa:			
(April 1-September 14)	73	30	103
(September 15-March 31)	58	30	88
Gainesville, Alachua	59	34	93
Gulf Breeze, Santa Rosa	65	34	99
Jacksonville, Duval County; Naval Station Mayport	65	30	95
Key West, Monroe:			
(December 15-April 30)	172	42	214
(May 1-December 14)	122	42	164
Kissimmee, Osceola	67	30	97
Lakeland, Polk:			
(January 1-April 30)	63	30	93
(May 1-December 31)	55	30	85
Miami, Dade	79	42	121
Naples, Collier:			
(December 15-April 30)	94	38	132
(May 1-December 14)	61	38	99
Orlando, Orange	69	34	103
Panama City, Bay:			
(March 1-September 14)	55	30	85
(September 15-February 29)	50	30	80
Pensacola, Escambia	62	34	96
Punta Gorda, Charlotte:			
(December 15-April 14)	75	34	109
(April 15-December 14)	52	34	86
Saint Augustine, Saint Johns:			
(February 1-August 31)	60	34	94
(September 1-January 31)	50	34	84
Sarasota, Sarasota:			
(December 15-April 30)	90	34	124
(May 1-December 14)	63	34	97
Stuart, Martin:			
(January 1-April 30)	67	34	101
(May 1-December 31)	61	34	95
Tallahassee, Leon	68	34	102
Tampa/St. Petersburg, Hillsborough and Pinellas:			
(January 1-April 30)	81	38	119
(May 1-December 31)	72	38	110
Vero Beach, Indian River:			
(January 15-April 30)	86	30	116

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
(May 1-January 14)	73	30	103
West Palm Beach, Palm Beach:			
(January 1-April 30)	85	38	123
(May 1-December 31)	64	38	102
Georgia:			
Albany, Dougherty	59	30	89
Athens, Clarke	58	34	92
Atlanta, Clayton, De Kalb, Fulton, Cobb and Gwinnett	98	38	134
Augusta, Richmond	53	30	83
Columbus, Muscogee	56	30	86
Conyers, Rockdale	54	30	84
Macon, Bibb	54	30	84
Savannah, Chatham	63	34	97
Idaho:			
Boise, Ada	61	34	95
Coeur d'Alene, Kootenai:			
(May 1-September 30)	67	34	101
(October 1-April 30)	55	34	89
Idaho Falls, Bonneville	52	34	86
Ketchum/Sun Valley, Blaine			
(November 1-March 31)	86	38	124
(April 1-October 31)	73	38	111
McCall, Valley	56	34	100
Sandpoint, Bonner:			
(July 1-August 31)	79	30	109
(September 1-June 30)	50	30	80
Stanley, Custer	51	34	85
Illinois:			
Bloomington, McLean	52	30	82
Champaign/Urbana, Champaign	56	34	90
Chicago, Du Page, Cook and Lake	119	42	161
Decatur, Macon	51	30	81
Joliet, Will	53	30	83
Kankakee, Kankakee	52	30	82
Peoria, Peoria	58	34	92
Rock Island, Rock Island	76	30	106
Rockford, Winnebago	63	38	101
Springfield, Sangamon	53	30	83
Indiana:			
Anderson, Madison	54	30	84
Bloomington/Crane, Monroe and Martin	51	34	85
Burlington Beach/Valparaiso, Porter	73	30	103
Carmel, Hamilton	63	38	101
Elkhart, Elkhart	52	30	82
Evansville, Vanderburgh	63	34	97
Fort Wayne, Allen	62	30	92
French Lick, Orange	57	30	87
Gary/Merrillville, Lake	57	30	87
Greenwood, Johnson	55	30	85
Indianapolis, Marion County; Fort Benjamin Harrison	71	38	109
Lafayette, Tippecanoe	57	34	91
Madison, Jefferson	52	30	82
Michigan City, La Porte	52	30	82
Muncie, Delaware	53	30	83
Nashville, Brown:			
(June 1-October 31)	112	30	142
(November 1-May 31)	90	30	120
South Bend, St. Joseph	61	30	91
Iowa:			
Bettendorf/Davenport, Scott	61	30	91
Cedar Rapids, Linn	53	34	87
Des Moines, Polk	60	30	90
Iowa City, Johnson	54	30	84
Kansas:			
Kansas City, Johnson and Wyandotte (See also Kansas City, MO)	78	42	120
Manhattan, Riley	55	30	85
Wichita, Sedgwick	63	34	97
Kentucky:			
Covington, Kenton	58	34	92
Florence, Boone	61	30	91
Lexington, Fayette	57	34	91
Louisville, Jefferson	57	38	105

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Louisiana:			
Baton Rouge, East Baton Rouge Parish	63	34	97
Bossier City, Bossier Parish	60	30	90
Gonzales, Ascension Parish	57	30	87
Lafayette, Lafayette Parish	51	30	81
Lake Charles, Calcasieu Parish	64	30	94
New Orleans, Parishes of Jefferson, Orleans, Plaquemines and St. Bernard	70	42	112
Opelousas, Saint Landry	58	30	88
Shreveport, Caddo Parish	58	34	92
Slidell, St. Tammany Parish	51	30	81
Maine:			
Augusta, Kennebec	51	30	81
Bangor, Penobscot:			
(July 1-October 31)	57	30	87
(November 1-June 30)	50	30	80
Bar Harbor, Hancock:			
(July 1-September 14)	121	34	155
(September 15-June 30)	84	34	118
Bath, Sagadahoc:			
(June 1-September 30)	61	30	91
(October 1-May 31)	53	30	83
Calaix, Washington	57	30	87
Kennebunk/Sanford, York:			
(May 1-September 30)	87	34	121
(October 1-April 30)	63	34	97
Kittery, Portsmouth Naval Shipyard (See also Portsmouth, NH):			
(June 1-October 31)	75	34	109
(November 1-May 31)	56	34	90
Portland, Cumberland:			
(July 1-October 31)	86	38	124
(November 1-June 30)	65	38	103
Rockport, Knox:			
(June 15-October 31)	94	34	128
(November 1-June 14)	65	34	99
Wiscasset, Lincoln:			
(July 1-September 14)	84	30	114
(September 15-June 30)	57	30	87
Maryland:			
(For the counties of Montgomery and Prince Georges, see District of Columbia)			
Annapolis, Anne Arundel	86	38	124
Baltimore, Baltimore and Harford	96	38	134
Columbia, Howard	87	42	129
Frederick, Frederick	58	38	96
Grasonville, Queen Annes	55	34	89
Hagerstown, Washington	55	30	85
Lexington Park/St. Inigoes/Leonardtown, Saint Mary's	59	34	93
Lusby, Calvert	59	34	93
Ocean City, Worcester:			
(May 1-September 30)	152	42	194
(October 1-April 30)	77	42	119
Saint Michaels, Talbot	133	38	171
Salisbury, Wicomico:			
(June 1-September 14)	57	34	91
(September 15-May 31)	52	34	86
Massachusetts:			
Andover, Essex	77	38	115
Boston, Suffolk	116	42	158
Cambridge/Lowell, Middlesex	116	34	150
Hyannis, Barnstable:			
(July 1-September 30)	112	38	150
(October 1-June 30)	67	38	105
Martha's Vineyard/Nantucket, Dukes and Nantucket:			
(June 1-October 31)	179	42	221
(November 1-May 31)	122	42	164
Northampton, Hampshire	66	30	96
Pittsfield, Berkshire	56	34	90
Plymouth, Plymouth:			
(June 15-October 31)	87	30	117
(November 1-June 14)	64	30	94
Quincy, Norfolk	78	34	112
South Deerfield/Greenfield, Franklin	69	30	99

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Springfield, Hampden	87	30	97
Taunton/New Bedford, Bristol	58	30	88
Worcester, Worcester	61	30	91
Michigan:			
Ann Arbor, Washtenaw	67	30	97
Battle Creek, Calhoun	57	30	87
Cadillac, Wexford	53	30	83
Charlevoix, Charlevoix:			
(June 1-September 30)	94	30	124
(October 1-May 31)	50	30	80
Detroit, Wayne	84	38	122
Flint, Genesee	52	30	82
Frankfort, Benzie:			
(June 1-September 30)	64	30	94
(October 1-May 31)	50	30	80
Gaylord, Otsego:			
(June 1-September 30)	58	34	92
(October 1-May 31)	52	34	86
Grand Rapids, Kent	60	34	94
Grayling, Crawford	52	30	82
Holland, Ottawa:			
(May 1-September 30)	58	30	88
(October 1-April 30)	51	30	81
Kalamazoo, Kalamazoo	61	30	91
Lansing/East Lansing, Ingham	57	30	87
Leland, Leelanau:			
(May 1-September 30)	114	30	144
(October 1-April 30)	80	30	110
Ludington, Mason:			
(May 1-September 30)	68	30	98
(October 1-April 30)	50	30	80
Mackinac Island, Mackinac:			
(June 1-September 30)	124	38	162
(October 1-May 31)	91	38	129
Marquette, Marquette:			
(June 1-September 30)	50	30	80
(October 1-May 31)	50	30	80
Midland, Midland	55	30	85
Mount Pleasant, Isabella	56	30	86
Muskegon, Muskegon	51	30	81
Ontonagon, Ontonagon	55	30	85
Petoskey, Emmet	51	34	85
Pontiac/Troy, Oakland	81	38	119
Port Huron, St. Clair	52	38	90
Sault Ste Marie, Chippewa	77	34	111
South Haven, Van Buren:			
(May 1-September 30)	70	30	100
(October 1-April 30)	55	30	85
St. Joseph/Benton Harbor/Niles, Berrien	56	34	90
Traverse City, Grand Traverse:			
(May 1-September 30)	98	34	132
(October 1-April 30)	54	34	88
Warren, Macomb	56	30	86
Minnesota:			
Duluth, St. Louis:			
(June 1-September 30)	58	38	97
(October 1-May 31)	51	38	89
Hinckley, Pine	51	30	81
Minneapolis/St. Paul, Anoka, Hennepin, Dakota and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount	61	38	119
Rochester, Olmsted	61	30	91
Mississippi:			
Bienville/Gulfport/Pascagoula/Bay St. Louis, Harrison, Jackson, and Hancock:			
(May 1-September 14)	72	34	106
(September 15-April 30)	63	34	97
Greenville, Washington	51	30	81
Jackson, Hinds	60	34	94
Philadelphia, Neshoba	60	30	90
Ridgeland, Madison	55	34	89
Robinsonville, Tunica	64	30	94
Vicksburg, Warren	51	30	81

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Missouri			
Branson, Taney:			
(May 1-October 31)	78	30	108
(November 1-April 30)	62	30	92
Cape Girardeau, Cape Girardeau	54	30	84
Hannibal, Marion:			
(June 1-September 14)	55	30	85
(September 15-May 31)	50	30	80
Jefferson City, Cole	56	30	86
Kansas City, Clay, Jackson and Platte (See also Kansas City, KS)	78	42	120
Lake Ozark, Miller	53	34	87
Osage Beach, Camden:			
(May 1-October 31)	68	34	102
(November 1-May 14)	57	34	91
Springfield, Greene	54	34	88
St. Louis, St. Charles and St. Louis	74	42	116
Montana			
Great Falls, Cascade	54	30	84
Kalispell/Polson, Flathead and Lake	54	30	84
Nebraska			
Kearney, Buffalo	51	30	81
Lincoln, Lancaster	53	30	83
Omaha, Douglas	63	34	97
Nevada			
Elko, Elko	53	30	83
Incline Village:			
(June 1-September 30)	149	38	187
(October 1-May 31)	106	38	144
Las Vegas, Clark County; Nellis AFB	74	38	112
Reno, all points in Washoe County other than the city of Incline Village	56	34	90
Stateline, Douglas (See also South Lake Tahoe, CA)	126	38	164
Winnemucca, Humboldt	55	30	85
New Hampshire			
Concord, Merrimack:			
(June 1-October 31)	70	30	100
(November 1-May 31)	61	30	91
Conway, Carroll:			
(June 1-October 31)	74	34	108
(November 1-May 31)	60	34	94
Durham, Strafford:			
(May 1-October 31)	63	30	93
(November 1-April 30)	58	30	88
Hanover, Grafton and Sullivan:			
(June 1-October 31)	72	38	110
(November 1-May 31)	58	38	96
Laconia, Belknap:			
(June 1-October 31)	83	30	113
(November 1-May 31)	58	30	88
Manchester, Hillsborough	58	30	88
Portsmouth/Newington, Rockingham County; Pease AFB (See also Kittery, ME):			
(June 1-October 31)	75	34	109
(November 1-May 31)	56	34	90
New Jersey			
Atlantic City, Atlantic:			
(April 1-November 30)	114	38	152
(December 1-March 31)	76	38	114
Belle Mead, Somerset	69	34	103
Camden/Moorestown, Camden and Burlington	77	38	115
Edison, Middlesex	66	38	104
Flemington, Hunterdon	63	34	97
Freehold/Eatontown, Monmouth County; Fort Monmouth	83	34	117
Milville, Cumberland	54	34	88
Newark, Bergen, Essex, Hudson, Passaic and Union	93	42	135
Ocean City/Cape May, Cape May:			
(May 15-September 30)	158	30	186
(October 1-May 14)	104	30	134
Parippany/Dover, Morris County; Picatinny Arsenal	97	38	135
Princeton/Trenton, Mercer	89	35	127
Salem, Salem	51	30	81
Tom's River, Ocean:			
(June 1-September 30)	69	34	103

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
(October 1-May 31)	62	34	96
New Mexico			
Albuquerque, Bernalillo	70	34	104
Cloudcroft, Otero	87	30	117
Farmington, San Juan	57	34	91
Gallup, McKinley	51	30	81
Las Cruces/White Sands, Dona Ana	53	30	83
Los Alamos, Los Alamos	75	34	109
Raton, Colfax:			
(June 1-August 31)	55	30	85
(September 1-May 31)	50	30	80
Santa Fe, Santa Fe:			
(May 1-October 31)	121	42	163
(November 1-April 30)	91	42	133
Taos, Taos:			
(December 1-March 31)	87	34	121
(April 1-November 30)	76	34	110
New York			
Albany, Albany	81	38	119
Auburn, Cayuga	51	30	81
Batavia, Genesee	60	34	94
Binghamton, Broome	62	34	96
Buffalo, Erie	80	38	118
Catskill, Greene:			
(June 1-September 14)		30	96
(September 15-May 31)		30	83
Corning, Steuben		34	95
Glens Falls, Warren:			
(June 1-October 31)	84	38	122
(November 1-May 31)	59	38	97
Ithaca, Tompkins	62	30	92
Kingston, Ulster	51	34	85
Lake Placid, Essex:			
(June 1-November 14)	88	34	122
(November 15-May 31)	59	34	93
Monticello, Sullivan	62	34	96
New York City, the boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island; Nassau and Suffolk Counties	153	42	195
Niagara Falls, Niagara:			
(May 15-October 31)	77	34	111
(November 1-May 14)	63	34	97
Oswego, Oswego	51	30	81
Owego, Tioga	57	30	87
Palisades/Nyack, Rockland	60	34	94
Plattsburgh, Clinton	54	34	88
Poughkeepsie, Dutchess	74	30	104
Rochester, Monroe	74	42	116
Romulus/Waterloo, Seneca	65	30	95
Saratoga Springs, Saratoga:			
(May 1-October 31)	94	38	132
(November 1-April 30)	53	38	91
Schenectady, Schenectady	61	34	95
Syracuse, Onondaga	58	34	92
Utica, Oneida	60	34	94
Watertown, Jefferson	59	30	89
Watkins Glen, Schuyler:			
(May 1-October 31)	88	30	118
(November 1-April 30)	58	30	88
West Point, Orange	53	30	83
White Plains, Westchester	105	42	147
North Carolina			
Asheville, Buncombe:			
(May 1-October 31)	79	34	113
(November 1-April 30)	30	34	64
Charlotte, Mecklenburg	61	38	99
Duck/Outer Banks, Dare:			
(May 1-September 30)	134	34	168
(October 1-April 30)	50	34	84
Fayetteville, Cumberland	52	30	82
Greensboro/High Point, Guilford	60	34	94
Morehead City, Carteret	60	30	90
New Bern/Havelock, Craven	53	30	83

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Research Park/Raleigh/Durham/Chapel Hill, Wake, Durham and Orange	86	38	124
Wilmington, New Hanover:			
(March 1-September 30)	66	30	96
(October 1-February 29)	58	30	88
Winston-Salem, Forsyth	84	34	98
Ohio:			
Akron, Summit	73	34	107
Bellevue/Norwalk, Huron:			
(May 1-September 30)	90	30	120
(October 1-April 30)	55	30	85
Cambridge, Guernsey	55	30	85
Canton, Stark	55	30	85
Cincinnati/Evendale, Hamilton and Warren	85	34	100
Cleveland, Cuyahoga	78	38	116
Columbus, Franklin	70	34	104
Dayton/Fairborn, Montgomery and Greene; Wright Patterson AFB	67	30	97
Elyria, Lorain:			
(May 1-September 30)	67	30	97
(October 1-April 30)	52	30	82
Fairfield/Hamilton, Butler	59	30	89
Findlay, Hancock	55	30	85
Geneva, Ashtabula	76	30	106
Jackson, Jackson and Pike	53	30	83
Lancaster, Fairfield	58	30	88
Perrysburg, Wood	72	30	102
Port Clinton/Oak Harbor, Ottawa:			
(June 1-September 30)	81	30	111
(October 1-May 31)	56	30	86
Portsmouth, Scioto	52	30	82
Sandusky, Erie:			
(May 1-September 30)	109	30	139
(October 1-April 30)	55	30	85
Springfield, Clark	53	34	87
Tinney/Fremont, Sandusky:			
(June 1-September 14)	60	30	90
(September 15-May 31)	50	30	80
Toledo, Lucas	56	34	90
Oklahoma:			
Eufaula, McIntosh	56	30	86
Norman, Cleveland	53	30	83
Oklahoma City, Oklahoma	66	30	96
Tulsa/Bartlesville, Osage, Tulsa and Washington	55	30	85
Oregon:			
Ashland/Medford, Jackson	78	38	116
Beaverton, Washington	70	38	108
Bend, Deschutes	63	30	93
Clackamas/Milwaukie, Clackamas	78	30	108
Coos Bay, Coos	53	30	83
Crater Lake/Klamath Falls, Klamath	99	38	137
Eugene/Florence, Lane	67	34	101
Gold Beach, Curry:			
(May 15-October 31)	64	30	94
(November 1-May 14)	50	30	80
Lincoln City/Newport, Lincoln:			
(June 1-October 31)	94	38	132
(November 1-May 31)	72	38	110
Portland, Multnomah	87	38	125
Salem, Marion	57	30	87
Seaside, Clatsop:			
(May 1-September 30)	72	30	102
(October 1-April 30)	65	30	95
Pennsylvania:			
Allentown, Lehigh	61	34	95
Chester/Radnor, Delaware	103	42	145
Easton, Northampton	53	30	83
Erie, Erie	61	30	91
Gettysburg, Adams:			
(May 1-October 31)	68	34	112
(November 1-April 30)	62	34	96
Harrisburg, Dauphin	74	34	108
King of Prussia/Ft. Washington, Montgomery County, except Bala Cynwyd (See also Philadelphia, PA)	80	38	118

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Lancaster, Lancaster	71	34	105
Lebanon, Lebanon County; Indian Town Gap Military Reservation	54	30	84
Mechanicsburg, Cumberland	61	30	91
Mercer, Mercer	53	30	83
Philadelphia, Philadelphia County; city of Bala Cynwyd in Montgomery County	100	38	138
Pittsburgh, Allegheny	83	38	121
Reading, Berks	64	30	94
Scranton, Lackawanna	57	34	91
Shippingport/Beaver Falls, Beaver	51	30	81
State College, Centre	67	34	101
Uniontown, Fayette	56	30	86
Valley Forge/Malvern, Chester	90	38	128
Warminster, Bucks County; Naval Air Development Center	60	34	94
York, York	56	34	90
Rhode Island:			
East Greenwich, Kent County; Naval Construction Battalion Center, Davisville	84	34	118
Newport/Block Island, Newport and Washington:			
(May 1-October 14)	99	42	141
(October 15-April 30)	81	42	123
Providence, Providence	87	42	129
South Carolina:			
Aiken, Aiken	53	30	83
Charleston, Charleston and Berkeley	62	34	96
Columbia, Richland	58	30	88
Greenville, Greenville	75	38	113
Hilton Head, Beaufort:			
(March 1-September 30)	83	34	117
(October 1-February 29)	61	34	95
Myrtle Beach, Horry County; Myrtle Beach AFB:			
(May 1-September 30)	96	34	130
(October 1-April 30)	58	34	92
Spartanburg, Spartanburg	53	30	83
South Dakota:			
Custer, Custer:			
(June 1-September 30)	73	30	103
(October 1-May 31)	52	30	82
Hot Springs, Fall River:			
(May 1-September 30)	75	30	105
(October 1-April 30)	50	30	80
Rapid City, Pennington:			
(June 1-August 31)	85	30	115
(September 1-May 31)	51	30	81
Sioux Falls, Minnehaha	51	30	81
Spearfish, Lawrence:			
(May 1-September 14)	65	30	95
(September 15-April 30)	51	30	81
Tennessee:			
Chattanooga, Hamilton	61	30	91
Gatlinburg, Sevier	74	34	108
Johnson City, Washington	53	30	83
Knoxville, Knox County; city of Oak Ridge	63	34	97
Memphis, Shelby	69	30	99
Murfreesboro, Rutherford	55	30	85
Nashville, Davidson	82	38	120
Townsend, Blount	70	30	100
Texas:			
Abilene, Taylor	59	30	89
Amarillo, Potter	54	30	84
Austin, Travis	74	34	108
Brownsville, Cameron	54	30	84
College Station/Bryan, Brazos	52	30	82
Corpus Christi/Ingelside, Nueces and San Patricio	64	30	94
Dallas/Fort Worth, Dallas and Tarrant	84	42	126
Eagle Pass, Maverick	54	30	84
El Paso, El Paso	68	34	102
Fort Davis, Jeff Davis	54	30	84
Galveston, Galveston:			
(May 1-September 14)	77	42	119
(September 15-April 30)	67	42	109
Granbury, Hood	52	30	82

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Houston, Harris County; L.B. Johnson Space Center and Ellington AFB	78	38	116
Lajas, Brewster	58	30	88
Laredo, Webb	60	30	90
Lubbock, Lubbock	60	34	94
McAllen, Hidalgo	62	30	92
Midland/Odessa, Ector and Midland	55	30	85
Piano, Collin	84	34	118
San Antonio, Bexar	94	34	128
Temple, Bell	52	30	82
Taylor, Smith	52	30	82
Victoria, Victoria	53	30	83
Waco, McLennan	57	30	87
Utah:			
Bullfrog, Garfield:			
(April 1–October 31)	115	34	149
(November 1–March 31)	80	34	114
Cedar City, Iron:			
(June 1–September 30)	64	30	94
(October 1–May 31)	50	30	80
Moab, Grand	88	30	118
Park City, Summit:			
(December 1–March 31)	147	42	189
(April 1–November 30)	84	42	126
Provo, Utah	53	34	87
Salt Lake City/Ogden, Salt Lake, Weber, and Davis Counties; Dugway Proving Ground and Tooele Army Depot	75	38	113
St. George, Washington	52	34	86
Vernal, Uintah:			
(May 1–September 14)	55	30	85
(September 15–April 30)	50	30	80
Vermont:			
Brattleboro, Windham	53	30	83
Burlington, Chittenden	64	34	98
Manchester, Bennington	102	34	136
Middlebury, Addison:			
(May 1–October 31)	79	34	113
(November 1–April 30)	62	34	96
Montpelier, Washington	55	30	85
Rutland, Rutland:			
(December 15–March 31)	58	30	88
(April 1–December 14)	53	30	83
St. Albans, Franklin	53	30	83
White River Junction, Windsor:			
(June 1–October 31)	72	30	102
(November 1–May 31)	58	30	88
Virginia:			
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)			
Blacksburg, Montgomery	51	30	81
Charlottesville*	56	42	98
Lexington*	53	30	83
Lynchburg*	62	34	96
Manassas/Manassas Park*, Prince William	53	30	83
Richmond*, Chesterfield and Henrico Counties; also Defense Supply Center	70	38	108
Roanoke*	54	34	88
Virginia Beach*, Virginia Beach (also Norfolk, Portsmouth and Chesapeake)*:			
(May 1–September 30)	108	38	146
(October 1–April 30)	77	38	115
Wallops Island, Accomack:			
(June 1–October 14)	91	30	121
(October 15–May 31)	70	30	100
Williamsburg*, Williamsburg (also Hampton, Newport News, York County, Naval Weapons Station, Yorktown)*:			
(April 1–October 31)	91	34	125
(November 1–March 31)	65	34	99
Wintergreen, Nelson	103	42	145
Washington:			
Anacortes/Mt. Vernon/Whidbey Island, Skagit and Island:			
(May 1–October 14)	51	30	81
(October 15–April 30)	69	34	103
Bellingham, Whatcom	59	34	93
	56	34	90

Per diem locality: Key city, ¹ County and/or other defined location ^{2,3}	Maximum lodging amount (a)	M&IE rate (b)	Maximum per diem rate ⁴ (c)
Bremerton, Kitsap	57	30	87
Friday Harbor, San Juan:			
(June 1–October 31)	84	38	122
(November 1–May 31)	71	38	109
Kelso/Longview, Cowlitz	53	34	87
Lynnwood/Everett, Snohomish	65	34	99
Ocean Shores, Grays Harbor:			
(April 1–September 30)	69	34	103
(October 1–March 31)	55	34	89
Port Angeles, Clallam:			
(May 15–September 30)	71	34	105
(October 1–May 14)	51	34	85
Port Townsend, Jefferson:			
(April 15–October 31)	81	30	111
(November 1–April 14)	64	30	94
Seattle, King	96	38	136
Spokane, Spokane	67	38	105
Tacoma, Pierce	60	30	90
Tumwater/Olympia, Thurston	64	30	94
Vancouver, Clark	68	34	102
West Virginia:			
Berkeley Springs, Morgan	82	30	112
Charleston, Kanawha	58	30	88
Harpers Ferry, Jefferson	88	30	98
Martinsburg, Berkeley	62	30	92
Morgantown, Monongalia	65	30	95
Parkersburg, Wood	52	30	82
Wheeling, Ohio	53	34	87
Wisconsin:			
Appleton, Outagamie	61	30	91
Brookfield, Waukesha	66	38	104
Eagle River, Vilas:			
(June 1–September 30)	59	30	89
(October 1–May 31)	50	30	80
Eau Claire, Eau Claire	55	34	89
Green Bay, Brown	68	30	98
La Crosse, La Crosse	55	34	89
Lake Geneva, Walworth:			
(May 1–October 31)	99	34	133
(November 1–April 30)	69	34	103
Madison, Dane	82	34	96
Milwaukee, Milwaukee	70	34	104
Mishicot, Manitowoc	52	30	82
Oshkosh, Winnebago	55	34	89
Racine/Kenosha, Racine and Kenosha	58	34	92
Rhineland/Menomonie, Oneida	52	30	82
Sheboygan/Plymouth, Sheboygan	51	30	81
Sturgeon Bay, Door:			
(June 1–September 14)	65	30	95
(September 15–May 31)	50	30	80
Wautoma, Waushara	51	30	81
Wisconsin Dells, Columbia:			
(June 1–September 14)	107	38	145
(September 15–May 31)	54	38	92
Wyoming:			
Cody, Park:			
(May 1–September 30)	88	30	118
(October 1–April 30)	52	30	82
Jackson, Teton:			
(June 1–October 14)	102	42	144
(October 15–May 31)	64	42	106
Thermopolis, Hot Springs:			
(June 1–September 14)	62	30	92
(September 15–May 31)	50	30	80

* Denotes independent cities.

¹ Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

² Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

³ Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."

*Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be reviewed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Office of Governmentwide Policy, Attr: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual review.

Dated: November 15, 1996.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

[FR Doc. 96-29768 Filed 11-20-96; 8:45 am]

BILLING CODE 4820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 440

[42-102-F]

Medicaid Program: Family Planning Services and Supplies for Individuals of Child-bearing Age

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendment.

SUMMARY: This document makes a technical amendment to a Medicaid regulation under 42 CFR 440.40(c) to restore an inadvertent omission of a paragraph designation related to family planning services and supplies for individuals of child-bearing age.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT:

Linda Tavener, (410) 786-3838.

SUPPLEMENTARY INFORMATION: On November 10, 1994, we published a final rule in the Federal Register (59 FR 56116) related to Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities. In that rule, we inadvertently omitted a heading and reserved designation of § 440.40(c). This paragraph designation must be included to show that family planning services and supplies for individuals of child-bearing age are covered Medicaid services under § 440.40. At the present time, there are no Federal regulations regarding these services but we are reserving this paragraph for future use. The States can define these services as they see appropriate.

List of Subjects in 42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR part 440 is amended as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

A. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.40 [Corrected]

B. In § 440.40 the section heading is revised and paragraph (c) is added to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental disease, EPSDT, and family planning services and supplies.

(c) Family planning services and supplies for individuals of child-bearing age. [Reserved]

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: November 7, 1996.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 96-29397 Filed 11-20-96; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 90-337, FCC 96-160]

Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 9, 1996, the Federal Communications Commission adopted a *Third Report and Order* and *Order on Reconsideration* ("Order") that establishes standards for reporting when a carrier interconnects an international private line to the U.S. Public Switched

Network (PSN). With this Order we require that any carrier that interconnects an international private line to the PSN at the central office report on an annual basis its arrangements for such interconnection. However, we require these carriers to fulfill their § 43.15 notification requirements by filing only information on the country of origin, and number and type of private lines interconnected for each customer during the reporting period. This decision reaffirms our longstanding policy of allowing end users to interconnect their international private lines to the public switched network for their own use, while enabling us to better monitor the effects of our resale rules.

In taking this action, the Commission's objective is to enhance its ability to monitor and assess the impact of end user interconnections on our international settlements policy, and to enhance the ability of the Commission and interested parties to monitor for unauthorized private line resale, while being sensitive to end users' reluctance to disclose commercially sensitive or proprietary information.

EFFECTIVE DATE: This rule is effective December 23, 1996, except § 43.51(d) which contains new information collections which will not become effective until approval by Office of Management and Budget (OMB). The Commission will publish a document in the Federal Register at a later date establishing the effective date.

ADDRESSES: Submit all comments concerning the Paperwork Reduction Act to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Susan O'Connell, Attorney, International Bureau, (202) 418-1460. For additional information concerning

the information collections contained in the Order contact Dorothy Conway at (202) 418-0217, or via the Internet to dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* and *Order on Reconsideration* adopted on April 9, 1996, and released on May 20, 1996 (FCC 96-160). The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington D.C. The complete text also may be purchased from the Commission's Copy contractor, International Transcription Service, Inc. (202) 857-3800, 2100 M St., N.W., Suite 140, Washington D.C. 20037.

Paperwork Reduction Act

This *Third Report and Order* and *Order on Reconsideration* contains a proposed information collection subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

This Order contains a proposed information collection. Written comments by the public on the information collections should be submitted on or before December 23, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street,

N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20502 or via the Internet to fain_t@al.eop.gov.

OMB Approval Number: 3060-

Title: Common Carrier International Telecommunications Services.

Form No.: N/A.

Type of Review: New collection.

Respondents: Carriers interconnecting their private lines to the U.S. Public Switched Network.

Number of Respondents: 10.

Estimated Time Per Response: 8.

Total Annual Burden: 80.

Estimated costs per respondent: none.

Needs and Uses: The collections of information for which approval is here sought are contained in amendments to Part 43 and in the Order adopting such amendments. These information collections are authorized and necessary for the Commission to carry out its statutory mandate, pursuant to Sections 1, 4, 201-205, 211, 214, 218-220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201-205, 211, 214, 218-220, and 303, and Part 43 of the Commission's Rules.

The information collections contained in amendments to Part 43 are necessary to assist us in reviewing the impact, if any, that end user private line interconnections have on our international settlements policies. The information collections will also enhance the ability of the Commission and interested parties to monitor for unauthorized resale, thus preserving the integrity of our international resale policy.

The information will be used by the Commission staff in carrying out its duties under the Communications Act. Common carriers that interconnect an international private line to the PSN at the carrier's switch, including any switch in which the carrier obtains capacity either through lease or otherwise, would report on an annual basis certain information about its arrangements for such interconnection under Part 43 of the Commission's rules, as modified by the Commission's Order.

Summary of the Third Report and Order and Order on Reconsideration

1. In response to the *Order on Reconsideration* and *Third Further Notice Proposed Rulemaking* in Phase II of Regulation of International Accounting Rates (57 FR 62543 (December 31, 1992)), the Commission adopts this *Third Report and Order* and *Order on Reconsideration* ("Order"). This Order modifies current standards

for reporting the interconnection of international private lines to the U.S. PSN.

2. Our December 1991 *International Resale Order* authorized the resale of international private lines to provide switched services. However, we recognized that "one-way" resale of international private lines would tend to divert International Message Telephone Service (IMTS) traffic from the settlements process and increase the U.S. net settlements deficit. We accordingly required U.S. carriers to permit resale of their international private lines only to those countries that afford U.S.-based resellers "equivalent" resale opportunities. Our international resale policy, however, did not alter our policy of allowing end users to attach their private lines to the U.S. PSN for their own use. Section 43.51(a)(3) currently requires U.S. carriers to file a notification of any intercarrier agreement for the interconnection of an international private line to the U.S. PSN at the carrier's central office, whether on behalf of a reseller or an end user. In the Order, we discerned no reason to distinguish between intercarrier interconnection agreements entered into on behalf of end users, and interconnection agreements entered into directly by the carrier and the end users itself. Accordingly, we ordered that Section 43.51 be amended to require that carriers also notify the Commission of any agreement for private line interconnection entered into directly by a carrier and an end user.

3. Addressing commenters' concerns over the potential disclosure of commercially sensitive information, we also ordered an amendment to 47 CFR § 43.51 to require only certain limited information. Specifically, we will require carriers interconnecting an international private line to the U.S. PSN to report on the country of origin and the number and type (e.g., 64-kbps circuit) of private lines interconnected for each customer (whether a reseller or end user). The identity of the customer need not be reported. In recognition of commenters' concerns over the disclosure of the country of origin, we will treat the country of origin information as confidential. Further, we only require that this information be reported on an annual basis. We clarify that the carrier that we require to report the interconnection is the carrier that is itself making the physical interconnection at its switch, including any switch in which the carrier obtains capacity, whether by lease or otherwise.

4. We believe that this data will assist us in reviewing the impact, if any, that end user private line interconnections

have on our international settlements policies, and will also enhance the ability of the Commission and interested parties to monitor for unauthorized resale, thus preserving the integrity of our international resale policy. We further conclude that, by requiring interconnecting carriers to file only this limited information, and by keeping the country of origin confidential, we address the commenting parties' concern that we not require the disclosure of commercially sensitive or proprietary information. We believe that this policy strikes the proper balance between our need for such data and the need to protect against the unnecessary disclosure of such data. Finally, because the equivalency of such markets obviates the need for such data, interconnections of international private lines to Canada, the United Kingdom, Sweden, and any other countries which we find to satisfy our equivalency standard need not be reported. We exempt private lines to these points from this requirement.

5. By making these changes to § 43.51 we grant in part CITU's Petition for Reconsideration. Rather than require that carriers file copies of their intercarrier agreements for private line interconnection, we require only that carriers file certain limited information. This change responds to CITU's concern that we permit carriers to file redacted versions of interconnection agreements. It is also less burdensome than requiring that the actual interconnection agreement be filed. While CITU's Petition appeared concerned primarily with disclosure of proprietary information of end users, as opposed to resellers, we find no reason on reconsideration to require copies of any agreements for private line interconnection to be filed.

Final Regulatory Flexibility Act Analysis

Pursuant to Section 603 of Title 5, United States Code, 5 U.S.C. 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking in CC Docket 90-337. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need and Purpose of Rules

With this Order we modify § 43.51 of our Rules to require any carrier that interconnects an international private line to the U.S. PSN at the carrier's switch, including any switch in which the carrier obtains capacity, whether by lease or otherwise, to report all such interconnections on an annual basis. Interconnections of private lines

between the United States and countries deemed by the Commission to offer "equivalent" private line resale opportunities are exempt from this requirement. We are requiring that only certain limited information be submitted. This information is limited to the country of origin (which will be treated as confidential) and the number and type of circuits for each customer. This reporting requirement enhances our ability to monitor and assess the impact of end user interconnections on our international settlements policy, as well as the Commission's and interested parties' ability to monitor for unauthorized resale of private lines, while also being sensitive to end users' reluctance to disclose commercially sensitive or proprietary information.

B. Issues Raised by the Public in Response to the Initial Analysis

In this proceeding commenters requested that we clarify our current notification requirements, protect from disclosure commercially sensitive business information of end users, and exempt from the notification requirement interconnections of private lines to countries found to offer equivalent resale opportunities.

C. Significant Alternatives Considered

We have attempted to balance all of the commenters' concerns with our public interest mandate under the Act. We modify § 43.51 to require that carriers notify us of all private line interconnection agreements. Based on the record before us, we see no reason to distinguish between intercarrier interconnection agreements entered into on behalf of end users, and interconnection agreements entered into directly by a carrier and an end user itself. We modify this section, however, to require notification only on an annual basis and to require only certain limited information: the country of origin and the number and type of private lines interconnected for each customer. Additionally, we will treat the country of origin as confidential, and exempt from the scope of § 43.51 private lines to countries that we find to satisfy our equivalency standard. These modifications will reduce unnecessarily burdensome filing requirements and responds to carriers' and end users' concerns over disclosing commercially sensitive information.

Ordering Clauses

Accordingly, it is ordered that pursuant to authority contained in Sections 1, 4, 201-205, 211, 214, 218-220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C.

Sections 151, 154, 201-205, 211, 214, 218-220, and 303, Part 43 of the Commission's Rules, 47 CFR Part 43 is amended as set forth below.

It is further ordered that the policies, rules, and requirements set forth herein are adopted.

It is further ordered that CITU's Petition for Clarification and in the Alternative for Partial Reconsideration is granted in part and denied in part as set forth herein.

It is further ordered that this rule is effective December 23, 1996, except § 43.51(d) which contains new information collections which will not become effective until approval by Office of Management and Budget (OMB). The Commission will publish a document in the Federal Register at a later date establishing the effective date.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission, William F. Caton, Acting Secretary.

Rule Changes

Part 43 of title 47 of the Code of Federal Regulations is amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.51 is amended by removing paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(3), adding the word "and" at the end of paragraph (a)(2), redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 43.51 Contracts and concessions.

(d) Any U.S. carrier that interconnects an international private line to the U.S. Public Switched Network, at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief of the International Bureau a certified statement containing the number and type (e.g., 64-kbps circuits) of private lines interconnected in such a manner. The certified statement shall specify the number and

type of interconnected private lines on a country specific basis. The identity of the customer need not be reported, and the Commission will treat the country of origin information as confidential. Carriers need not file their contracts for such interconnections, unless they are specifically requested to do so. These reports shall be filed on a consolidated basis on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries which we find to satisfy our equivalency standard at any time during a particular reporting period are exempt from this requirement.

[FR Doc. 96-29295 Filed 11-20-96; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 63

Common Carrier Applications; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations

which were published on November 18, 1980 (45 FR 76169). The regulations related to requirements for common carrier applications under section 214 of the Communications Act of 1934.

EFFECTIVE DATE: November 21, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Cameron, (202) 418-2326.

SUPPLEMENTARY INFORMATION:

Background

Sections 63.91 and 63.502 were removed by the Commission in the publication of January 16, 1980 (45 FR 3037) and in § 61.15(a), the definition of "non-dominant", was redesignated as § 61.3(u) in the publication of April 25, 1995 (60 FR 20052).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

Accordingly, 47 CFR Part 63 is corrected by making the following correcting amendments:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201-205, 218 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. Secs. 154, 154(i), 154(j), 201-205, 218 and 403, unless otherwise noted.

§ 63.52 [Corrected]

2. Section 63.52 is amended by removing the references "63.91," and "63.502," in the first sentence of paragraph (b).

§ 63.61 [Corrected]

3. Section 63.61 is amended by removing the reference "61.15(a)" and adding in its place the reference "61.3(u)".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-29637 Filed 11-20-96; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-135, Notice No. 8C-96-9-NM]

Special Conditions: Boeing Model 767-27C, Airborne Warning and Control System Modification (AWACS) Airplanes; Liquid Oxygen

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 767-27C airplanes, modified by installation of an Airborne Warning and Control System (AWACS). These airplanes will be equipped with an oxygen system utilizing liquid oxygen for storage to allow extended, unpressurized operations. The applicable regulations do not contain adequate or appropriate safety standards for the design and installation of oxygen systems utilizing liquid oxygen for storage. This notice contains the additional safety standards that the Administrator considers necessary to ensure that the design and installation of the oxygen system utilizing liquid oxygen for storage is such that a level of safety equivalent to that established by the airworthiness standards for transport category airplanes is provided.

DATES: Comments must be received on or before December 23, 1996.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-135, 1601 Lind Avenue SW, Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-135. Comments may be inspected in the Rules Docket

weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055-4056; telephone (206) 227-2148.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on this proposal. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-135." The postcard will be date stamped and returned to the commenter.

Background

On May 25, 1993, Boeing Commercial Airplane Group-Wichita Division, applied for a supplemental type certificate (STC) to modify Boeing Model 767-27C airplanes to an Airborne Warning and Control System (AWACS) configuration. The AWACS modification includes installation of equipment consoles, seats for console operators, a liquid oxygen (LOX) system (liquid oxygen converter, valves, evaporating coils, lines, regulators, indicators, fittings, etc.), and a radome on the top of the airplane. Boeing will modify the aft lower lobe with hydraulics for the AWACS antenna drive unit, high-powered radio

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frequency units for the AWACS radar, and other AWACS hardware. Boeing has designed the LOX installation to allow extended unpressurized operation at 25,000 feet. The FAA will approve the performance of the oxygen system during certification testing.

There are no specific regulations that address the design and installation of oxygen systems that utilize liquid oxygen. Existing requirements, such as §§ 25.1309, 25.1441 (b) & (c), 25.1451, and 25.1453 in the Boeing Model 767-27C original type certification basis, applicable to this modification, provide some design standards for crew and medical oxygen system installations. However, the FAA must specify additional standards for systems utilizing liquid oxygen to ensure that an acceptable level of safety is maintained.

Supplemental Type Certification Basis

Under the provisions of §§ 21.101 (a) and (b), Boeing Commercial Airplane Group must show that the modified Model 767-27C continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) No. A1NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC A1NM are basically as follows: Part 25 of the FAR, as amended by Amendments 25-1 through 25-37, plus certain later amended sections as specified in Type Certificate Data Sheet A1NM. In addition, the certification basis includes certain special conditions, exemptions and optional requirements that are not relevant to these special conditions. Also, the modified Model 767-27C must continue to comply with the fuel venting and exhaust emission requirements of part 34 (previously Special Aviation Regulation 27), and the noise certification requirements of part 36 in effect on the date the STC is issued.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended and applicable) do not contain adequate or appropriate safety standards for the modified Model 767-27C because of a novel or unusual design feature, special

conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplement type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There are no specific regulations that address the design and installation of oxygen systems that utilize liquid oxygen for storage. Existing requirements, such as §§ 25.1309, 25.1441 (b) and (c), 25.1451, and 25.1453 of the Boeing 767-200 series certification basis applicable to this STC project, provide some design standards appropriate for oxygen system installations. However, additional design standards for oxygen systems utilizing liquid oxygen are needed to supplement the existing applicable requirements. The quantity of liquid oxygen involved in this installation and the potential for unsafe conditions that may result when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, or damage from external sources, make it necessary to assure adequate safety standards are applied to the design and installation of the system in Boeing Model 767-27C airplanes.

To ensure that a level of safety is achieved for modified Boeing Model 767-27C airplanes, utilizing liquid oxygen as a storage medium for an oxygen system, equivalent to that intended by the regulations incorporated by reference, special conditions are needed which require those oxygen systems to be designed and installed to preclude or minimize the existence of unsafe conditions that can result from system leaks, malfunction, installation, or damage from external sources.

Application by Boeing for approval of oxygen systems utilizing liquid oxygen as a storage medium installed in transport airplanes, and the unsafe conditions that can exist when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, installation or damage from external sources, make development and application of

appropriate additional design and installation standards necessary.

As discussed above, these special conditions are applicable initially to the Boeing Model 767-27C airplane. Should Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 767-27C airplanes modified to an AWACS configuration.

a. The liquid oxygen converter and other oxygen equipment shall not be installed where baggage, cargo, or loose equipment are stored (unless items are stored within an appropriate container which is secured or restrained by acceptable means).

b. The liquid oxygen converter shall be located in the aircraft so that there is no risk of damage due to an uncontained rotor or fan blade failure.

c. The liquid oxygen system and associated gaseous oxygen distribution lines should be designed and located to minimize the hazard from uncontained rotor debris.

d. The flight deck oxygen system shall meet the supply requirements of Part 121 after the distribution line has been served by a rotor fragment.

e. The pressure relief valves on the liquid oxygen converters shall be vented overboard through a drain in the bottom of the aircraft. Means must be provided to prevent hydrocarbon fluid migration from impinging upon the vent outlet of the liquid oxygen system.

f. The system shall include provisions to ensure complete conversion of the liquid oxygen to gaseous oxygen.

g. If multiple converters are used and manifolded together, check valves shall

be installed so that a leak in one converter will not allow leakage of oxygen from any other converter.

h. Flexible hoses shall be used for the aircraft systems connections to shock-mounted converters, where movement relative to the aircraft may occur.

i. Condensation from system components or lines shall be collected by drip pans, shields, or other suitable collection means and drained overboard through a drain fitting separate from the liquid oxygen vent fitting, as specified in (e) above.

j. Oxygen system components shall be burst pressure tested to 3.0 times, and proof pressure tested to 1.5 times, the maximum normal operating pressure. Compliance with the requirement for burst testing may be shown by analysis, or a combination of analysis and test.

k. Oxygen system components shall be electrically bonded to the aircraft structure.

l. All gaseous or liquid oxygen connections located in close proximity to an ignition source shall be shrouded and vented overboard using the system specified in (e) above.

m. A means will be provided to indicate the quantity of oxygen in the converter and oxygen availability to the flightcrews.

Issue in Renton, Washington, on November 13, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 96-29822 Filed 11-20-96; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-CE-41-AD]

RIN 2120-AA64

Airworthiness Directives: Louis L'Hotellier, S.A., Ball and Swivel Joint Quick Connectors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Louis L'Hotellier S.A. (L'Hotellier) ball and swivel joint quick connectors installed on gliders and sailplanes that are not equipped with a "Uerling" sleeve or an LS-safety sleeve. These connectors allow the operator of the gliders and sailplanes to quickly connect and disconnect the control systems during assembly and disassembly for storage

purposes. The proposed action would require enlarging the safety pin guide hole diameter, and fabricating and installing a placard that specifies a check of the security of the connectors prior to each flight. Several in-flight accidents involving inadvertent disconnection of these connectors that are installed on certain gliders and sailplanes prompted the proposed action. The actions specified in this proposed AD are intended to prevent the connectors from becoming inadvertently disconnected, which could result in loss of control of the sailplane or glider.

DATES: Comments must be received on or before January 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-41-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Klesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-8932; facsimile (816) 426-2189.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-41-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-41-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed Action

The FAA has received several reports of L'Hotellier quick connectors used on gliders and sailplanes becoming disconnected. These ball and swivel joint connectors allow the operator to quickly connect and disconnect the glider control systems during assembly and disassembly for storage purposes.

The FAA has determined that there could be several reasons for the referenced failures. Among these include the lack of preflight check procedures, improper connection assembly, and inadequate inspection and maintenance requirements.

On July 22, 1992, the FAA issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit comments from owners/operators of the affected gliders and sailplanes in order to adequately make a determination as to what type of action to take (if any). The responses to the ANPRM may be obtained by contacting the Rules Docket specified in the ADDRESSES section of the proposal.

From responses to this ANPRM, the FAA found that most of the owners/operators who responded are checking the security of the connectors prior to flight; however, these owner/operators are not always using a safety pin, wire or sleeve to adequately secure the connectors in a locked position. Based on review of the above-referenced incidents, the FAA has determined that installing a pin, safety wire, or safety sleeve, as applicable, will assure that these connectors will not inadvertently disconnect while the glider or sailplane is in flight.

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents described above, including the comments received in response to the ANPRM, the FAA has determined that AD action should be taken to prevent these connectors from becoming

inadvertently disconnected, which could result in loss of control of the sailplane or glider.

Since an unsafe condition has been identified that is likely to exist or develop in gliders and sailplanes utilizing the L'Hotellier ball and swivel joint quick connectors, and that are not equipped with a "Uerling" sleeve or an LS-Safety sleeve, the proposed AD would require the following:

- Enlarging the safety pin guide hole diameter to a minimum of 1.2 mm (0.05 in.) to accommodate a safety wire or pin, as applicable.
- Fabricating a placard (using 1/8 inch letters) with the following words: "All L'Hotellier control system connectors must be secured with safety wire, pins or safety sleeves, as applicable, prior to operation."
- Installing this placard in the glider or sailplane within the pilot's clear view.

Proposed Compliance Time

The compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplanes and gliders ranges throughout the fleet. For example, one owner may operate the sailplane or glider 25 hours in one week, while another operator may operate the sailplane or glider 25 hours in one year. For this reason, the FAA has determined that, in order to ensure that all of the owners/operators of the affected sailplanes and gliders incorporate the proposed actions within a reasonable amount of time, a calendar compliance time is proposed.

Cost Impact

The FAA estimates that 1,100 sailplanes and gliders, with an average of 4 connectors per sailplane, in the U.S. registry would be affected by the proposed AD, that it would take less than 4 workhours per sailplane or glider to accomplish the proposed actions (less than 1 workhour per connector), and that the average labor rate is approximately \$60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$264,000. This cost is figured for the estimated time it would take for an authorized mechanic to enlarge the safety pin guide hole diameter. An owner/operator who holds a private pilot's certificate, as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11), can fabricate and install the placard. This \$264,000 figure is based on the assumption that all of the affected owners/operators of the affected sailplanes and gliders do not have the guide pin hole already

enlarged, a safety sleeve installed, or the placard installed.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

Manufacturer	Models
Alexander Schleicher	ASH25, ASH25E, ASK21, ASK23, ASK23B, ASW15, ASW15B, ASW17, ASW19, ASW19B, ASW20, ASW20B, ASW20BL, ASW20C, ASW20L, ASW20CL, ASW22, ASW22B, and ASW22BE.
Centrair	101A Pegasus, Pegasus 85, and Ventus.
Eiravion	PIK 20, PIK 20B, PIK 20C, PIK 20E, and PIK 30.
Glaser Dirks	DG100, DG200, and DG400.
Grob	G102 Astr CS, G102 Astr CS 77, G102 Standard Astr II, G102 Club Astr, G102 Astr CS Jeans, G103 ACRO, G103 TW Astr, G103 Twin Astr Trainer, G109, and G109B.
Intrepidair ICA (Lark)	IS28, IS29, and IS32.
Rolladen Schneider	LS1-0, LS1-a, LS1-b, LS1-c, LS1-d, LS1-f, LS3-a, and LS3-17.
Schempp-Hirth	Cirrus, Std. Cirrus, Std. Cirrus B, Std. Cirrus CS-11-75L, Std. Cirrus G, VTC, Nimbus 2, Nimbus 2B, Nimbus 2C, Nimbus 2M, Nimbus-3, Nimbus-3/24.5, Nimbus-3D, Nimbus-3T, Nimbus-3DT, Nimbus-3DM, Janus, Janus B, Janus C, Janus Ca, Janus CM, and Janus CT, Discus a, Ventus, Ventus-a, Ventus-a/16.6, Ventus-c (with the Ventus-a fuselage).
Schweizer	2-33 and 1-26.

Note 1: This AD applies to each glider and sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders and sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 calendar days after the effective date of this AD, or upon installation of the quick connectors, whichever occurs later, unless already accomplished.

To prevent the quick connectors from becoming inadvertently disconnected, which could result in loss of control of the sailplane or glider, accomplish the following:

(a) For quick connectors that have a safety pin guide hole, enlarge the hole in the lock plate to a minimum diameter of 1.2 mm (0.05 in.) to accommodate a safety wire or pin.

(b) Fabricate and install a placard (using 1/8 inch letters) in the glider or sailplane, within the pilot's clear view, with the following words: "All L'Hotellier control system connectors must be secured with

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Louis L'Hotellier, S.A. Ball and Swivel Joint Quick Connectors

Docket No. 92-CE-41-AD.

Applicability: All quick connectors as installed in, but not limited to, the following gliders and sailplanes that are not equipped with a "Uerling" sleeve or an LS-Safety sleeve:

Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 13, 1996.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-29722 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-22-P

14 CFR Part 71

[Airspace Docket No. 96-ASO-23]

Proposed Establishment of Class E Airspace; Somerset, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace area at Somerset, KY, for the Somerset-Pulaski County-J.T. Wilson Field Airport. An automated weather observing system has been installed at the airport, which transmits the required weather observations continuously to Indianapolis Center, the controlling facility for the airport. Therefore, the airport now meets the criteria for Class E2 surface area airspace.

DATES: Comments must be received on or before December 31, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96-ASO-23, Manager, Operations Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305-5585.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96-ASO-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E2 airspace area at Somerset, KY, for the Somerset-Pulaski County-J.T. Wilson Field Airport. An automated weather observing system has been installed at the airport, which transmits the required weather observations continuously to Indianapolis Center, the controlling facility for the airport. Therefore, the

airport now meets the criteria for Class E2 surface area airspace. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

ASO KY E2 Somerset, KY [New]
Somerset-Pulaski County-J.T. Wilson Field Airport, KY
(Lat. 37°03'17" N, long. 84°36'52" W)
Bowling Green VORTAC
(Lat. 36°55'43" N, long. 86°28'36" W)

Within a 4-mile radius of Somerset-Pulaski County-J.T. Wilson Field Airport.

Issued in College Park, Georgia, on November 13, 1996.

Wade T. Carpenter,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 96-29823 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-18]

Establishment of Class E2 Airspace; Sawyer Airport, Gwin, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace to accommodate an Automated Weather Observation System/Surface Weather and Reporting System (AWOS/SWARS) to serve runway 01/19 approach at Sawyer Airport, Gwin, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before December 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96-AGL-18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E2 airspace to accommodate an Automated Weather Observation System/Surface Weather and Reporting System (AWOS/SWARS) to serve runway 01/19 approach at Sawyer Airport, Gwin, MI. Controlled airspace extending upward from 700 to

1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E2 airspace designations for surface area for an airport, are published in paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E2 airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective

September 16, 1996, is amended as follows:

Paragraph 6002 The Class E airspace areas designated as a surface area for an airport.

AGL MI E5 Sawyer, MI [New]

Sawyer Airport, MI
(Lat. 46°21'20"N, long. 87°23'34"W)

Within a 4.6-mile radius of Sawyer Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

Issued in Des Plaines, Illinois on November 13, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96-29820 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-19]

Establishment of Class E5 Airspace; Sawyer Airport, Gwin, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace to accommodate an Instrument Landing System (ILS), a Very High Frequency Omnidirectional Range (VOR) and a Distance Measuring Equipment (DME) to serve runway 01/19 approach at Sawyer Airport, Gwin, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before December 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300

East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 96-AGL-19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace to accommodate an Instrument Landing System (ILS), a Very High Frequency Omnidirectional Range (VOR) and a Distance Measuring Equipment (DME) to serve runway 01/19 approach at Sawyer Airport, Gwin, MI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E5 airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to

amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL MI E5 Sawyer, MI [New]

Sawyer Airport, MI
(Lat. 46°21'20"N, long. 87°23'34"W)

The airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Sawyer Airport, excluding that airspace within the Marquette, MI, Class E airspace area, and that airspace extending upward from 1,200 feet above the surface within a 34.8-mile radius of the Sawyer Airport.

Issued in Des Plaines, Illinois on November 13, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96-29821 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Parts 91, 121, 127, and 135

RIN 2120-AG11

[Docket No. 28577; Notice No. 96-4]

Special Flight Rules in the Vicinity of the Rocky Mountain National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of the comment period and notice of availability of Draft Environmental Assessment (EA).

SUMMARY: This notice announces the reopening of the comment period on a Notice of Proposed Rulemaking (NPRM), which proposes to establish a Special Federal Aviation Regulation to preserve the natural park experience of visitors to Rocky Mountain National Park (RMNP) by preventing any potential adverse noise impact from aircraft-based sightseeing overflights. Following the closing date of the

comment period the FAA prepared a Draft EA concerning alternatives for addressing the potential aviation noise issues at RMNP. This action is being taken to afford the public the opportunity to comment on the Draft EA.

DATES: The comment period is being reopened from November 21, 1996 through December 23, 1996. Comments must be received on or before the December 23, 1996.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 28577, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov. Comments must be marked Docket No. 28577. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays. **FOR FURTHER INFORMATION CONTACT:** Neil Saunders, Airspace and Rules Division, ATA-400, Airspace Management Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202-267-8783.

SUPPLEMENTARY INFORMATION:

Background

Notice No. 96-4 was placed on immediate display at the Federal Register on May 10, 1996, and published on May 15, 1996 (61 FR 24852). A correction document was published on July 23, 1996 (61 FR 38119) extending the comment period to August 19, 1996. Notice No. 96-4 proposed several methods of preserving the natural park experience of RMNP by restricting aircraft-based sightseeing flights. The NPRM indicated that the FAA would select a viable alternative based on comments received and other pertinent information, identify a proposed alternative for final rulemaking and publish a Draft EA for comment. The Draft EA would evaluate the alternatives identified for detailed study and assess the current conditions and the preferred alternative. The NPRM also indicated that the FAA will evaluate the comments on the Draft EA and prepare a final assessment.

Reopen Comment Period

The comment period on Notice No. 96-4, Special Flight Rules in the Vicinity of the Rocky Mountain National Park closed on August 19, 1996. Following the closing date of the

comment period the FAA prepared a Draft EA that evaluates various alternatives for addressing potential aviation noise issues at RMNP. Consequently, the FAA finds that it is in the public interest to reopen the comment period to allow interested persons the opportunity to comment on the Draft EA. A copy of the Draft EA has been placed in the Docket and is available for review.

Copies of the Draft EA are being circulated to interested parties and the Draft EA is also available on the Internet at the website of the FAA's Office of Environment and Energy: <http://aee.hq.faa.gov/>. Copies may also be obtained by contacting Mr. William J. Marx, Division Manager, ATA-300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3075.

In addition, after the comment period on the NPRM closed, the Department of Transportation became aware of certain RMNP sound level data. In September 1995, sound level measurements were made at five locations in RMNP on behalf of the NPS. While it is unlikely that this data will provide a basis for a final rulemaking in this matter, we are including it in the Docket for completeness of the record.

Accordingly, the comment period is being reopened and the Draft EA is being made available for comment from November 21, 1996 through December 23, 1996.

Issued in Washington, DC, on November 18, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic, Airspace Management.

[FR Doc. 96-29816 Filed 11-18-96; 4:04 pm]

BILLING CODE 4910-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 511 and 514

[Docket No. 96N-0411]

New Animal Drugs for Investigational Use and New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to propose revisions to its

regulations governing new animal drugs for investigational use and new animal drug applications (NADA's). On October 9, 1996, President Clinton signed into law the Animal Drug Availability Act of 1996 (the ADAA). FDA intends to propose revisions to the investigational new animal drug (INAD) and NADA regulations to implement the ADAA. FDA also intends to propose revisions to the INAD and NADA regulations to fulfill its commitment under the National Performance Review to reinvent the regulation of animal drugs. In the President's National Performance Report, "Reinventing the Regulation of Animal Drugs," May 1996, the President announced FDA's proposal to revise its regulations to create a more efficient process for reviewing and approving new animal drugs (NAD's). FDA's proposal for changes in the process for reviewing and approving animal drugs is intended to minimize the regulatory burden upon industry without compromising FDA's ability to ensure that the animal drugs it approves are safe and effective.

DATES: Written comments before January 21, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George A. Mitchell, Center for Veterinary Medicine (HFV-1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1761.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 1996, President Clinton signed into law the ADAA. The purpose of the ADAA is to build into the NAD approval process needed flexibility to facilitate more efficient and expeditious approval of NAD's without decreasing FDA's existing authority to ensure that animal drug products are safe for use in animals and for humans who consume food products derived from animals. The ADAA does this, in large part, by redefining substantial evidence, the standard by which FDA determines whether a NAD is effective. The ADAA redefines the term "substantial evidence" to mean:

evidence consisting of one or more adequate and well-controlled investigations, such as—a study in a target species; a study in laboratory animals; any field investigation that may be required under (section 512(d)(3)) and that meets the requirements of subsection (b)(3) if a presubmission conference is requested by the applicant; a bioequivalence study; or an in vitro study; by

experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

Section 2(e) of the ADAA directs FDA to further define by regulation the term "substantial evidence" and the term "adequate and well-controlled" as it relates to field investigations that alone or along with other studies may establish substantial evidence that a NAD is effective. The ADAA also requires FDA to publish regulations to address dose range labeling. FDA has 6 months from the enactment of the ADAA to publish proposed regulations to further define "adequate and well-controlled" and 12 months to publish proposed regulations to address dose range labeling and further define "substantial evidence."

In the President's National Performance Report, "Reinventing the Regulation of Animal Drugs," May 1996, the President announced FDA's proposal to revise its regulations to create a more efficient process for reviewing and approving NAD's. Historically, FDA has reviewed NADA's using a process that emphasized centralized coordination of an application review. Although this approach has advantages, FDA has found that this approach for processing applications has also resulted in delays. FDA has introduced numerous process changes intended to foster a more streamlined animal drug application review and approval process and reduce the regulatory burden on industry. For example, FDA tested an evaluation process described as direct review. Under direct reviews of sponsors' technical submissions, individuals conducting reviews of technical submissions are responsible for the scientific evaluation and administrative processing of a particular section of a submission and for communicating directly with the appropriate responsible official of the drug sponsor. To implement FDA's reinventing government proposal, FDA intends to propose revisions to its INAD and NADA regulations to reflect such process changes. The proposed changes to the INAD and NADA regulations will also reflect, among other things, CVM's use of presubmission conferences, phased review of data submissions, direct review of sponsors' technical submissions, and sponsor-monitored methods trials.

II. Revisions Under Consideration

The agency intends to propose revisions to the INAD and NADA regulations to further define "substantial evidence" and "adequate and well-controlled," as well as address dose range labeling, as directed by the ADAA. FDA also anticipates proposing revisions to these regulations to implement other aspects of the ADAA, i.e., presubmission conferences, combination animal drugs, Veterinary Feed Directive (VFD) drugs, and feed mill licensing. Finally, FDA intends to propose revisions to the INAD and NADA regulations to implement FDA's reinventing government proposal to reinvent the regulation of animal drugs.

III. Agency Request for Comments

FDA is soliciting comments on all aspects of this advance notice of proposed rulemaking (ANPRM), and specifically requests comments on the following issues:

- (1) Further definition of "substantial evidence."
- (2) Defining "adequate and well-controlled" as it relates to field investigations.
- (3) Regulations to address dose range labeling.
- (4) Regulations to implement presubmission conferences.
- (5) Regulations to implement the streamlined approval process for certain combination animal drugs.
- (6) The content and format of a VFD.
- (7) CVM's use of a phased review process for reviewing NADA's.
- (8) CVM's use of direct review of sponsors' technical submissions for reviewing NADA's.
- (9) CVM's review of manufacturing supplements.

IV. Comments

Interested persons may, on or before January 21, 1997, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Because the ADAA requires FDA to publish regulations within short timeframes, FDA encourages that comments be submitted as soon as possible. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This ANPRM is issued under section 2(e) of the ADAA, sections 201, 501, 502, 503, 512, 701, and 801 of the Federal Food, Drug, and Cosmetic Act

(21 U.S.C. 321, 351, 352, 353, 360b, 371, and 381), and under the authority of the Commissioner of Food and Drugs.

Dated: November 15, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96-29767 Filed 11-20-96; 8:45 am]

BILLING CODE 4190-01-F

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN-1510-AA37

Treasury Tax and Loan Depositories and Payment of Federal Taxes

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking; extension of time for comments.

SUMMARY: On September 30, 1996, the Financial Management Service issued a notice of proposed rulemaking proposing new regulatory text for 31 CFR Part 203 to govern the operation of the Electronic Federal Tax Payment System. The document also proposed to update the rules governing Treasury's investment program. The date for filing comments is being extended at the request of interested commenters. Although the date is to be extended until January 13, 1997, commenters are encouraged to submit comments as soon as possible.

DATES: The date for filing comments is extended to and including January 13, 1997.

ADDRESSES: Comments or inquiries may be mailed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, Room 420, 401 14th Street, S.W., Washington, D.C. 20227.

FOR FURTHER INFORMATION CONTACT: Mark Matolak, Financial Program Specialist; Donald E. Clark, Financial Program Specialist; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, 401 14th Street, S.W., Washington, D.C. 20227, (202) 874-6590; or Margaret Roy, Principal Attorney, at (202) 874-6680. A copy of the original proposed rule, dated September 30, 1996, is being made available for downloading from the Financial Management Service home page at the following address: <http://www.ustreas.gov/treasury/bureaus/finman/>.

Dated: November 18, 1996.

Russell D. Morris,

Commissioner.

[FR Doc. 96-29771 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-30-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[AD-FRL-5553-2]

List of Industrial Combustion Coordinated Rulemaking Advisory Coordinating Committee Members and Notice of Upcoming Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: List of Industrial Combustion Coordinated Rulemaking (ICCR) Federal Advisory Committee and Work Group members, solicitation of additional Work Group nominations, and notice of upcoming meetings.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the Coordinating Committee) in the Federal Register on August 2, 1996 (61 FR 40413). The Coordinating Committee members have been selected and are listed in this document. The Coordinating Committee also has selected Work Group members and the current list of members is announced in this document. Nominations for the Work Groups are still being solicited to ensure adequate representation from each of the stakeholder interest groups on the Work Groups.

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the Coordinating Committee is scheduled for January 8 and 9, 1997.

Additional nominations for membership on the work groups must be submitted by December 6, 1996.

Further information on the Coordinating Committee and Work Group meetings may be obtained by accessing the TTN.

ADDRESSES: The Coordinating Committee meeting on January 8 and 9, 1997 will be held at the Holiday Inn Hotel and Suites (formerly Old Colony),

625 First Street, Alexandria, Virginia (703-548-6300).

Nominations for membership on work groups should be submitted to Fred Porter at EPA, Emission Standards Division, Combustion Group, (MD-13), Research Triangle Park, NC 27711.

Inspection of Documents: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at U.S. EPA Air and Radiation Docket and Information Center, Docket No. A-96-17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter, Sims Roy, or Walt Stevenson, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group, (MD-13), Research Triangle Park, NC 27711, telephone numbers (919) 541-5251, 541-5263, and 541-5264, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet or directly by modem. Through the Internet, the TTN may be accessed at: TELNET: ttnbbs.rtpnc.epa.gov FTP: ttnftp.rtpnc.epa.gov WWW: ttnwww.rtpnc.epa.gov

When accessing the WWW site, select TTN BBS Web from the first menu, then select Gateway to TTN Technical Areas from the second menu, and finally, select ICCR-Industrial Combustion Coordinated Rulemaking from the third menu.

By modem, dial (919) 541-5742 for up to a 14,400 bits-per-second information transfer connection. After logging on to the system, select Gateway to the TTN Technical Areas from the menu and then select ICCR-Industrial Combustion Coordinated Rulemaking from the next menu. Access to the TTN through Telnet will look the same as if you had dialed by modem, so these instructions should be followed for a Telnet connection.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541-5384.

All Coordinating Committee meetings will be announced in the *Federal Register*. Work Group meetings may or may not be announced in the *Federal Register*. Work Group meetings will, however, be announced on the TTN. Individuals interested in Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available

upon request to the Docket (ask for item #1-B-1). The purpose of the Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and

developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

The EPA reviewed the nominations for Coordinating Committee members received in response to the August 2, 1996 *Federal Register* notice and selected Coordinating Committee members for 2 year terms. Table 1 lists the current members of the Coordinating Committee.

TABLE 1.—COORDINATING COMMITTEE MEMBERSHIP

Greg Adams, Assistant Departmental Engineer, Los Angeles County Sanitation District, Phone: (310) 689-7411, Fax: (310) 692-6890, E-Mail: gadams@co.la.ca.us
Richard Anderson, Director of Government Affairs, Wheelabrator Technologies Inc., Phone: (202) 838-1201, Fax: (202) 626-0400, E-Mail: anderson1@clark.net
Atty Brasher, Assistant Administrator, Office of Air Quality and Radiation Protection, Louisiana Department of Environmental Quality, Phone: (504) 765-0100, Fax: (504) 765-0222, E-Mail: atty_b@deq.state.la.us
Mark Calmes, Director Environmental Engineering Services, Archer Daniels Midland Company, Phone: (217) 424-7456, Fax: (217) 362-3992, E-Mail: admcpa1@midwest.net
Peter Carroll, Vice President—Government Affairs, Solar Turbines, Inc., Phone: (202) 293-4327, Fax: (202) 293-4336, E-Mail: ucp01y9@bimmail.com
Paul Eleke, Director Environmental Affairs, Masco Corporation, Phone: (313) 374-6031, Fax: (313) 374-6935, E-Mail: not available at this time
John Fanning, Deputy Commissioner, City of Chicago Department of General Services, Phone: (312) 744-2997, Fax: (312) 742-0052, E-Mail: Wednesday@men.com
Stephen Geritson, Executive Director, Lake Michigan Air Directors Consortium (LADCO), Phone: (847) 296-2182, Fax: (847) 296-2958, E-Mail: ladco@interaccess.com
Alex Johnson, Director, Citizens Commission for Clean Air, in the Lake Michigan Basin, Phone: (414) 271-7467, Fax: (414) 271-7312, E-Mail: cbe@gcc.apc.org
Robert Kaufmann, Director Air Quality Program, American Forest and Paper Association, Phone: (202) 463-2588, Fax: (202) 463-2423, E-Mail: robert_kaufmann@afandpa.com
Chuck Ketter, Director Regulatory Management, Monsanto Company, Phone: (314) 694-4956, Fax: (314) 693-4956, E-Mail: ckwett@ccmail.monsanto.com
Miriam Lev-On, Senior Consultant, Atlantic Richfield Company, Phone: (213) 486-2610, Fax: (213) 486-2021, E-Mail: mlevon@is.arco.com
Jed R. Mandel, General Counsel, Engine Manufacturers Association, Phone: (312) 269-8042, Fax: (312) 269-1747, E-Mail: not available at this time
Robert A. Morris, Director, Environmental Affairs, Coastal Corporation (Refining Division), Phone: (713) 877-6194, Fax: (713) 297-1045, E-Mail: not available at this time
Russell Mosher, President, American Boiler Manufacturers Association, Phone: (703) 522-7350, Fax: (703) 522-2865, E-Mail: 76041.2623@compuserve.com
Elsie Munsell, Deputy Assistant Secretary—Environment, Department of the Navy, Phone: (703) 614-1305, Fax: (703) 695-2573, E-Mail: munsell-elsie@hq.secnv.navy.mil
Bill O'Sullivan, Administrator, Office of Air Quality Permitting, New Jersey Department of Environmental Protection, Phone: (800) 984-6721, Fax: (800) 984-6389, E-Mail: wosullivan@dep.state.nj.us
Robert Palzer, Air Quality Coordinator, Oregon Chapter of the Sierra Club, Phone: (503) 520-8671, Fax: Call for number, E-Mail: rbpalzer@pdx.sierra.com
John A. Paul, Director, Regional Air Pollution Control Agency, Phone: (937) 225-5848, Fax: (937) 225-3486, E-Mail: paule@tae.co.montgomery.oh.us
Fred Porter, Senior Environmental Engineer and Designated Federal Officer (DFO), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Phone: (919) 541-5251, Fax: (919) 541-5450, E-Mail: porter.fred@epamail.epa.gov
Marvin Schorr, Consulting Engineer, General Electric Industrial and Power Systems, Phone: (518) 385-3036, Fax: (518) 385-4274, E-Mail: marvin.schorr@geps.ge.com
Jeffrey C. Smith, Executive Director, Institute of Clean Air Companies, Phone: (202) 457-0911, Fax: (202) 331-1388, E-Mail: jsmith@icac.com
R. M. (Dick) Van Frank, Local Issues Chairperson, The Amos W. Butler Chapter of the National Audubon Society, Phone: (317) 842-8555, Fax: (317) 842-8555, E-Mail: vanfrank@iquest.net
J. Ross Vincent, Chairman, Sierra Club Environmental Quality Strategy Team, Phone: (719) 561-3117, Fax: (719) 561-1149, E-Mail: ross.vincent@sierraclub.org
Robert Welch, Director Regulatory Management, Columbia Gas System Service Corp., Phone: (703) 295-0300, Fax: (703) 716-4572, E-Mail: not available at this time

Tables 2 to 5 list the initial members of the Combustion Turbine Work Group, the Internal Combustion Engine Work Group, the Testing and Monitoring

Protocol Work Group, and the Economic Analysis Work Group. With regard to the Boiler Work Group, Process Heater Work Group, and the Incinerator Work

Group, the Coordinating Committee selected a number of individuals for membership on these Work Groups, but due to the need for development of

working definitions to distinguish between a boiler, heater, or incinerator, it is not possible at this point to list the

members of each of these Work Groups. When these membership lists have been confirmed, another *Federal Register*

notice will be published listing the information for these Work Group members.

TABLE 2.—COMBUSTION TURBINE WORK GROUP MEMBERSHIP

Greg Adams, Assistant Departmental Engineer, Los Angeles County Sanitation District, Phone: (310) 689-7411, Fax: (310) 692-6890, E-Mail: gadams@co.la.ca.us
Sam Allen, Associate Power Consultant, Dow Chemical Company, Phone: (504) 353-8790, Fax: (504) 353-6965, E-Mail: sallen@dow.com
Charles Chang, Policy Analyst—Air Quality, Los Angeles Department of Water & Power, Phone: (213) 367-1330, Fax: (213) 367-1450, E-Mail: cchang@dlwp.ci.la.ca.us
A. J. Cherian, Environmental Engineer, Pacific Gas Transmission Co., Phone: (503) 833-4708, Fax: (503) 833-4974, E-Mail: acherian@pgt.net
Sam L. Clowney, Senior Engineering Consultant, Tenneco Energy, Phone: (713) 757-3968, Fax: (713) 757-2449, E-Mail: 103506.3205@compuserve.com
Dr. Ted D. Guth, Permitting Regulatory Affairs Consultant, Phone: (619) 670-3157, Fax: (619) 670-8454, E-Mail: not available at this time
Peter E. Hill, U.S. Naval Facilities Engineering, Service Center (NFESC), Phone: (805) 982-3502, Fax: (805) 982-5388, E-Mail: phil@nfesc.navy.mil
George Ikhimwin, Maryland Department of the Environment, Air Quality Permits Program, Phone: (410) 631-3846, Fax: (410) 631-3202, E-Mail: george.ikhimwin@ghawk.com
John M. Klein, Engineer/Atlantic Richfield Co. Alaska, Inc., Phone: (907) 265-6292, Fax: (907) 263-4540, E-Mail: leejmk@pcmail.alaska.com
David A. Rohy, Solar Turbines Inc., San Diego, California 92186-5378, Phone: (619) 544-5078, Fax: (619) 595-7511, E-Mail: drohy@sta.com
Sims Roy, Environmental Engineer, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Phone: (919) 541-5263, Fax: (919) 541-5450, E-Mail: roy.sims@epamail.epa.gov
Marvin Schorr, Consulting Engineer, General Electric Industrial and Power Systems, Phone: (518) 385-3036, Fax: (518) 385-4274, E-Mail: marvin.schorr@geps.ge.com
Jorge Torres, Chief Engineer, Compressors, Natural Gas Pipeline of America, Phone: (708) 691-3702, Fax: (708) 691-3827, E-Mail: not available at this time

TABLE 3.—INTERNAL COMBUSTION ENGINE WORK GROUP MEMBERSHIP

Amanda Agnew, Environmental Engineer U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Phone: (919) 541-5268 Fax: (919) 541-5450, E-mail: agnew.amanda@epamail.epa.gov
J. Darrell Bowen, Project Director, Clean Air Project, CNG Transmission Corporation, Phone: (304) 623-8419, Fax: (304) 624-0154, E-Mail: j.darrell.bowen@cngt.cng.com
Michael S. Brand, Manager, Product Environmental Management Off-Highway Applications, Cummins Engine Company, Inc., Phone: (812) 377-3752, Fax: (812) 377-8739, E-Mail: mbrand@cob.cummins.com
Sam L. Clowney, Senior Engineering Consultant, Tenneco Energy, Phone: (713) 757-3968, Fax: (713) 757-2449, E-Mail: 103506.3205@compuserve.com
Donald C. Dowdall, Consultant, Engine Manufacturers Association, Phone: (312) 644-6610, Fax: (312) 321-5111, E-Mail: not available at this time
Rand F. Drake, P.E., U.S. Naval Facilities Engineering Service Center (NFESC), Phone: (805) 982-3514, Fax: (805) 982-5388, E-Mail: rdrake@nfesc.navy.mil
Charles J. Elder, Staff Engineer, General Motors Corporation, Phone: (313) 556-7764, Fax: (313) 556-9002, E-Mail: not available at this time
Randy Hamilton, P.E., Air Policy and Regulations Division, Texas Natural Resource Conservation Commission, Phone: (512) 239-1512, Fax: (512) 239-5687, E-Mail: rhamilton@smtpgate.tncc.state.tx.us
Wayne Andrew Hamilton, Staff Environmental Engineer, Shell Exploration & Production Technology Company, Phone: (713) 245-7782, Fax: (713) 245-7813, E-Mail: wahamilton@shellus.com
William R. Heater, Cooper Energy Services, Phone: (513) 327-4200, Fax: (513) 327-4388, E-Mail: not available at this time
Jed R. Mandel, General Counsel, Engine Manufacturers Association, Phone: (312) 269-8042, Fax: (312) 269-1747, E-Mail: not available at this time
Michael P. Milliet, Environmental Professional, Texaco Exploration & Production Inc., Phone: (504) 595-1752, Fax: (504) 593-4081, E-Mail: millimp@texaco.com
Vick Newsom, Staff Environmental Specialist, Amoco Corporation, Phone: (713) 366-7655, Fax: (713) 366-7556, E-Mail: vnewsome@amoco.com
William C. Passie, Engine Emissions Manager, Caterpillar, Inc., Phone: (309) 675-5362, Fax: (309) 675-6181, E-Mail: passie-william-c@cat.com
Nolan Elliott Penney, Public Health Engineer, Maryland Department of the Environment, Phone: (410) 631-3219, Fax: (410) 631-3202, E-Mail: nolan.penney@ghawk.com
Donald R. Price, Rule Development Engineer, Ventura County Air Pollution Control District, Phone: (805) 845-1407, Fax: (805) 845-1444, E-Mail: don@vcarod.mhs.compuserve.com
Robert W. Stachowicz, P.E., Senior Project Engineer II, Dresser Industries, Inc., Phone: (414) 549-2753, Fax: (414) 549-2705, E-Mail: not available at this time
Edward M. Torres, Environmental Management Division Manager, Orange County Sanitation District, Phone: (714) 962-2411, Fax: (714) 962-8379, E-Mail: not available at this time
Jorge Torres, Chief Engineer, Compressors, Natural Gas Pipeline of America, Phone: (708) 691-3702, Fax: (708) 691-3827, E-Mail: not available at this time
Bill Walker, Air and Water Quality Management, Alaska Department of Environmental Conservation, Phone: (907) 465-5124, Fax: (907) 465-5129, E-Mail: billwalker@environ.state.ak.us

TABLE 4.—TESTING AND MONITORING PROTOCOL WORK GROUP MEMBERSHIP

Tom Bach, Manager, Environmental Permitting, Natural Gas Pipeline Company of America, Phone: (630) 691-3777, Fax: (630) 691-3827, E-Mail: thomas_bach@oxy.com

Timothy Brooks, Chief, Source Testing Section, Bureau of Air Quality, Pennsylvania Department of Environmental Resources, Phone: (717) 783-0271, Fax: (717) 772-2303, E-Mail: brooks.timothy@al.dep.state.pa.us

Tom C. Dender, Manager, Technical Services, Tenneco Energy, Phone: (713) 662-5319, Fax: (713) 662-5339, E-Mail: muskes2@aol.com

David N. Fashimpeur, Environmental Scientist, BP Oil Company, Phone: (216) 586-5837, Fax: (216) 586-5565, E-Mail: fashimdn@bp.com

Deanna Haines, Senior Market Planner, Southern California Gas Company, Phone: (213) 244-5819, Fax: (213) 244-8188, E-Mail: dhaines@pacent.com

Terry Harrison, Environmental Engineer, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Phone: (919) 541-5233, Fax: (919) 541-2357, E-mail: harrison.terry@epamail.epa.gov

Dennis R. Knisley, Senior Environmental Representative, Eastman Chemical Company, Phone: (423) 298-5603, Fax: (423) 224-7213, E-Mail: dkisley@eastman.com

Karl Loe, Senior Staff Research Chemist, Shell Development Company, Phone: (713) 544-8491, Fax: (713) 544-7268, E-Mail: kloe@shellus.com

Paul Martino, Senior Environmental Scientist/API, Phone: (202) 682-8582, Fax: (202) 682-8270, E-Mail: martino@api.org

Farhana Mohamed, Ph.D., Laboratory Manager, Bureau of Sanitation, City of Los Angeles Hyperion Treatment Plant, Phone: (310) 524-9180, Fax: (310) 524-8294, E-Mail: fm@san.ci.la.ca.us

Lawrence Otwell, Senior Environmental Engineer Technical Support, Georgia Pacific Corp. Phone: (404) 652-5061, Fax: (404) 654-4685, E-Mail: lotwell@gspec.com

William C. Passie, Engine Emissions Manager, Caterpillar, Inc., Phone: (309) 675-5362, Fax: (309) 675-6181, E-Mail: passie_william_c@cat.com

John Preczewski, New Jersey Department of Environmental Protection, Phone: (609) 530-4041, Fax: (609) 530-4504, E-Mail: not available at this time

David C. Schanbacher, PE, Texas Natural Resources Conservation Commission, Phone: (512) 239-1228, Fax: (512) 239-1213, E-Mail: dschanba@smtpgate.tncc.state.tx.us

Dr. Vernon Schievelbein, Research Consultant, Texaco, Phone: (713) 432-2266, Fax: (713) 432-3108, E-Mail: schievh@texaco.com

Dr. Shirish A. Shimpi, Cummins Technical Center, Phone: (812) 377-7532, Fax: (812) 377-7050, E-Mail: s.a.shimpi@ctc.cummins.com

Allen W. Verstuyft, Ph.D., Consulting Scientist, Chevron Research & Technology, Phone: (510) 242-3403, Fax: (510) 242-5320, E-Mail: avve@chevron.com

Michael J. Wax, Ph.D., Deputy Director, Institute of Clean Air Companies, Phone: (202) 457-0911, Fax: (202) 331-1388, E-Mail: mwax@icac.com

James E. Wright, Technical Director/Clean Air Engineering, Phone: (412) 787-9130, Fax: (412) 787-9138, E-Mail: jim_wright@cleanair.com

TABLE 5. ECONOMIC ANALYSIS WORK GROUP MEMBERSHIP

David Emery, Environmental Engineer, Phillips Petroleum, Phone: (918) 661-3041, Fax: (918) 661-6146, E-Mail: dtemery@bvermx.pcco.com

Jim Greer, Natural Gas Pipeline Company of America, Phone: (630) 691-3860, Fax: (630) 691-3827, E-Mail: jim_r_greer@oxy.com

Glenn F. Keller, Executive Director, Engine Manufacturers Association, Phone: (312) 644-6610, Fax: (312) 321-5111, E-Mail: not available at this time

Arthur Lee, Senior Staff Environmental Engineer, Texaco, Inc. Phone: (914) 838-7173, Fax: (914) 383-7115, E-Mail: leea@texaco.com

Joseph Mackell, Environmental Representative, Marathon Oil company, Phone: (419) 421-3442, Fax: (419) 421-4299, E-Mail: mackell@hou.moc.com

Michael Rusin, Deputy Director, American Petroleum Institute, Phone: (202) 682-8533, Fax: (202) 682-8408, E-Mail: rusinm@api.org

R. M. (Dick) Van Frank, Local Issues Chairperson, The Amos W. Butler Chapter of the National Audubon Society, Phone: (317) 842-9555, Fax: (317) 842-9555, E-Mail: vanfrank@iquest.net

Tom Walton, Economist, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Phone: (919) 541-5311, Fax: (919) 541-0804, E-mail: walton.tom@epamail.epa.gov

George Williams, Southern California Gas Company, Phone: (202) 662-1700, Fax: (202) 293-2887, E-Mail: not available at this time

The lists of Coordinating Committee and Work Group members are available for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

The EPA, on behalf of the Coordinating Committee, is soliciting additional nominations for membership on the Work Groups, primarily to obtain representatives of environmental and environmental justice organizations, State/local regulatory agencies, labor, academia, and small businesses, although all nominations for membership will be considered. Additional nominations should be submitted to EPA (Attention: Fred

Porter at address under FOR FURTHER INFORMATION CONTACT section of this notice). These nominations should be submitted by December 6, 1996 to ensure consideration by the Coordinating Committee at its January meeting.

Prior to submitting a nomination, an individual or organization should obtain and thoroughly read the ICCR document (available on the TTN [filename ICCR.WPF] and through the public docket) which contains additional information and a suggested nomination form. To be considered, nominees for membership on the Source Work Groups must meet the criteria outlined in the ICCR document. Nominations for the membership on the Source Work

Groups must also identify the particular Work Group for which the person is being nominated.

The next meeting of the Coordinating Committee will be held January 8-9, 1997 in Alexandria, Virginia at the Holiday Inn Hotel and Suites (formerly the Old Colony) from about 9:00 a.m. to about 5:00 p.m. on both days, although an evening session will be held on January 8, if necessary, to ensure completion of the agenda. The agenda for this meeting will include discussion of revisions to the ICCR document, reports from the Work Groups on their progress and planning, discussion of EPA's data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating

Committee to the Work Groups. This meeting will also be open to the public, and an opportunity will be provided for the public to offer comments and address the Coordinating Committee.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in January, will be March 19-20, 1997 in Chicago, Illinois.

Dated: November 13, 1996.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 96-29656 Filed 11-19-96; 10:29 am]

BILLING CODE 5550-50-P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 15, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer For Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, OCIO, Mail Stop 7802, Washington, D.C. 20250-7802. Copies of the submission(s) may be obtained by calling (202) 720-6204 or (202) 720-6746.

*Food Safety and Inspection Service

Title: Use of Corn Syrup Solids and Glucose Syrup as Flavoring Agents in Meat Products.

OMB Control Number: This is a new information collection.

Summary: FSIS is amending the regulations to permit the use of corn syrup as a flavoring agent. Manufacturers wishing to use corn syrup for this purpose must submit the label for approval.

Need and Use of the Information: FSIS will use the information to ensure that meat and poultry products are properly labeled.

Description of Respondents: Business or other for-profit.

Number of Respondents: 750.

Frequency of Responses:

Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,813.

Emergency processing of this submission has been requested by 12/16/96.

*Agricultural Marketing Service

Title: Irish Potatoes Grown in Washington, Marketing Order No. 946.

OMB Control Number: 0581-0070.

Summary: Information is collected from candidates nominated to serve on the committee, for modification of inspection privilege, and for special purpose shipments.

Need and Use of the Information: The information is used to regulate the provisions of Marketing Order No. 946.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 490.

Frequency of Responses:

Recordkeeping; Reporting: On occasion, Biennially, Annually.

Total Burden Hours: 246.

*Agricultural Marketing Service

Title: Regulations for Inspection of Eggs, and Egg Products.

OMB Control Number: 0581-0113.

Summary: Information is collected to register shell egg handlers and hatcheries, request importation of shell eggs and egg products into the United States and to report and document findings during surveillance inspections of shell egg handlers and hatcheries.

Need and Use of the Information: The information is used to assure compliance with the Egg Products Inspection Act and to take administrative and regulatory action.

Description of Respondents: Business or other for-profit; Federal Government; State, local, or tribal government.

Number of Respondents: 1,268.

Frequency of Responses:

Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 2,330.

*Rural Housing Service

Title: Field Office Handbook & Centralized Servicing Center Handbook.

OMB Control Number: This is a new information collection.

Summary: The information is collected from persons with any type of pecuniary interest in that of an applicant or recipient of a direct single family housing loan or grant. The information is used to ensure that the direct single family housing programs are administered in a manner consistent with legislative and administrative requirements.

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Thursday, November 21, 1996

Need and Use of the Information: The information collected is used to verify program eligibility requirements; continued eligibility requirements for borrower assistance; servicing of loans; eligibility for special servicing assistance such as: payment subsidies, moratorium (stop) on payments, delinquency workout agreements; liquidation of loans; and, debt settlement.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, local, or tribal government.

Number of Respondents: 550,000.

Frequency of Responses: Reporting;

On Occasion, Annually.

Total Burden Hours: 834,494.

*Agricultural Marketing Service

Title: Limes Grown in Florida, Marketing Order No. 911.

OMB Control Number: 0581-0091.

Summary: The Florida Lime Administrative Committee needs specific information from Florida lime growers and handlers to nominate committee members, to recommend volume regulations, to determine handler compliance, to levy assessment, and prepare periodic reports.

Need and Use of the Information: The information is used to regulate the provisions of Marketing Order No. 911.

Description of Respondents: Business or other for-profit; Farms; Federal government; State, local or tribal government.

Number of Respondents: 55.

Frequency of Responses:

Recordkeeping; Reporting: On occasion, weekly, annually, other (daily).

Total Burden Hours: 112.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96-29727 Filed 11-20-96; 8:45 am]

BILLING CODE 3410-01-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 8:30 p.m. on December

5, 1996, at the Langston Hughes Theater/Lincoln University, Dunklin and Chestnut Streets, Jefferson City, Missouri 65102. The purpose of the meeting is to hold a community forum to obtain information on the status of race relations in Cole County and Jefferson City, and to provide information on filing various civil rights complaints.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 12, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96-29780 Filed 11-20-96; 8:45 am]

BILLING CODE 3335-01-P

DEPARTMENT OF COMMERCE

Bureau of the Census

The Census Advisory Committee (CAC) on the African American Population, the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, and the CAC on the Hispanic Population; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409, Pub. L. 96-523, and Pub. L. 97-375), we are giving notice of a joint meeting followed by separate and concurrently held (described below) meetings of the CAC on the African American Population, the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, and the CAC on the Hispanic Population. The joint meeting will convene on December 5-6, 1996 at the Bureau of the Census, Federal Building 3, 4700 Silver Hill Road, Suitland, Maryland 20746.

Each of these Committees is composed of nine members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the

Bureau of the Census on its efforts to reduce the differential in the count for the 2000 census and on ways the census data can be disseminated to maximum usefulness to their communities and other users.

The Committees will draw on past experience with the 1990 census process and procedures, results of evaluations and research studies, and the expertise and insight of its members to provide advice and recommendations during the research and development phase on various topics, and provide advice and recommendations during the design, planning, and implementation phases of the 2000 census.

The agenda for the December 5 combined meeting that will begin at 8:00 a.m. and end at 5:30 p.m. is: (1) Introductory Remarks; (2) What Are the Major Findings on Race and Hispanic Origin from the 1996 National Content Survey?; (3) What Is the Review Process for Assessing Possible Changes for OMB Directive 157?; (4) How Can the Committee Members Use the Organizations with which They Are Affiliated to Help the Bureau Implement Its Census 2000 Marketing Plan?; and (5) Results of the Focus Groups on Questionnaires.

The agendas for the four committees in their separate and concurrently held meetings are as follows:

The CAC on the African American Population: (1) issues from last meeting; (2) review of background papers; (3) report from working group on outreach and promotion; and (4) review responses to recommendations.

The CAC on the American Indian and Alaska Native Populations: (1) issues from last meeting; (2) review of background papers; (3) report from working group on outreach and promotion; (4) observation reports from the 1996 community census; (5) review responses to recommendations; and (6) update of geography programs.

The CAC on the Asian and Pacific Islander Populations: (1) issues from last meeting; (2) review of background papers; (3) report from working group on outreach and promotion; and (4) review responses to recommendations.

The CAC on the Hispanic Population: (1) issues from the last meeting; (2) review of background papers; (3) report from working group on outreach and promotion; and (4) review responses to recommendations.

The agenda for the December 6 jointly held meeting that will begin at 8:00 a.m. and end at 3:45 p.m. is: (1) How Can the Census Bureau and the Advisory Committees Work Together to Demonstrate the Usefulness of the American Community Survey for Meeting Data Needs of Racial and Ethnic Populations?; (2) What Are Some Alternatives to Achieve 90-Percent

Response at the Census Tract Level?; (3) A Conversation: Advisory Committees; and (4) Committee Recommendations to the Census Bureau.

The agendas for the four committees in their separate and concurrently held meetings are as follows:

The CAC on the African American Population: discussion of committee recommendations.

The CAC on the American Indian and Alaska Native Populations: discussion of committee recommendations.

The CAC on the Asian and Pacific Islander Populations: discussion of committee recommendations.

The CAC on the Hispanic Population: discussion of committee recommendations.

All meetings are open to the public and a brief period is set aside on December 6, during the closing session, for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau's Designated Federal Officer, Robert Marx, Room 2031, Federal Building 3, Washington, DC 20233, at least three days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 3039, Federal Building 3, Washington, DC 20233.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact the Committee Liaison Officer on (301) 457-2308, TDD (301) 457-2540.

Dated: November 18, 1996.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 96-29888 Filed 11-20-96; 8:45 am]

BILLING CODE 3510-07-P

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 96-00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Spirit Index, Ltd. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1995).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the *Federal Register*. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (As They Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam,

the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Spirit Index, Ltd. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Market;

3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;

4. Enter into exclusive or non-exclusive licensing, and/or sales agreements with Suppliers, Export Intermediaries, or other persons for the transfer of title to Products, Services, and/or Technology Rights in Export Markets;

5. Enter into exclusive or non-exclusive pricing and/or consignment agreements for the sale and shipment of Products and Services to Export Markets;

6. Allocate the sales, export orders and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale, licensing and/or transfer of title to Products, Services, and/or Technology Rights;

7. Enter into exclusive or non-exclusive agreements for the pooling of tangible property and other resources, the tying of Products and Services, the setting of prices, and/or the distribution, shipping or handling of Products or Services in the Export Markets; and

8. Enter into agreements to invest in overseas warehouses for the purpose of storing exported Products until transferred to the foreign purchaser, or to invest in overseas facilities for the purpose of making minor product or packaging modifications necessary to insure compatibility of the Product with the requirements of the foreign market.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, Spirit Index, Ltd. will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. Spirit Index, Ltd. will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for

information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: November 15, 1996.

W. Dawn Busby,
Director, Office of Export Trading Company Affairs.

[FR Doc. 96-29761 Filed 11-20-96; 8:45 am]
BILLING CODE 3510-DR-P

National Oceanic and Atmospheric Administration

[D. 1101968]

Small Takes of Marine Mammals Incidental to Specified Activities; McDonnell Douglas Aerospace Delta II Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of harbor seals, California sea lions, and northern elephant seals by harassment incidental to launches of McDonnell Douglas Aerospace Delta II (MDA Delta II) vehicles at Space Launch Complex 2W

(SLC-2W), Vandenberg Air Force Base, CA (Vandenberg) has been issued to the U.S. Air Force.

EFFECTIVE DATE: This authorization is effective from November 13, 1996 until November 13, 1997.

ADDRESSES: The application, comments on the application, the authorization, and a list of the references used in this document, and/or previous *Federal Register* notices on this activity may be obtained by writing to the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802, or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301-713-2055, or Irma Lagomarsino, Southwest Regional Office at 301-980-4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines "harassment" as:

"...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breeding, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the

incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 17, 1996, NMFS received an application from the U.S. Air Force requesting continuation of an authorization for the harassment of small numbers of harbor seals and potentially for other pinniped species incidental to launches of Delta II vehicles at SLC-2W, Vandenberg. These launches would place Department of Defense, National Aeronautics and Space Administration (NASA), and commercial medium-weight payloads into polar or near-polar orbits. MDA/NASA intends to launch up to 10 Delta IIs during the period of this proposed 1-year authorization.

Because SLC-2W is located north of most other launch complexes at Vandenberg, and because there are oil production platforms located off the coast to the south of SLC-2W, missions flown from SLC-2W cannot fly directly on their final southward course. The normal trajectory for a SLC-2W launch is 259.5° west for the first 90 seconds, then a 41-second dog-leg maneuver to bring the vehicle on its southward course of 196°. This trajectory takes the launch vehicle away from the coast and nearly 30 mi west of San Miguel Island (SMI), the westernmost Channel Island (Air Force 1995b).

A notice of receipt of the application and the proposed authorization was published on August 29, 1996 (61 FR 45404) and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, two letters were received. The recommendation and comment contained in the letter from the Marine Mammal Commission (MMC) is discussed below, comments from the applicant are minor technical corrections to the proposed authorization and do not warrant further discussion. These letters are available upon request (see ADDRESSES). Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the above-mentioned notice and needs not be repeated here.

Comments and Responses

Comment 1: The MMC recommends that, before issuing the requested authorization, NMFS review the results

¹ A list of references used in this document can be obtained by writing to the address provided above (see ADDRESSES).

of monitoring done to date to determine (1) if there may have been cumulative effects on the haul-out patterns, abundance, or productivity of harbor seals that reside in the Vandenberg area, and (2) whether the current monitoring program is sufficient to detect such effects.

Response: By limiting incidental harassment authorizations to a single year as opposed to multi-year authorizations for Letters of Authorization (LOAs) issued under section 101(a)(5)(A) of the MMPA, NMFS does not believe that Congress intended NMFS to make negligible impact assessments on activities for periods greater than the period of the authorization, nor to require holders of IHAs to monitor for periods greater than the authorization. As a result, monitoring for most activities holding IHAs are designed to be event specific, that is, for a period of time prior to the event, during the event, and after completion of the activity. Although this precludes the applicability of monitoring under a single IHA for determining long-term cumulative effects, in those cases where holders of IHAs request continuing authorizations, monitoring, over time and in conjunction with other measurements of population trends and abundances, provides information sufficient to make the necessary negligible impact determinations under section 101(a)(5)(D) of the MMPA. This is what was done for the negligible impact determination for this authorization.

Recognizing that short-term monitoring leaves unanswered the effect from cumulative impacts, the U.S. Air Force is designing research to investigate this concern. This research will use launches of Titan IVs to provide information vital for assessing long-term impacts on the physiology, behavior and survival of pinnipeds from launch noise and sonic booms. This research which will be conducted under an MMPA section 104 research permit, is expected to begin within a year.

Therefore, while NMFS is unaware of any long-term studies currently underway on the effects on pinnipeds from launch noises or sonic booms, monitoring at Vandenberg for Titan IV and other launches in the past has provided the baseline information on long-term and cumulative impacts. This information and the fact that the haul-outs along the Vandenberg coast remain active indicates that there are no immediately evident long-term, cumulative impacts. Launch noises are infrequent enough and divided between North and South Vandenberg so that these impacts are presumed to be less

significant, cumulatively, than human, wildlife and pet disturbances including motorized vessels.

Comment 2: The MMC states that it should be made clear that the authorization is automatically rescinded if a marine mammal is killed as a result of the authorized activity.

Response: No marine mammals are anticipated to be killed or seriously injured as a result of launchings of Delta II rockets. However, while section 101(a)(5)(D)(iv) of the MMPA provides NMFS authority to modify, suspend, or revoke an authorization if it is found that the provisions of the section are not being met, for IHA suspensions, NMFS follows procedures established for suspension of Letters of Authorization (LOAs) under section 101(a)(5)(A) of the MMPA. In that regard, an IHA may be suspended without notice and comment if emergency conditions exist that pose a significant risk to the well-being of the marine mammal stock, or if holder of an IHA is not in compliance with the conditions of the IHA. However, prior to revocation of an IHA, NMFS must satisfy the statutory notice and comment requirement. While section 101(a)(5)(B) allows NMFS to withdraw (revoke) or "suspend for a time certain" an LOA, subsequent to notice and comment, section 101(a)(5)(C) does not waive the notice and comment requirement where NMFS seeks to withdraw the authorization. Conditions for suspension or withdrawal of an LOA or IHA are described in 50 CFR 216.106 and 107.

Conclusion

Based upon the information provided in the proposed authorization, NMFS has determined that the short-term impact of the launching of Delta II rockets is expected to result at worst, in a minor, temporary reduction in utilization of the haulout as seals or sea lions leave the beach for the safety of the water. These launchings are not expected to result in any reduction in the number of pinnipeds, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and the northern Channel Islands are unlikely.

Therefore, since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, California sea lions, and northern elephant seals; would have only a negligible impact on the species, and would result in the

least practicable impact on the stock, NMFS determined that the requirements of section 101(a)(5)(D) had been met and the incidental harassment authorization was issued.

Dated: November 13, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 96-29738 Filed 11-20-96; 8:45 am]
BILLING CODE 3510-22-F

[I.D. 100896B]

Small Takes of Marine Mammals Incidental to Specified Activities; U.S. Coast Guard

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Correction notice.

SUMMARY: This document contains
corrections to the notice of receipt of
application (I.D. 100896B) that was
published on October 17, 1996 (61 FR
54157). These corrections are necessary
to inform the public of the correct
sequence of events in the U.S. Coast
Guard's (USCG) application for a small
take authorization and its submission of
the requested documents to NMFS.

ADDRESSES: A copy of the USCG
application may be obtained by writing
to Michael Payne, Chief, Marine
Mammal Division, Office of Protected
Resources, National Marine Fisheries
Service, 1315 East-West Highway, Silver
Spring, MD 20910-3226.

FOR FURTHER INFORMATION CONTACT:
Kenneth R. Hollingshead, Office of
Protected Resources, NMFS, (301) 713-
2055.

SUPPLEMENTARY INFORMATION: On
October 17, 1996, NMFS published a
notice (61 FR 54157) that NMFS had
received a request from USCG for a
small take of certain marine mammal
species incidental to USCG vessel and
aircraft operations off the U.S. Atlantic
shoreline over the next 5 years. This
application was in response to an order
dated May 2, 1995, in *Strahan v. Linnon*
wherein the presiding District Court
judge ordered USCG to apply by May
31, 1995, under section 101(a)(5)(A) of
the Marine Mammal Protection Act
(MMPA; 16 U.S.C. 1361 *et seq.*), for a
small take of northern right whales
(*Eubalaena glacialis*).

Need for Correction

As published, the notice contains
errors to the dates that may prove to be
misleading and are in need of

clarification. First, NMFS clarifies that
the USCG application was hand-
delivered to NMFS on May 31, 1996, not
on June 2, 1996, as stated. Second,
NMFS corrects an error concerning the
date of the court order. The order in
Strahan v. Linnon actually was dated
May 2, 1995, and was revised by an
order issued on May 19, 1995.

Correction of Publication

Accordingly, the publication on
October 17, 1996, of the notice of receipt
of application (I.D. 100896B), which
was the subject of FR Doc. 96-26634, is
corrected as follows:

On page 54158, in the first column,
under the heading Summary of Request,
paragraph one, line one, is corrected to
read: "On May 31, 1995, NMFS received
an" and line 10 is corrected to read:
"dated May 2, 1995, and was revised by
an order dated May 19, 1995, in *Strahan*
v."

In the third column, paragraph two,
lines 14 and 15 are corrected to read:
"USCG. For that reason, the USCG's
May 31, 1995, application for a small
take"

Dated: November 15, 1996.

Patricia Montano,

Acting Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 96-29803 Filed 11-20-96; 8:45 am]
BILLING CODE 3510-22-F

[I.D. 111396B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Notice of a public meetings.

SUMMARY: The Pacific Fishery
Management Council's (Council)
Scientific and Statistical Committee
Economic Subcommittee will hold a
public meeting.

DATES: The meeting will begin on
December 3, 1996 at 10:00 a.m., and will
recess when business for the day has
been completed. The meeting will
reconvene at 8:00 a.m. on December 4,
1996, and will adjourn by 3:00 p.m.

ADDRESSES: The meeting will be held at
the Council office, 2130 SW Fifth
Avenue, Suite 224, Portland, OR 97201.
FOR FURTHER INFORMATION CONTACT: Jim
Seger, Economic Analysis Coordinator;
telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The
primary purpose of this meeting is to
begin work on development of a Council
economic data plan.

Special Accommodations

This meeting is physically accessible
to people with disabilities. Requests for
sign language interpretation or other
auxiliary aids should be directed to Eric
W. Greene at (503) 326-6352 at least 5
days prior to the meeting date.

Dated: November 15, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable
Fisheries, National Marine Fisheries Service.

[FR Doc. 96-29804 Filed 11-20-96; 8:45 am]
BILLING CODE 3510-22-F

National Estuarine Research Reserve System; Public Meetings on Site Selection Process for Nomination of Candidate Site in Alaska

AGENCY: Office of Ocean and Coastal
Resource Management (OCRM),
National Ocean Service (NOS), National
Oceanic and Atmospheric
Administration, Department of
Commerce.

ACTION: Notice of public meetings in
Seldovia and Homer, Alaska, on the site
selection process for the nomination of
a candidate site for the National
Estuarine Research Reserve System.

SUMMARY: In accordance with section
315 of the Coastal Zone Management
Act of 1972, as amended, the State of
Alaska and the National Oceanic and
Atmospheric Administration (NOAA)
intend to conduct public meetings on
December 10 and 11, 1996, in Seldovia
and Homer, Alaska, respectively, as part
of NOAA's site selection process for the
nomination of a candidate site for the
National Estuarine Research Reserve
(NERR) System.

DATE AND TIME: Tuesday, December 10,
1996 at 6:30 p.m.

ADDRESS: Seldovia Library Building,
Multi-purpose Room, 260 Seldovia
Street, Seldovia, Alaska 99663.

DATE AND TIME: Wednesday, December
11, 1996 at 7:00 p.m.

ADDRESS: Homer City Hall, City Council
Chambers, 491 East Pioneer Avenue,
Homer, Alaska 99603.

FOR FURTHER INFORMATION CONTACT:
Janet Moser, Alaska Department of Fish
and Game, at (907) 267-2341, or Matt
Menashes, Program Specialist,
Sanctuaries and Reserves Division,
Office of Ocean and Coastal Resource
Management, NOAA, at (301) 713-3132,
ext. 117.

SUPPLEMENTARY INFORMATION: The NERR
System is dedicated to fostering a
system of estuarine reserves that
represents the wide range of coastal and
estuarine habitats found in the United

States. NOAA has developed a
classification scheme and typology of
national estuarine areas that places the
coastlines of the United States into
biogeographic regions and subregions.

Site selection criteria are based on
ecological representativeness, value for
research and education, and practical
coastal management considerations. The
site ultimately designated will be used
by researchers, educators, and the
general public to study estuarine
ecology and coastal issues that can aid
in coastal policy making and
management decisions.

During the past year, the State of
Alaska, in consultation with NOAA, has
undertaken a process to identify a site
which adequately represents the major
estuarine characteristics of Southcentral
Alaskan coastal ecosystems. An estuary
located in Southcentral Alaska would be
the first site to represent the Fjord
Biogeographic Region.

After consideration of several possible
sites along the Southcentral Alaska
coast, the Southcentral Alaska National
Estuarine Research Reserve Site
Selection Committee has selected the
Kachemak Bay area of Southcentral
Alaska as its candidate site for
nomination as a potential NERR. These
public meetings are being held to
provide details and solicit comments on
this proposed site.

At the public meetings, the Alaska
Department of Fish and Game will
provide an overview of the national
NERR Program; provide a summary of
the Southcentral Alaska NERR
initiative, including the site selection
process and a description of the
proposed site; and conduct an open
question and answer period.

Following the public meetings, a site
nomination document will be
developed based on existing research
documents and literature, and
comments received from NOAA, the
Southcentral Alaska National Estuarine
Research Reserve Site Selection
Committee, and the general public. The
final site selection document will then
be sent to the Governor of Alaska for his
approval. If approved, the Governor will
forward the site selection package and a
nomination letter to NOAA for
approval. After NOAA approves the
State's proposed site, a draft and final
Environmental Impact Statement and
Management Plan must be prepared
prior to final site designation.

The public meetings will be held at
6:30 p.m. on Tuesday, December 10,
1996, at the Seldovia Library Building,
Seldovia, Alaska, and at 7:00 p.m. on
Wednesday, December 11, 1996, at the
Homer City Hall, Homer, Alaska.

Interested parties who wish to
comment on the site selection are
invited to attend. For more information
contact Janet Moser, Alaska Department
of Fish and Game, at (907) 267-2341 or
Matt Menashes, Program Specialist,
Sanctuaries and Reserves Division,
Office of Ocean and Coastal Resource
Management, NOAA, at (301) 713-3132,
ext. 117.

Dated: October 29, 1996.

Federal Domestic Assistance Catalog Number
11.420 (Coastal Zone Management) Research
Reserves

David L. Evans,

Deputy Assistant Administrator for Ocean
Services and Coastal Zone Management.

[FR Doc. 96-29636 Filed 11-20-96; 8:45 am]
BILLING CODE 3510-22-F

COMMODITY FUTURES TRADING COMMISSION

**Applications of the New York Cotton
Exchange as a Contract Market in
Futures and Options on the Deutsche
Mark/Spanish Peseta Cross Rate**

AGENCY: Commodity Futures Trading
Commission.

ACTION: Notice of availability of the
terms and conditions of proposed
commodity futures and option
contracts.

SUMMARY: The New York Cotton
Exchange (NYCE or Exchange) has
applied for designation as a contract
market in futures and options on the
Deutsche Mark/Spanish Peseta cross
rate. The Acting Director of the Division
of Economic Analysis (Division) of the
Commission, acting pursuant to the
authority delegated by Commission
Regulation 140.96, has determined that
publication of the proposals for
comment is in the public interest, will
assist the Commission in considering
the views of interested persons, and is
consistent with the purposes of the
Commodity Exchange Act.

DATES: Comments must be received on
or before December 23, 1996.

ADDRESSES: Interested persons should
submit their views and comments to
Jean A. Webb, Secretary, Commodity
Futures Trading Commission, Three
Lafayette Centre, 21st Street NW,
Washington, DC 20581. In addition,
comments may be sent by facsimile
transmission to facsimile number (202)
418-5521, or by electronic mail to
secretary@cftc.gov. Reference should be
made to the NYCE Deutsche Mark/
Spanish Peseta cross rate contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone 202-418-5277. Facsimile number: (202) 418-5527. Electronic mail: ssherrod@cftc.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418-5100.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 15, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96-29698 Filed 11-20-96; 8:45 am]

BILLING CODE 8201-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Civilian Community Corps Advisory Board Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (Corporation) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that

it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The Board advises the Director of the CCC concerning the administration of the program and assists in the development and administration of the Corps. The Board will discuss the progress of CCC to date and future direction of the program. The meeting will be open to the public, up to the seating capacity of the room.

DATES: The CCC Advisory Board will meet from 9:00 a.m.-12:00 noon on Monday, December 9, 1996.

ADDRESSES: Corporation for National and Community Service, 1201 New York Avenue NW, 8th Floor, Washington, DC 20525.

FOR FURTHER INFORMATION: To ensure adequate accommodation, prior to December 9, 1996, contact Ms. Annalisa Robles, Special Events Coordinator, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525. (202) 606-5000 ext. 153. T.D.D. (202) 565-2799.

Dated: November 13, 1996.

Fred Peters,

Acting Director, National Civilian Community Corps.

[FR Doc. 96-29794 Filed 11-20-96; 8:45 am]

BILLING CODE 9000-00-P

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Office of School-to-Work Opportunities

Advisory Council for School-to-Work Opportunities; Notice of Open Meetings

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council assesses the progress of School-to-Work Opportunities systems development and program implementation; makes recommendations regarding progress and implementation of the School-to-Work initiative; advises on the effectiveness of the new Federal role in providing venture capital to States and localities to develop School-to-Work systems and acts as advocates for implementing the School-to-Work framework on behalf of their stakeholders.

TIME AND PLACE: The Advisory Council for School-to-Work Opportunities will

have an open meeting on Wednesday, December 4, 1996 from 8:30 a.m.-1:30 p.m. and from 3:30 p.m.-4:30 p.m. at the Capital Hilton, 16th and K Streets, NW., Washington, DC 20036.

AGENDA: The agenda for the meeting from 8:30 a.m. to 1:30 p.m. will include opening remarks, a panel on related education and workforce development initiatives, an update of School-to-Work implementation and state and local presentations. During the afternoon, the Council's subcommittees will meet to organize their reports to the Council on their activities. The agenda from 3:30 p.m. to 4:30 p.m. will include reports from the various subcommittees, a summary of the day's meeting and a discussion of future actions.

PUBLIC PARTICIPATION: The meeting Wednesday, December 4 from 8:30 a.m.-1:30 p.m. and 3:30 p.m. to 4:30 p.m. will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: JD Hoyer, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, SW., Room 210, Washington, DC, (202) 401-6222. (This is not a toll free number.)

Due to scheduling difficulties, we are giving less than the full advance notice of the meeting.

Signed at Washington, DC, this 18th day of November, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Patricia W. McNeil,

Assistant Secretary of Education.

[FR Doc. 96-29781 Filed 11-20-96; 8:45 am]

BILLING CODE 4510-32-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97-11-000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1996.

Take notice that on November 8, 1996, Algonquin LNG, Inc. (Algonquin LNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of December 1, 1996:

Fourth Revised Sheet No. 200.

Algonquin LNG states that the purpose of this filing is to reflect change in Algonquin LNG's index of customers.

Algonquin LNG states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29730 Filed 11-20-96; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP96-403-001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1996.

Take notice that on November 12, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to be effective November 1, 1996:

Second Revised Volume No. 1
Fourth Revised Sheet No. 2
Third Revised Sheet Nos. 5 through 7
Fifteenth Revised Sheet No. 8
Seventeenth Revised Sheet No. 9
Third Revised Sheet Nos. 11 and 12
Seventeenth Revised Sheet No. 13
Third Revised Sheet Nos. 14 and 15
Seventeenth Revised Sheet No. 16
Sixteenth Revised Sheet No. 17
Substitute Fifth Revised Sheet No. 17A
Substitute Second Revised Sheet No. 187.1
Substitute First Revised Sheet No. 187.2
First Revised Sheet Nos. 187A and 187B
Second Revised Sheet No. 188
Fourth Revised Sheet No. 181
Original Volume No. 2
Third Revised Sheet No. 13
Ninth Revised Sheet No. 14
Substitute Third Revised Sheet No. 15

ANR states that the purpose of this filing is to reflect the removal of the "Rate Adjustment for Viking Transportation Costs" provision

contained in Section 29 of the General Terms and Conditions of its tariff, and the removal of approximately \$10.2 million of Viking Transportation Costs from its base rates.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29729 Filed 11-20-96; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP97-24-001]

Carnegie Interstate Pipeline Company; Notice of Compliance Filing

November 15, 1996.

Take notice that on November 12, 1996, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing in compliance with the letter order issued in the above-captioned proceeding on October 31, 1996, the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Substitute Tenth Revised Sheet No. 7

CIPCO proposed that the tariff sheet become effective on November 1, 1996.

Since the time that CIPCO submitted Tenth Revised Sheet No. 7 in its Annual Transportation Cost Rate filing, the Commission approved in Docket No. TM97-1-120-001 a revised Annual Charge Adjustment (ACA) of \$0.0019 for CIPCO, effective October 1, 1996. As directed by the Commission in its letter order in this proceeding, CIPCO filed a substitute sheet to reflect its Commission-approved ACA on the tariff sheet effective November 1, 1996.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29732 Filed 11-20-96; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP96-190-000]

Colorado Interstate Gas Company; Notice of Tariff Filing

November 15, 1996.

Take notice that on November 12, 1996, Colorado Interstate Gas Company (CIG), tendered for filing Fourth Revised Sheet No. 229. CIG states that on March 29, 1996 it filed to change rates for all currently-offered jurisdictional Services in Docket No. RP96-190-000 (75 FERC OCH) ¶ 61,090. CIG has discovered that Sheet No. 229 was erroneously stated as Second Revised Sheet No. 229. CIG is filing to correct this error. CIG states that no other change is proposed for this sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29733 Filed 11-20-96; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. CP97-54-000]

Florida Gas Transmission Company; Notice of Application

November 15, 1996.

Take notice that on October 21, 1996, as supplemented on November 8, 1996, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP97-54-000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's Regulations for permission and approval to abandon

by sale to Southern Natural Gas Company (Southern) FGT's ownership interest in certain pipeline, measurement and appurtenant facilities know as Cognac Pipeline located just off the Louisiana Gulf Coast in the Outer Continental Shelf, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that the Cognac Pipeline was originally constructed to deliver reserves from Mississippi Canyon Blocks 150, 151, 194, and 195 in the offshore Louisiana area. The Cognac Pipeline consists of: (1) 26.3 miles of 16-inch pipeline extending from the platform in Block 194 to the South Pass in Plaquemines Parish, Louisiana; (2) 13.4 miles of 16-inch pipeline extending from the South Pass in Plaquemines Parish to a point of interconnection with Southern's existing 14-inch Romero Pass Pipeline, Plaquemines Parish, Louisiana; (3) .3 miles of 14-inch Pipeline from the Block 194 platform riser; and (4) a receiving station consisting of measurement facilities and certain related and appurtenant facilities.

FGT seeks to abandon by sale its 25.29502% interest in the Cognac Pipeline to Southern, which will acquire FGT's interest under its Part 157 Subpart F Blanket Construction Certificate upon Commission approval to abandon these facilities. FGT states that the sales price for the facilities to be conveyed to Southern is \$137,000, which will be a net gain since the facilities are fully depreciated. FGT proposes to sell its interest in the Cognac Pipeline because the purchase gas contract in the offshore Louisiana area has been terminated and the Cognac Pipeline is a non-contiguous lateral off the FGT system.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1996, file with the Federal Energy Regulatory Commission (888 First Street, N.E., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.
[FR Doc. 96-29737 Filed 11-20-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP97-78-000]

South Georgia Natural Gas Company; Notice of Revised Tariff Sheets

November 15, 1996.

Take notice that on November 8, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1996:

Sixth Revised Sheet No. 5
Sixth Revised Sheet No. 6
Fourth Revised Sheet No. 14
Fourth Revised Sheet No. 32

South Georgia states that the instant filing is submitted in order to remove certain provisions in its Tariff concerning a volumetric take-or-pay surcharge that is no longer being assessed.

South Georgia states that copies of the filing were served upon South Georgia's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of South Georgia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 96-29735 Filed 11-20-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP97-77-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1996.

Take notice that on November 8, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Twenty First Revised First Revised Sheet No. 27. The tariff sheet is proposed to become effective November 1, 1996.

Transco states that the instant filing is for the limited purpose of revising Transco's Rate Schedule GSS rates to reflect in such rates the cost of the 3 Bcf of base gas purchased by Transco pursuant to the authorizations granted by the Federal Energy Regulatory Commission on June 13, 1996, in Docket Nos. CP96-226-000 and CP96-238-000.

Transco states that it is serving copies of the instant filing to its Rate Schedule GSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.
[FR Doc. 96-29734 Filed 11-20-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP97-92-000]

Viking Gas Transmission Company; Notice of Application

November 15, 1996.

Take notice that on November 12, 1996, Viking Gas Transmission Company (Applicant), 825 Rice Street, St. Paul, Minnesota 55117-5485 has filed under Section 7(c) of the Natural Gas Act (NGA), for a certificate to do the following:

(1) Construct, and operate 10.5 miles of 24-inch pipeline loop, in Kittson County, Minnesota, extending from milepost 2201-2 + .07, to milepost 2201-2 + 0.01;

(2) Construct and operate 11.8 miles of 24-inch pipeline loop, in Polk County, Minnesota, extending from milepost 2204-2 + 0.00, to milepost 2204-2 + 11.82;

(3) Construct and operate 7.1 miles of 24-inch pipeline loop, in Norman and Clay Counties, Minnesota, extending from milepost 2207-2 + 4.42 to milepost 2207-2 + 11.54;

(4) install and operate five 4,700 horsepower gas combustion turbine compressor units to be located at the following compressor stations:

A. Angus Compressor Station in Polk County, Minnesota.

B. Ada Compressor Station in Norman County, Minnesota.

C. Frazee Compressor Station in Ottertail County, Minnesota.

D. Staples Compressor Station in Todd County, Minnesota.

E. Milaca Compressor Station in Mille Lacs County, Minnesota.

(5) install a new meter station for the city of Perham, Minnesota.

Proposed construction will cost \$27.9 million. The facilities will be used to provide additional firm transportation capacity from the Emerson Interconnection for the following shippers:

Customer	Delivery point	Dth/day
City of Perham, Minnesota	Perham	750.
Minnegasco	Cambridge, MN	20,000 (Nov-Mar).
Coastal Gas Marketing Co.	Marshfield, WI	27,500
J.R. Simplot Co.	North Branch, MN	2,500.
	Grand Forks, MN	3,500.
	Marshfield, WI	4,500.
	North Branch, MN	500.
RDO Foods Co.	RDO Foods	1,200.
Kimball Trading Co. LLC	North Branch, MN	850 (Nov-Mar).
		2,350 (Apr-Oct).
Unsubscribed (summer)	North Branch, MN	4,500.
Total		61,300 (winter).
		47,300 (summer).

Applicant states that it holds precedent agreements with each of these prospective shippers. Applicant also claims that this project will provide greater reliability and additional operating flexibility for existing customers.

Applicant proposes to charge the shippers an incremental demand rate of \$8.65/Dth/Mo. The initial commodity and fuel rates for the project shippers will be equal to Applicant's existing rates for firm shippers under Rate Schedule FT-A.

Any person desiring to be heard or to make any protest with regard to this application should on or before December 6, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.
[FR Doc. 96-29736 Filed 11-20-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP96-400-002 and RP96-103-067]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1996.

Take notice that on November 12, 1996, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Substitute, Second Revised Sheet Nos. 8C and 8D, with the proposed effective date of November 1, 1996.

WNG states that on September 30, 1996, as amended on October 15, 1996, it filed its fourth quarter report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs. Subsequent to the September 30 and October 15 filings, a contract was entered into with Greeley Gas Company which is retroactive to October 1, 1996. Revised Schedule 4 is being filed to reflect the revised MDTQ for Greeley Gas and the revised allocation to each Shipper. All other aspects for WNG's September 30 filing, as revised October 15, are unchanged.

WNG states that a copy of its filing was served on all of WNG's jurisdictional customers and interested state commissions.

Any persons desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29731 Filed 11-20-96; 8:45 am]
BILLING CODE 8717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5553-5]

Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification and Petitions; Renewal Submission to OMB; OMB No. 2070-0093

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and 5 CFR 1320.12(c) of its implementing regulations, this notice announces that the Office of Prevention, Pesticides and Toxic Substances has forwarded the Information Collection Request (ICR) abstracted in this notice to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12(a)(2). The ICR, which is entitled: Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification, and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPA ICR No. 1363.06; OMB Approval No. 2070-0093), describes the nature of the information collection, its expected cost and burden, and the actual data collection instrument or form. The Agency is requesting that OMB renew its approval of this ICR, which has been approved under a Congressional legislative extension of an OMB approval in 1992 and is effective until the Agency promulgates revisions to the Form R and Instructions pursuant to law. On August 30, 1996, EPA issued a Federal Register notice proposing this submission and providing 60 days for public comment on the request and the

contents of this ICR (61 FR 45964). EPA received several comments during the comment period, many of which related to a recent, but separate, proposed rule to expand reporting under EPCRA section 313, those comments were forwarded to the EPA staff working on that rulemaking. Comments directly related to this ICR have been addressed within the revised ICR submitted to OMB.

DATES: Any additional comments must be submitted to the addresses listed below on or before December 23, 1996. **FOR A COPY CALL:** Sandy Farmer at EPA, 202-260-2740, or via e-mail at "farmer.sandy@epamail.epa.gov" and refer to EPA ICR No. 1363.06; OMB No. 2070-0093.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460, with a copy also sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503. Please refer to EPA ICR No. 1363.06 and OMB Control No. 2070-0093 in any correspondence.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to extend the approval for a current information collection.

ICR Numbers: EPA ICR No. 1363.06 and OMB No. 2070-0093.

Current Expiration Date: Congress legislatively extended the approval granted by OMB in May 1992 until EPA promulgates changes to the Form R and Instructions. As indicated within this ICR, EPA is amending the Form R and Instructions in response to several comments.

Respondents: The statute applies the reporting requirement to owners and operators of facilities that have 10 or more full-time employees, manufacture or process more than 25,000 pounds or otherwise use more than 10,000 pounds of a listed chemical, and are in Standard Industrial Classification (SIC) codes 20 through 39. The SIC code determination applies to all operations within each two-digit category, including all sub-categorizations to the four-digit level. The following listing identifies the SIC codes and corresponding categories at the two-digit level:

SIC code	Industry Group
20	Food

SIC code	Industry Group
21	Tobacco
22	Textiles
23	Apparel
24	Lumber and Wood
25	Furniture
26	Paper
27	Printing/Publishing
28	Chemicals
29	Petroleum
30	Rubber and Plastics
31	Leather
32	Stone, Clay, and Glass
33	Primary Metals
34	Fabricated Metals
35	Machinery (ex. electrical)
36	Electrical/Electronic equipment
37	Transportation Equipment
38	Instruments
39	Miscellaneous Manufacturing

Establishments that are part of a multi-establishment facility have the option to report separately, provided that all of the releases and waste management data from all of the establishments in that facility are reported.

Title: Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification, and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act.

Abstract: This Information Collection Request (ICR) covers the information collection requirements for toxic chemical release reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 et seq.) and the information collection in section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 11071 to 11079). In short, EPCRA § 313 requires owners or operators of certain facilities (i.e., currently manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39) manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories (hereafter "toxic chemicals") in excess of the applicable threshold quantities, and meeting certain requirements (i.e., at least 10 employees), to report environmental releases and transfers of and waste management activities for such chemicals annually. Under section 6607 of the PPA, facilities must provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities. Currently, facilities subject to the TRI reporting requirements may either use the EPA Toxic Chemical Release Inventory Form R (EPA Form 9350-1), or the EPA Toxic Chemical Release Inventory Form A (formerly "Certification Statement",

EPA Form 9350-2, which is approved under OMB Number 2070-0143). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternate threshold for those facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds per year for that chemical, provided that certain conditions are met, and submit the Form A instead of the Form R.

In accordance with EPCRA section 313 (and PPA section 6607 because of its linkage to EPCRA), EPA's Office of Pollution Prevention and Toxics (OPPT) collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at both EPA and the National Library of Medicine (NLM); NLM provides public access to the TRI database through the Toxicology Data Network (TOXNET). The TRI has been used extensively by both EPA and the public sector. Program offices within EPA have used the TRI, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and for enforcement activities. Environmental and public interest groups have used the data in several studies and reports, making the public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level, outside of EPCRA section 313, are generally not available. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI, and the real gains in understanding it has produced, communities and governments know what listed toxic chemicals industrial facilities (SIC 20-39) in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

OMB approved the reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control No. 2070-0093 (EPA ICR No. 1363). Although that

OMB approval would have ordinarily expired on November 30, 1992, Congress extended the approval legislatively in September of 1992, until EPA promulgates changes to the Form R and Instructions. This approval was contained in the 1993 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Pub.L. 102-389, signed October 6, 1992, which specifically states that:

Notwithstanding the Paperwork Reduction Act of 1980 or any requirements thereunder the Environmental Protection Agency Toxic Chemical Release Inventory TRI Form R and instructions, revised 1991 version issued May 19, 1992, and related requirements (OMB No. 2070-0093), shall be effective for reporting under section 6607 of the Pollution Prevention Act of 1990 (Public Law 101-508) and section 313 of the Superfund Amendments and Reauthorization Act of 1990 (Public Law 99-499) until such time as revisions are promulgated pursuant to law.

OMB's approval of this ICR will replace the Congressional extension of OMB's 1992 approval described above, requiring EPA to seek subsequent OMB approvals pursuant to the Paperwork Reduction Act (PRA) (Pub. L. 104-13, codified at 44 U.S.C. 3501-3520) and the procedures specified at 5 CFR 1320.12. As specified by 5 CFR 1320.12(a)(1), EPA issued a Federal Register notice on August 30, 1996, which sought comments as required by 5 CFR 1320.8(d) regarding the burden estimates and the information collection activities described in the proposed ICR (61 FR 45964). EPA has reviewed the comments received during the 60-day comment period, and is submitting this final ICR to OMB for review and approval, pursuant to 1320.12(a)(2). Until OMB approves EPA's proposed changes to the Form R and Instructions, as described in this ICR, the Congressional extension of OMB's 1992 approval and use of the previous Form R and instructions will continue in effect.

A commenter to the proposed ICR stated that the Congressional extension of OMB's 1992 approval, which basically exempted the Agency from the requirements of the PRA, was superseded by the reauthorization and amendment of the PRA in 1995. In essence asserting that the Congressional extension of OMB's 1992 approval expired in 1995 because Congress cited the 1980 PRA, which ceased to exist when the 1995 PRA was enacted in its place. The commenter asserts that the Agency was, therefore, required to seek OMB approval even though no changes to the Form R and Instructions were made. The flaws in this interpretation

are obvious because it is clear that the 1995 reauthorization and amendments to the PRA did not in any way invalidate or otherwise change, any of the OMB approvals previously granted. This is especially true in light of the legislative interpretation maxim that "implicit repeals are disfavored." I.e., when Congress means to repeal an earlier exemption, Congress will use explicit language to do so. In this case, Congress used no such language and, to the contrary, discusses the continuation of previous approvals until their scheduled renewals.

The Paperwork Reduction Act of 1995 states that the Agency must certify that each information collection it submits to OMB for review and approval meets specified standards. EPA must certify that the collection is: 1) necessary for the proper performance of EPA's functions, and that it has practical utility; 2) is not unnecessarily duplicative of information EPA otherwise can reasonably access; and 3) reduces, to the extent practicable and appropriate, the burden on persons providing the information to or for EPA. In this ICR, EPA clearly demonstrates that the information being collected under EPCRA section 313 is necessary for the implementation of the law and is of essential use to the Agency in carrying out its functions by listing ways in which Agency program offices and outside parties utilize the data; that the information collected in EPA reporting Form R is not duplicative of information collected by other environmental regulations as evidenced by the information contained in chapter 5 of this ICR; and, that through use of the alternate threshold reporting option, the petition process, automated Form R reporting, the TRI List Review effort which evaluates the original list of TRI chemicals and removes from the EPCRA section 313 reporting list any chemical which does not meet the listing criteria, EPA has reduced, to the best of its ability, the burden on persons providing the information being collected under EPCRA section 313.

The existing reporting and recordkeeping requirements associated with Form R, supplier notification and petitions are discussed in this ICR (EPA ICR No. 1363), which is separate from the ICR related to the alternate reporting requirement of Form A. The reporting and recordkeeping requirements associated with the alternate reporting requirement using Form A are contained in a separate ICR and are approved under OMB Control No. 2070-0143 (EPA ICR No. 1704). OMB recently extended its approval of EPA ICR No. 1704, which was scheduled to expire on

In addition, EPA recently proposed to
 amend the TRI reporting and
 recordkeeping requirements by
 proposing to add several additional
 industry groups to the universe of
 respondents subject to reporting (61 FR
 33588, June 27, 1996). As required by
 section 3507(d) of the PRA and 5 CFR
 1320.11, EPA announced and sought
 comment on the proposed Expansion of
 the List of Industrial Groups ICR (EPA
 ICR No. 1784), which provided burden
 estimates for the information collection
 contained in the proposed rule. Since
 the comment period for the industrial
 group expansion rule was extended for
 an additional 30 days, the public had a
 total of 90 days to provide comments on
 the information collection requirements
 contained in that proposed rule.

When the final rule for Industry
 Expansion is issued, the information
 collection requirements contained in the
 final rule will be reflected in a revised
 EPA ICR No. 1784, which will be
 submitted to OMB for review and
 approval pursuant 5 CFR 1320.11(h).
 That submission must occur no later
 than publication of that final rule in the
 Federal Register and the submission
 must be announced in a Federal
 Register (issued either separately or as
 part of the final rule). Upon OMB's
 approval of the expansion related ICR
 (ICR No. 1784.02), EPA will amend add
 the expansion burdens to the existing
 burdens associated with overall TRI
 reporting and recordkeeping (i.e., those
 in ICR Nos. 1363 and 1704).
 Specifically, EPA would amend the
 existing ICRs by submitting an
 Information Correction Worksheet to
 OMB requesting that the burden hours
 associated with each ICR be adjusted to
 include the new burden hours imposed
 by that final rule.

EPA received several comments on
 this ICR during its 60 day comment
 period. In general, the commenters
 submitting information to EPA ICR No.
 1363.06 were comprised mainly of
 industry members in addition to two
 commenters from the Federal
 Government. Copies of these comments

can be found in docket number OPPTS-
 198. Comments received focused mainly
 on the practical utility of the
 information collected by EPA under
 EPCRA section 313; the Agency's
 definition of "release" as reflected in
 TRI reporting Form R, §§ 5.4 and 5.5.1;
 EPA's adherence to the Paperwork
 Reduction Act of 1980 and 1995; the
 purported need for EPA to measure risk,
 not releases; and, the need for further
 consideration by the Agency of an
 expanded use of TRI reporting Form A,
 the alternate threshold reporting form.
 EPA has provided additional
 information and discussion herein, as
 applicable, in response to the comments
 submitted to the ICR. Those issues that
 related solely to the requirements
 contained in the alternate reporting
 threshold rule, or those contained in the
 recently proposed expansion rule, were
 forwarded to the appropriate staff for
 consideration in relationship to those
 requirements.

Burden Statement: The annual public
 reporting and recordkeeping burden for
 this collection of information is
 estimated to average 47.1 hours per
 Form R submitted. This estimate
 includes the time needed to review
 instructions; develop, acquire, install
 and utilize technology and systems for
 the purposes of collecting, validating
 and verifying information, processing
 and maintaining information, and
 disclosing and providing information;
 adjust the existing ways to comply with
 any previously applicable instructions
 and requirements; train personnel to be
 able to respond to a collection of
 information; search data sources;
 complete and review the collection of
 information; and transmit or otherwise
 disclose the information. No person is
 required to respond to a collection of
 information unless it displays a
 currently valid OMB control number.
 The OMB control numbers for EPA's
 regulations are displayed in 40 CFR Part
 9.

Respondents/Affected Entities:
 Chemical facilities that manufacture,
 process or otherwise use certain toxic
 chemicals and which are required,
 under EPCRA section 313, to report
 annually to EPA their environmental
 releases of such chemicals.

Estimated No. of Respondents:
 23,725.

**Estimated Total Annual Burden on
 Respondents:** 5,538,727 hours.

Frequency of Collection: Annual.
 Accordingly, this ICR has been
 submitted to OMB for review and
 approval.

Changes in Burden Estimates: The
 total respondent burden has increased
 approximately 651,000 hours from the

previous ICR. A table in the ICR (Table
 16), illustrates the major program
 changes and adjustments that have
 occurred since the previous ICR and the
 corresponding changes in the number of
 expected Form R Forms and related
 annual burden estimates. The impacts of
 the 1995 and 1996 program changes on
 the Form A ICR (No. 1704) burden are
 also included in the discussion, but the
 burdens are not included in the total
 estimates for this ICR. The changes in
 burden can be attributed to several
 factors, as briefly discussed below:

**1994 Program Change—Chemical
 Expansion Rule.** In November 1994,
 EPA added 286 chemicals and chemical
 categories to the EPCRA section 313 list
 of chemicals and chemical categories.
 These new chemicals were reportable
 beginning with the 1995 reporting year.
 This program change would, at full
 compliance, add up to 14,036 reports, or
 an additional 729,872 burden hours.
 The Chemical Expansion Rule would, at
 full compliance, also result in an
 additional 407 supplier notification
 facilities, for an increase in total annual
 burden of 9,768 hours. The total impacts
 due to the Chemical Expansion Rule are
 therefore an additional 14,036 reports
 and an increase in burden of 739,640
 hours.

**A. 1995 Program Change—Alternate
 Threshold Rule.** In 1995, EPA provided
 a simplified reporting option for
 facilities with an annual reportable
 amount of less than 500 pounds for a
 chemical. Facilities that do not exceed
 the reportable amount of 500 pounds
 and that do not exceed the alternate
 activity threshold of one million pounds
 have the option of reporting on Form A
 (a two page certification) in lieu of the
 nine page Form R. Up to 23,288 fewer
 Form Rs may be filed as a result, for a
 decrease in annual burden of 1,210,976
 hours.

**1995 and 1996 Program Changes—
 Petition Delistings.** The list of toxic
 chemicals subject to reporting under
 EPCRA section 313 is not static. The list
 can be modified either as a result of an
 Agency-initiated action or as a result of
 a petition submitted by the public. If a
 listed chemical does not meet the
 toxicity criteria of EPCRA section
 313(d)(2), the Administrator may delete
 the chemical from the EPCRA section
 313 list. Since the previous ICR, a
 number of chemicals have been
 delisted, or had their listings modified
 in such a way as to reduce reporting.
 These include ammonia, sulfuric acid,
 acetone, butyl benzyl phthalate, certain
 copper phthalocyanine compounds,
 hydrochloric acid, and diethyl
 phthalate. At full compliance, this is
 estimated to reduce the number of Form

Rs by 12,386 reports and total annual
 burden by 644,072 hours.

I. Adjustments. Several adjustments
 were made to update burden estimates.
 In 1994, the unit burden for the
 compliance activities of calculations
 and report completion and
 recordkeeping needed for Form R
 completion was increased, resulting in a
 total increase in burden of 1,523,016
 hours. Additional adjustments include
 an increase in the burden for
 compliance determination, a further
 increase in the burden for calculations
 and report completion, a decrease in the
 respondent universe from 188,232 to
 185,266 facilities, and an adjustment for
 the burden of completing petitions.
 These adjustments combined result in a
 burden increase of 1,766,455 hours.

A. Wage Rates. An increase in wage
 rates from the previous ICR to account
 for inflation, while not affecting
 respondent burden, has increased the
 unit cost to respondents.

The program changes reduced burden
 by an estimated 1,115,408 hours while
 the adjustments resulted in an estimated
 increase of 1,766,455 hours, yielding a
 net increase of 651,047 hours.

Dated: November 15, 1996.

Richard T. Westlund,

Acting Director, Regulatory Information
 Division.

[FR Doc. 96-29796 Filed 11-20-96; 8:45 am]

BILLING CODE 6960-20-P

[OPPTS-00185A; FRL-5573-9]

Facility Identification Initiative; Notice of Public Meetings

AGENCY: Environmental Protection
 Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA will hold two public
 meetings to receive public comment on
 issues regarding the consolidated
 reporting of facility identification
 information, as raised by the Agency's
 facility identification initiative.

DATES: The meetings will take place in
 Chicago, IL, on December 10, 1996, and
 in Washington, DC, on December 12,
 1996. Both meetings will begin at 10
 a.m. and will continue through 4 p.m.
 or until all speakers have had the
 opportunity to make presentations,
 whichever is first. The registration
 deadline for those interested in speaking
 at either meeting is December 5, 1996.

ADDRESSES: The meeting in Washington,
 DC will be held at the EPA Education
 Center, Environmental Protection
 Agency, 401 M St., SW., Washington,
 DC. The meeting in Chicago, IL will be
 held at U.S. EPA, Region 5, Metcalf

Building Rm. 325, 77 West Jackson
 Blvd., Chicago, IL.

FOR FURTHER INFORMATION CONTACT:

Diane Sheridan, Office of Pollution
 Prevention and Toxics, Environmental
 Protection Agency, Rm. NE-C606E,
 Mail Code 7407, 401 M St., SW.,
 Washington, DC 20460, Telephone:
 (202) 260-3435, e-mail: sheridan.
 diane@epamail.epa.gov. To register to
 speak, please call the registration line at
 (703) 218-2700.

SUPPLEMENTARY INFORMATION: The
 Facility Identification Initiative
 represents a significant Agency
 reinvention commitment. The
 overarching goal of the Facility
 Identification Initiative is to streamline
 access to and reporting of
 environmental data by establishing a
 uniform set of facility identification data
 and the infrastructure needed to make it
 operational. The President announced
 this initiative in the March 1995 report,
 Reinventing Environmental Regulation.

On October 7, 1996 (61 FR 52588)
 (FRL-4991-5), the Agency issued a
 notice in the Federal Register to outline
 the Facility Identification Initiative and
 present numerous issues and several
 options for public comment. The
 purpose of the public meetings is to
 provide public forums for interested
 parties to provide input on the issues
 raised by the Facility Identification
 Initiative. Oral statements may be
 limited to 10 minutes per person and
 will be scheduled on a first-come first-
 serve basis by calling the telephone
 number listed under FOR FURTHER
 INFORMATION CONTACT. EPA encourages
 meeting participants to provide written
 statements. All statements will become
 part of the public record and will be
 considered in the development of any
 approaches toward implementing the
 Facility Identification Initiative. In order
 to accommodate and schedule speakers,
 EPA requests that those interested in
 speaking register by December 5, 1996.

List of Subjects

Environmental protection.

Dated: November 15, 1996.

William H. Sanders III,

Director, Office of Pollution Prevention and
 Toxics.

[FR Doc. 96-29797 Filed 11-20-96; 8:45 am]

BILLING CODE 6960-20-M

[FRL-5553-5]

**Clean Air Act Advisory Committee:
 Accident Prevention Subcommittee
 Conference Call Meeting—December
 11, 1996, 2:00-4:00 EST**

AGENCY: Environmental Protection
 Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section
 112(r) required EPA to publish
 regulations to prevent accidental
 releases of chemicals and to reduce the
 severity of those releases that do occur.
 These accidental release prevention
 requirements build on the chemical
 safety work begun by the Emergency
 Planning and Community Right-to-
 Know Act (EPCRA) which sets forth
 requirements for industry, State and
 local governments. On June 20, 1996,
 EPA published the final rule for risk
 management programs to address
 prevention of accidental releases.

An estimated 66,000 facilities are
 subject to this regulation based on the
 quantity of regulated substances they
 have on-site. Facilities that are subject
 will be required to implement a risk
 management program at their facility,
 and submit a summary of this
 information to a central location
 specified by EPA. This information will
 be helpful to State and local government
 entities responsible for chemical
 emergency preparedness and
 prevention. It will also be useful to
 environmental and community
 organizations, and the public in
 understanding the chemical risks in
 their communities. In addition, we hope
 the availability of this information will
 stimulate a dialogue between industry
 and the public to improve accident
 prevention and emergency response
 practices.

The Accident Prevention
 Subcommittee was created in September
 1996 to advise EPA's Chemical
 Emergency Preparedness and
 Prevention Office (CEPPO) on these
 chemical accident prevention issues,
 specifically, section 112(r) of the Clean
 Air Act.

DATES: Pursuant to the Federal Advisory
 Committee Act, 5 U.S.C. App. 2, notice
 is hereby given that the Accident
 Prevention Subcommittee of the Clean
 Air Act Advisory Committee will hold a
 public teleconference on December 11,
 1996 from 2:00 p.m. to 4:00 p.m. Eastern
 Standard Time.

ADDRESSES: The meeting will be held in
 the Washington Information Center #13
 North, in EPA Headquarters, 401 M St.
 NW, Washington, D.C. 20460. Members
 of the public are welcome to attend in

person. The Accident Prevention Subcommittee will call into the meeting by teleconference. Due to the limited teleconference lines, there will not be additional lines for the public to call in.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact Karen Shanahan, Designated Federal Official, US EPA (5101), 401 M. St., SW, Washington, DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov, by telephone at (202) 260-2711 or FAX at (202) 260-7906.

SUPPLEMENTARY INFORMATION: The agenda, meeting summaries and other information on the Accident Prevention Subcommittee and Electronic Submission Workgroup are available on the Internet at: <http://www.epa.gov/swercepp/rmp-wg.html>

If you would like to automatically receive future information on the Accident Prevention Subcommittee and the Electronic Submission Workgroup by email please send an email to Karen Shanahan at: shanahan.karen@epamail.epa.gov requesting to be put on the email list for these groups.

Agenda

1. Update of Subcommittee membership.
2. Update on the progress of the Electronic Submission Workgroup. The Electronic Submission Workgroup has been meeting since October 9th to develop recommendations on how electronic submission of "risk management plans" (RMPs) can be accomplished and how the public can best access and utilize the data.
3. Review of Issues in preparation for the next Accident Prevention Subcommittee meeting in March/April 1997.

Members of the public who wish to make a brief oral presentation in person in Washington, D.C. to the Subcommittee at the December 11 meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than 12 noon Eastern Time; December 5, 1996 in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee or the Electronic Submission Workgroup up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously

submitted oral or written statements. In general, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Dated: November 18, 1996.
Karen Shanahan,
Designated Federal Official.
[FR Doc. 96-29795 Filed 11-20-96; 8:45 am]
BILLING CODE 6860-50-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984. Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-088
Title: West Coast of South America Agreement

Parties:

A.P. Moller-Maersk Line
Compania Chilena de Navegacion Interoceania, S.A.
Compania Sud Americana de Vapores, S.A.
Crowley American Transport, Inc.
Sea-Land Service, Inc.
South Pacific Shipping Company, Ltd.
d/b/a Ecuadorian Line

Synopsis: The proposed amendment would revise the provisions related to the financial obligations of a member who resigns from the Agreement.

Dated: November 15, 1996.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 96-29757 Filed 11-20-96; 8:45 am]
BILLING CODE 4730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 5, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brenda Joan Pace, Pretty Prairie, Kansas; to acquire an additional 18.83 percent, for a total of 22.88 percent, and Daniel R. Pace, also of Pretty Prairie, Kansas, to acquire a total of 22.88 percent, of the voting shares of Prairie Bankshares, Inc., Bucklin, Kansas, and thereby indirectly acquire State Bank of Pretty Prairie, Pretty Prairie, Kansas.

2. Joanne F. Shephard, and Mary K. Gustafson, both of Valentine, Nebraska; as co-executives to acquire an additional 53.99 percent, for a total of 69.33 percent, of the voting shares of Valentine Bancorporation, Valentine, Nebraska, and thereby indirectly acquire The First National Bank of Valentine, Valentine, Nebraska.

Board of Governors of the Federal Reserve System, November 15, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96-29711 Filed 11-20-96; 8:45 am]
BILLING CODE 3210-01-F

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 6, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Michael R. Schneider, Elkton, Minnesota; to acquire an additional 48.12 percent, for a total of 93.47 percent, and Cindy S. Schneider, also of Elkton, Minnesota, to acquire an additional 3.36 percent, for a total of 6.53 percent, of the voting shares of Elkton Bancshares, Inc., Elkton, Minnesota, and thereby indirectly acquire Farmers State Bank of Elkton, Elkton, Minnesota.

Board of Governors of the Federal Reserve System, November 18, 1996.

William W. Wiles,
Secretary of the Board.
[FR Doc. 96-29806 Filed 11-20-96; 8:45 am]
BILLING CODE 3210-01-F

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-28730) published on pages 57874 and 57875 of the issue for Friday, November 8, 1996.

Under the Federal Reserve Bank of Dallas heading, the entry for SW&KM Limited Partnership, Del Rio, Texas, is revised to read as follows:

1. SW&KM Limited Partnership, Del Rio, Texas; SW&KM Holdings, LLC, Del Rio, Texas; to become bank holding companies by acquiring Westex Bancorp., Inc., Del Rio, Texas; Westex Bancorp of Delaware, Inc., Wilmington, Delaware, and Del Rio Bank & Trust Company, Del Rio, Texas; First State Bank, Brackettville, Texas; and Sutton City National Bank, Sonora, Texas.

Comments on this application must be received by December 3, 1996.

Board of Governors of the Federal Reserve System, November 15, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96-29712 Filed 11-20-96; 8:45 am]
BILLING CODE 3210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. U.S. Trust Corporation, New York, New York; to acquire 100 percent of the

voting shares of U.S. Trust Company of New Jersey, Princeton, New Jersey.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Pinnacle Bancshares, Inc., Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Pinnacle Bank, Little Rock, Arkansas (a proposed, *de novo* state member bank).

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jefferson County Bancshares, Inc., Daykin, Nebraska; to acquire 38.1 percent of the voting shares of Antelope Bancshares, Inc., Elgin, Nebraska, and thereby indirectly acquire Bank of Elgin, Elgin, Nebraska.

Board of Governors of the Federal Reserve System, November 15, 1996.

William W. Wiles,
Secretary of the Board.
[FR Doc. 96-29713 Filed 11-20-96; 8:45 am]
BILLING CODE 3210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue

concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Walker Ban Co.*, Walker, Minnesota; to merge with Pequot Area Bancorporation, Inc., Pequot Lakes, Minnesota, and thereby indirectly acquire Lakes State Bank, Pequot Lakes, Minnesota.

Board of Governors of the Federal Reserve System, November 16, 1996.

William W. Wiles,
Secretary of the Board.

[FR Doc. 96-29807 Filed 11-20-96; 8:45 am]

BILLING CODE 3210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of the following special emphasis panel scheduled to meet during the month of December 1996:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: December 3, 1996, 3:00 p.m.

Place: Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, MD 20852.

Open December 3, 1996, 3:00 p.m. to 3:15 p.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on December 3, from 3:00 p.m. to 3:15 p.m., will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: November 14, 1996.

Clifton K. Gaus,
Administrator.

[FR Doc. 96-29693 Filed 11-20-96; 8:45 am]

BILLING CODE 4100-00-M

Centers for Disease Control and Prevention

(INFO-97-29)

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. **Evaluation of the Field Epidemiology Training Program—New**—A questionnaire has been designed to collect information for the "Evaluation of the Field Epidemiology Training Program" project. The purpose of the project is to develop and implement a comprehensive evaluation strategy which will provide the International Branch, Division of Field Epidemiology, Epidemiology Program Office, with the capacity to assess the degree to which CDC's Field Epidemiology Training Program (FETP) has achieved its objectives: (1) To train public health professionals in applied epidemiological skills; (2) to promote the sustainability of autonomous FETPs; and (3) to develop a global network of national programs. The information gathered will be analyzed, in conjunction with data collected from other sources, to address these questions. The results of the project will assist the International Branch, Division of Field Epidemiology, Epidemiology Program Office, in accomplishing the part of its mission related to protecting the health of the public of the United States, through maintaining a strong international presence and an international network of public health professionals and officials. In order to focus its support to international training efforts and resource allocation, a representative view of the overall Field Epidemiology Training Program (FETP), which includes assessing the recruitment of countries, the sustainability of autonomous FETPs, the quality of training, the public health usefulness of FETP, and the international linkages of FETP is needed. The total estimated cost to the in-country respondents is \$8,380.00.

Dated: November 15, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-29760 Filed 11-20-96; 8:45 am]

BILLING CODE 4100-12-P

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control and Prevention (CDC) announces the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering Laboratory (INEL) Health Effects Subcommittee.

Times and Dates:

8 a.m.-5 p.m., December 10, 1996

7 p.m.-9 p.m., December 10, 1996

8 a.m.-4:30 p.m., December 11, 1996

Place: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83402, telephone 208/523-8000, FAX 208/529-9610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR, on the progress of current studies. On December 10, at 7 p.m., the meeting will continue in order to allow more time for public input and comment.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information:

Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F-35, Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: November 15, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-29759 Filed 11-20-96; 8:45 am]

BILLING CODE 4100-15-M

Food and Drug Administration

(Docket No. 96P-0090)

Determination That Testosterone Propionate 2% Ointment Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that testosterone propionate 2% ointment (Perandren Ointment) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for testosterone propionate 2% ointment.

FOR FURTHER INFORMATION CONTACT:

Mary E. Catchings, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength

and dosage form as the listed drug, which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On March 19, 1996, Richard Hamer Associates, Inc., submitted a citizen petition (Docket No. 96P-0090/CP1) under 21 CFR 10.25(a), 10.30, and § 314.161(b), requesting that the agency determine whether testosterone propionate 2% ointment was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, to relist the drug in the Orange Book. Testosterone propionate 2% ointment (Perandren Ointment) was the subject of approved NDA 0-0499 held by Ciba Pharmaceutical Co. In the Federal Register of September 23, 1971 (36 FR

18885), FDA withdrew approval of NDA 0-0499 for Perandren Ointment based on the applicant's failure to submit required annual reports (section 505(e) of the act (21 U.S.C. 355(e)) and 21 CFR 314.80 and 314.81).

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that testosterone propionate 2% ointment was not withdrawn from sale for reasons of safety or effectiveness and will relist testosterone propionate 2% ointment in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to testosterone propionate 2% ointment may be approved by the agency.

Dated: October 27, 1996.

Jamel Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96-29786 Filed 11-20-96; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 95M-0482]

Biora US, Inc.; Premarket Approval of EMDOGAIN®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Biora US, Inc., West Chester, OH, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of EMDOGAIN®. After reviewing the recommendation of the Dental Products Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1996, of the approval of the application. **DATES:** Petitions for administrative review by December 23, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Pamela D. Scott, Center for Devices and Radiological Health (HFZ-480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8879.

SUPPLEMENTARY INFORMATION: On July 19, 1993, Biora US, Inc., West Chester,

OH 43069, submitted to CDRH an application for premarket approval of EMDOGAIN®. The device is a bone filling and augmentation device and is indicated for use as an adjunct to periodontal surgery for topical application onto exposed root surfaces to treat intrabony defects without furcations resulting from loss of tooth support due to moderate or severe periodontitis. EMDOGAIN® is to be used with the supplied vehicle solution of propylene glycol alginate.

On February 27, 1996, the Dental Products Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 23, 1996, file with the Dockets Management Branch (address

above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 24, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96-29765 Filed 11-20-96; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, December 12, 1996, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. The topics proposed for discussion include (1) Clinical Center Update; (2) Report from the Clinical Research Panel; (3) Discussion of Small Business Innovation Research and Small Business Technology Transfer Grants; and (4) Report from the Research Integrity Panel. Attendance by the public will be limited to space available.

Ms. Janice Ramadan, Program Assistant, Office of the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892-0159, telephone (301) 496-0959, fax (301) 496-7451, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than December 9, 1996.

Dated: November 18, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-29613 Filed 11-20-96; 8:45 am]

BILLING CODE 4160-01-M

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Neurobiology and Genetics of Autism RFA.

Date: December 9-11, 1996.

Time:

December 9, 8:00 a.m.-5:00 p.m.

December 10, 8:00 a.m.-5:00 p.m.

December 11, 8:00 a.m.-adjournment.

Place: 6100 Executive Boulevard, 6100 Building, Fifth Floor Conference Room, Rockville, Maryland 20852.

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301-496-1485.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: November 13, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-29810 Filed 11-20-96; 8:45 am]

BILLING CODE 4160-01-M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: December 12, 1996.

Time: 1-3 p.m.

Place: 6120 Executive Blvd., Rockville MD 20892 (telephone conference call).

Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892-7180, 301-496-8693.

Purpose/Agenda: To review and evaluate grant applications. The meeting will be

closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: November 15, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-29811 Filed 11-20-96; 8:45 am]

BILLING CODE 4160-01-M

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 6, 1996, in Building 31, Room 2A52, 9000 Rockville Pike, Bethesda, Maryland, 20892-2425.

This meeting will be open to the public from 8:00 a.m. to 12 noon on December 6 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on December 6 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892-2425, Area Code 301, 496-2133, will provide a summary of

the meeting and a roster of Board members and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact Ms. O'Connor in advance of the meeting.

Dated: November 15, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-29812 Filed 11-20-96; 8:45 am]

BILLING CODE 4160-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: November 25, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 4192, Telephone Conference.

Contact Person: Dr. Lynwood Jones, Scientific Review Administrator, 6701 Rockledge Drive, Room 4192, Bethesda, Maryland 20892, (301) 435-1153.

Name of SEP: Clinical Sciences.

Date: November 25, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 4128, Telephone Conference.

Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435-1211.

Name of SEP: Behavioral and Neurosciences.

Date: November 25, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 5186, Telephone Conference.

Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 6701 Rockledge Drive, Room 5186, Bethesda, Maryland 20892, (301) 435-1252.

Name of SEP: Biological and Physiological Sciences.

Date: November 26, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 4192, Telephone Conference.

Contact Person: Dr. Lynwood Jones, Scientific Review Administrator, 6701 Rockledge Drive, Room 4192, Bethesda, Maryland 20892, (301) 435-1153.

Name of SEP: Clinical Sciences.

Date: November 26, 1996.

Time: 4:00 p.m.

Place: NIH, Rockledge 2, Room 4216, Telephone Conference.

Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435-1196.

Name of SEP: Biological and Physiological Sciences.

Date: December 5, 1996.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 5128, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435-1285.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 6, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4186, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435-1150.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c) (4) and 552b(c) (6); Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 15, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-29809 Filed 11-20-96; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4176-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Secretary's Representative for the Southeast/Caribbean, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Secretary's Representative for the Southeast/Caribbean redelegates to the State and Area Coordinators of HUD Field Offices in the Southeast/Caribbean the same waiver authority of directives and handbook provisions pertaining to

Public Housing (PH) programs, as provided to the PH Directors in the HUD Field Offices.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT:

Harold E. Sæther, Director, Office of Public Housing, Department of Housing and Urban Development, Room 262, Richard B. Russell Federal Building, 75 Spring St., SW, Atlanta, Georgia 30303-3388 (telephone number (404) 331-4766) (TTY number (404) 730-2654). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide State and Area Coordinators in the Southeast/Caribbean with the same authority to waive directives, including handbook provisions, redelegated to Public Housing Directors in the Field Offices. It is issued in accordance with, and subject to, the Redelegation of Authority issued by the Acting Assistant Secretary for Public and Indian Housing on June 28, 1996 and published at 61 FR 35800 (July 8, 1996). This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

By this Redelegation of Authority, each State and Area Coordinator in the Southeast/Caribbean is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for Public Housing programs within their respective jurisdictions. The State and Area Coordinators are concurrently redelegated the same authority to waive Department directives concerning Public Housing programs as reside with the Public Housing Directors in their respective Field Offices. The PH Director and the State or Area Coordinator must jointly concur in all requests for waivers, whether the request is granted or denied. If the State or Area Coordinator and the PH Director do not agree, the matter will be referred to the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for Public and Indian Housing for resolution.

Accordingly, the Secretary's Representative for the Southeast/Caribbean redelegates as follows:

Section A. Authority Redelegated

The Secretary's Representative for the Southeast/Caribbean concurrently redelegates to each State and Area Coordinator for the Southeast/Caribbean the following authority to waive Department directives, including handbook provisions, concerning Public Housing programs for the

jurisdiction for which each State or Area Coordinator is responsible. This authority includes the same authority to waive Public Housing directives as is redelegated to Public Housing Directors in those respective jurisdictions. The extent of this waiver authority is currently described within the redelegations at 59 FR 51200 (October 7, 1994), 60 FR 50635 (September 29, 1994), and 61 FR 35800 (July 8, 1996). Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for PIH and to the Secretary's Representative for the Southeast/Caribbean. The Assistant Secretary for PIH will publish any changes or amendments to these redelegations.

B. Authority To Further Redelegate

The authority redelegated pursuant to Section A above may not be further redelegated.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)); 61 FR 35800 (July 8, 1996).

Dated: September 23, 1996.

Davey L. Gibson,

Secretary's Representative, Southeast/Caribbean.

[FR Doc. 96-29706 Filed 11-20-96; 8:45 am]

BILLING CODE 4210-01-P

[Docket No. FR-4177-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Secretary's Representative for the Southeast/Caribbean, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Secretary's Representative for the Southeast/Caribbean redelegates to the State and Area Coordinators of HUD Field Offices in the Southeast/Caribbean the same waiver authority of directives and handbook provisions pertaining to Housing programs, as provided to the Housing Program Directors in the HUD Field Offices.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT:

Charles E. Gardner, Director, Office of Housing, Department of Housing and Urban Development, Room 546, Richard B. Russell Federal Building, 75 Spring St., SW, Atlanta, Georgia 30303-3388 (Telephone number (404) 331-4127), (TTY number (404) 730-2654). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide State and Area Coordinators in the Southeast/Caribbean with the same authority to waive directives, including handbook provisions, redelegated to

Housing Program Directors in the Field Offices. It is issued in accordance with, and subject to, the Redelegation of Authority issued by the Assistant Secretary for Housing on June 28, 1996 and published at 61 FR 35801 (July 8, 1996). This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

By this Redelegation of Authority, each State and Area Coordinator in the Southeast/Caribbean is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for Housing programs within their respective jurisdictions. The State and Area Coordinators are concurrently redelegated the same authority to waive Department directives concerning Housing programs as reside with the Housing Program Directors in their respective Field Offices. The Housing Program Director and the State or Area Coordinator must jointly concur in all requests for waivers, whether the request is granted or denied. If the State or Area Coordinator and the Housing Program Director do not agree, the matter will be referred to the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for Housing for resolution.

Accordingly, the Secretary's Representative for the Southeast/Caribbean redelegates as follows:

Section A. Authority Redelegated

The Secretary's Representative for the Southeast/Caribbean concurrently redelegates to each State and Area Coordinator for the Southeast/Caribbean the following authority to waive Department directives, including handbook provisions, concerning Housing programs for the jurisdiction for which each State or Area Coordinator is responsible. This authority includes the same authority to waive Housing directives as is redelegated to Housing Program Directors in those respective jurisdictions. The extent of this waiver authority is currently described within the redelegations at 59 FR 62739 (December 6, 1994) and 61 FR 35801 (July 8, 1996). Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for Housing and to the Secretary's Representative for the Southeast/Caribbean. The Assistant Secretary for Housing will publish any changes or amendments to these redelegations.

B. Authority To Further Redelegate

The authority redelegated pursuant to Section A above may not be further redelegated.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)); 61 FR 35801 (July 8, 1996).

Dated: September 23, 1996.

Davey L. Gibson,

Secretary's Representative, Southeast/Caribbean.

[FR Doc. 96-29707 Filed 11-20-96; 8:45 am]

BILLING CODE 4210-01-P

[Docket No. FR-4178-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Secretary's Representative for the Southeast/Caribbean, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Secretary's Representative for the Southeast/Caribbean redelegates to the State and Area Coordinators of HUD Field Offices in the Southeast/Caribbean the same waiver authority of directives and handbook provisions pertaining to Fair Housing and Equal Opportunity (FHEO) programs, as provided to the FHEO Program Directors in the HUD Field Offices.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT:

Fanny Chestnut-Hairston, Program Operations and Compliance Center, FHEO, Department of Housing and Urban Development, Room 230, Richard B. Russell Federal Building, 75 Spring St., SW, Atlanta, Georgia 30303-3388 (Telephone number (404) 331-1798), (TTY number (404) 730-2654). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide State and Area Coordinators in the Southeast/Caribbean with the same authority to waive directives, including handbook provisions, redelegated to FHEO Program Directors in the Field Offices. It is issued in accordance with, and subject to, the Redelegation of Authority issued by the Assistant Secretary for FHEO on June 28, 1996 and published at 61 FR 35803 (July 8, 1996). This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991 at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

By this Redelegation of Authority, each State and Area Coordinator in the Southeast/Caribbean is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for FHEO programs within their respective

jurisdictions. The State and Area Coordinators are concurrently redelegated the same authority to waive Department directives concerning FHEO programs as reside with the FHEO Program Directors in their respective Field Offices. The FHEO Program Director and the State or Area Coordinator must jointly concur in all requests for waivers, whether the request is granted or denied. If the State or Area Coordinator and the FHEO Program Director do not agree, the matter will be referred to the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for FHEO for resolution.

Accordingly, the Secretary's Representative for the Southeast/Caribbean redelegates as follows:

Section A. Authority Redelegated

The Secretary's Representative for the Southeast/Caribbean concurrently redelegates to each State and Area Coordinator for the Southeast/Caribbean the following authority to waive Department directives, including handbook provisions, concerning FHEO programs for the jurisdiction for which each State or Area Coordinator is responsible. This authority includes the same authority to waive FHEO directives as is redelegated to FHEO Program Directors in those respective jurisdictions. Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for FHEO and to the Secretary's Representative for the Southeast/Caribbean. The Assistant Secretary for FHEO will publish any changes or amendments to these redelegations.

B. Authority To Further Redelegate

The authority redelegated pursuant to Section A above may not be further redelegated.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)); 61 FR 35803 (July 8, 1996).

Dated: September 23, 1996.

Davey L. Gibson,

Secretary's Representative, Southeast/Caribbean.

[FR Doc. 96-29708 Filed 11-20-96; 8:45 am]

BILLING CODE 4210-01-P

[Docket No. FR-4179-D-01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Secretary's Representative for the Southeast/Caribbean, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Secretary's Representative for the Southeast/

Caribbean redelegates to the State and Area Coordinators of HUD Field Offices in the Southeast/Caribbean the same waiver authority of directives and handbook provisions pertaining to Community Planning and Development (CPD) programs, as provided to the CPD Program Directors in the HUD Field Offices.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: John L. Perry, Director, Office of Community Planning and Development, Department of Housing and Urban Development, Room 270, Richard B. Russell Federal Building, 75 Spring St., SW, Atlanta, Georgia 30303-3388, (Telephone number (404) 331-5139), (TTY number (404) 730-2854). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide State and Area Coordinators in the Southeast/Caribbean with the same authority to waive directives, including handbook provisions, redelegated to CPD Program Directors in the Field Offices. It is issued in accordance with, and subject to, the Redelegation of Authority issued by the Assistant Secretary for CPD on June 28, 1996 and published at 61 FR 35802 (July 8, 1996). This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

By this Redelegation of Authority, each State and Area Coordinator in the Southeast/Caribbean is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for CPD programs within their respective jurisdictions. The State and Area Coordinators are concurrently redelegated the same authority to waive Department directives concerning CPD programs as reside with the CPD Program Directors in their respective Field Offices. The CPD Program Director and the State or Area Coordinator must jointly concur in all requests for waivers, whether the request is granted or denied. If the State or Area Coordinator and the CPD Program Director do not agree, the matter will be referred to the Secretary's Representative. If the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for CPD for resolution.

Accordingly, the Secretary's Representative for the Southeast/Caribbean redelegates as follows:

Section A. Authority Redelegated

The Secretary's Representative for the Southeast/Caribbean concurrently

redelegates to each State and Area Coordinator for the Southeast/Caribbean the following authority to waive Department directives, including handbook provisions, concerning CPD programs for the jurisdiction for which each State or Area Coordinator is responsible. This authority includes the same authority to waive CPD directives as is redelegated to CPD Program Directors in those respective jurisdictions. The extent of this waiver authority is currently described within the redelegations at 59 FR 18280 (April 15, 1994) [as amended by the redelegation at 60 FR 30312 (June 8, 1995)], and 61 FR 35802 (July 8, 1996). Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for CPD and to the Secretary's Representative for the Southeast/Caribbean. The Assistant Secretary for CPD will publish any changes or amendments to these redelegations.

B. Authority To Further Redelegate

The authority redelegated pursuant to Section A above may not be further redelegated.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)); 61 FR 35802 (July 8, 1996).

Dated: September 23, 1996.

Davey L. Gibson,

Secretary's Representative, Southeast/Caribbean.

[FR Doc. 96-29709 Filed 11-20-96; 8:45 am]

BILLING CODE 4210-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-963-1410-00-P; AA-9271]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 3.6 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

**T. 5 S., R. 98 W.,
Sec. 18.**

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 (907) 271-5960.

Any party claiming a property interest which is adversely affected by the

decision, an agency of the Federal government or regional corporation, shall have until December 23, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,
Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96-29758 Filed 11-20-96; 8:45 am]

BILLING CODE 4310-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-1020-00]

Notice of Availability of Proposed Plan Amendment and Associated Environmental Assessment/FONSI for the San Rafael Resource Management Plan

SUMMARY: Notice is hereby given that the Proposed Amendment and associated Environmental Assessment/FONSI for the San Rafael Resource Management Plan has been completed and is available for public review. In accordance with 43 CFR 1610.5-2, Protest Procedures, any person who has participated in this planning process and has an interest which is or may be adversely affected by the amendment of this resource management plan may protest this proposed amendment to the Director of the Bureau of Land Management. All protests must contain the following information: (1) the name, mailing address, telephone number and interest of the person filing the protest, (2) a statement of the issue(s) being protested, (3) a statement of the part(s) of the amendment being protested, (4) a copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting party, and (5) a concise statement why the State Director's decision is believed to be wrong.

DATES: The protest period for this proposed amendment commences with the publication of this notice. Protests must be submitted to the Director of the Bureau of Land Management on or before December 23, 1996.

ADDRESSES: Protests to the proposed plan amendment must be sent to the

Director, Bureau of Land Management (480); Resource Planning Team, 1849 C Street, NW, Washington, DC 20240, within 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Dave Henderson, Area Manager, Henry Mountain Resource Area, 150 East, 900 North, Richfield, Utah at 801-896-8221.
G. William Lamb,
State Director, Utah.

[FR Doc. 96-29705 Filed 11-20-96; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-930-1430-01; CACA 7998]

Public Land Order No. 7223; Partial Revocation of Secretarial Order Dated September 21, 1925; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 10,969.97 acres of National Forest System lands withdrawn for Power Site Classification No. 115. The lands are no longer needed for power site purposes. The revocation is needed to permit disposal of the lands through a pending land exchange under the General Exchange Act of 1922 and to process pending applications under the Small Tracts Act. Some of the lands are either located within or adjacent to the Trinity River Wild and Scenic Area and have no waterpower or water storage value with the Wild and Scenic designation along the river. This action will open the lands to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The lands have been and will remain open to mineral leasing and to mining, except for the lands that are closed because they are located within the Trinity River Wild and Scenic River Area. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT:

Duane Marti, BLM California State Office (CA-931.4), 2135 Butano Drive, Sacramento, California 95825, 916-979-2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated September 21, 1925, which withdrew

National Forest System lands for Power Site Classification No. 115, is hereby revoked insofar as it affects the following described lands:

Humboldt Meridian

T. 5 N., R. 5 E.,

Sec. 1, E $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ N $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 6 N., R. 5 E.,

Sec. 4, lot 9 (originally described as W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$), N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 9, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 10, E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 14, N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 15, E $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 21, E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 22, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 24, E $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 26, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 27, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 35, NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 7 N., R. 5 E.,

Sec. 5, lots 9 to 11, inclusive, and portion of tract 37 (originally described as lots 3 through 6 and Mineral lot number 37); Lots 8 and 12 (originally described as W $\frac{1}{2}$ NE $\frac{1}{4}$);

Lot 16 and portion of tract 37 (originally described as NE $\frac{1}{4}$ SW $\frac{1}{4}$);

Lots 15 and 17 (originally described as W $\frac{1}{2}$ SE $\frac{1}{4}$);

Lot 18 (originally described as SE $\frac{1}{4}$ SE $\frac{1}{4}$);

Sec. 8, lots 5 and 6 (originally described as S $\frac{1}{2}$ NE $\frac{1}{4}$);

Lots 7 and 8 (originally described as N $\frac{1}{2}$ SE $\frac{1}{4}$);

Lot 12 (originally described as SE $\frac{1}{4}$ SW $\frac{1}{4}$);

Lot 13 (originally described as NW $\frac{1}{4}$ NE $\frac{1}{4}$);

Sec. 9, lot 2 (originally described as NW $\frac{1}{4}$ NE $\frac{1}{4}$);

Lot 3 to 6, inclusive (originally described as NW $\frac{1}{4}$);

Lot 12 (originally described as NW $\frac{1}{4}$ SW $\frac{1}{4}$);

Lot 13 (originally described as SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$);

Sec. 17, lots 1 and 2, and portion of MS 1322 AM (originally described as SW $\frac{1}{4}$ SE $\frac{1}{4}$);

Sec. 19, W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 20, lots 1 and 2, and portion of MS 1322 AM (originally described as W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$), NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 27, NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 28, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 29, lot 1 (originally described as N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$);

Lot 4 (originally described as SE $\frac{1}{4}$ NE $\frac{1}{4}$);

Lots 2 and 3 (originally described as W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ NW $\frac{1}{4}$);

SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$);

Sec. 30, lot 17 (originally described as S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$);

Sec. 33, lot 1 (originally described as NE $\frac{1}{4}$ SE $\frac{1}{4}$).

T. 5 N., R. 6 E.,

Sec. 2, lots 1 to 4, inclusive, S $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;

Sec. 11, E $\frac{1}{2}$ W $\frac{1}{2}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 13, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;

Sec. 14, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 24, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 25, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;

T. 6 N., R. 6 E.,

Sec. 18, W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 19, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$;

Sec. 20, NE $\frac{1}{4}$ NW $\frac{1}{4}</$

SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$,
W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 29, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 35, SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 36, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,
SW $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 5 N., R. 7 E.,

Sec. 19, lots 3, 5, and 6, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and
NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ (originally
described as N $\frac{1}{2}$ SW $\frac{1}{4}$,
N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$), S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
Sec. 20, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
Sec. 21, NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 22, N $\frac{1}{2}$ and N $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 23, S $\frac{1}{2}$ N $\frac{1}{2}$ and S $\frac{1}{2}$;
Sec. 24, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 25, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$,
NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$,
N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 26, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 29, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$
NW $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 30, lots 1 and 2, and E $\frac{1}{2}$ NW $\frac{1}{4}$
(originally described as NW $\frac{1}{4}$),
W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$,
and NE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 4 N., R. 8 E.,

Sec. 4, lots 1 to 6, inclusive, and
SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The areas described aggregate 10,969.97
acres in Trinity and Humboldt Counties.

2. At 10 a.m. on December 23, 1996,
the lands shall be opened to such forms
of disposition as may by law be made
of National Forest System lands, subject
to valid existing rights, the provisions of
existing withdrawals, other segregations
of record, and the requirements of
applicable law.

3. The lands have been open to
mining under the provisions of the
Mining Claims Rights Restoration Act of
1955, 30 U.S.C. 621 (1988) and these
provisions are no longer required.

Dated: November 4, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96-29782 Filed 11-20-96; 8:45 am]

BILLING CODE 4310-04-P

Bureau of Reclamation

Request for Proposal to Lease Lands Near La Quinta, Riverside County, California to Construct, Manage, Operate and Maintain Recreation Facilities

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of solicitation for
proposals from qualified parties to lease,
construct, manage, operate and maintain
areas for recreational development.

SUMMARY: The Bureau of Reclamation is
soliciting proposals from qualified
parties to lease approximately 160 acres
of land for recreation development.

ADDRESSES: Interested parties should
request copies of the Request for
Proposal No. RFP2-96 from Ms. Neva
Tandy, Natural Resource Specialist,
Bureau of Reclamation, Lower Colorado
Region, P.O. Box 61470, Boulder City,
Nevada 89006-1470, Telephone: (702)
293-8521 or FAX (702) 293-8146.

FOR FURTHER INFORMATION CONTACT:
Neva Tandy at (702) 293-8521.

SUPPLEMENTARY INFORMATION:
Reclamation's Lower Colorado Regional
office is supervised by the Regional
Director, Mr. Robert W. Johnson, and
encompasses projects administered by
the Phoenix, Yuma and Southern
California Area Offices. Hoover, Davis
and Parker Dams and appurtenant
works are administered by the Lower
Colorado Dams Facilities Office, located
at Hoover Dam.

A Concession Agreement will be
negotiated with the concessionaire
selected under this RFP. The Regional
Director is the authorizing official in
this action. Prior to execution of an
agreement by the Regional Director, the
agreement will be reviewed for legal
sufficiency and endorsement, then
signed by the prospective new
concessionaire.

Dated: November 8, 1996.

Laura Horbranson,

Director, Resource Management and
Technical Services.

[FR Doc. 96-29789 Filed 11-20-96; 8:45 am]

BILLING CODE 4310-04-P

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications Under the FGDC National Spatial Data Infrastructure (NSDI) Competitive Cooperative Agreements Program for Fiscal Year (FY) 1997

AGENCY: U.S. Geological Survey,
Interior.

ACTION: Notice inviting applications for
competitive cooperative agreement
awards for fiscal year 1997, with
performance to begin in September
1997.

SUMMARY: The purpose of the FGDC
National Spatial Data Infrastructure
(NSDI) Competitive Cooperative
Agreements Program is to facilitate and
foster partnerships and alliances within
and among various public and private
entities to assist in building the NSDI.
The NSDI consists of policies,
standards, agreements, and partnerships
among a variety of sectors and
disciplines that will promote more cost-
effective production, ready availability,
and greater use of high quality
geospatial data. The NSDI Competitive
Cooperative Agreements Program is
intended to encourage resource-sharing
projects, between and among the public
and private sector through the use of
technology, networking, and enhanced
interagency coordination efforts.
Proposals must involve teaming with
two or more organizations. Participants
are expected to cost share in the project.
Activities initiated under this program
will promote development and
maintenance of and access to data sets
that are needed for national, regional,
State, and local analyses. Authority for
this program is contained in the Organic
Act of March 3, 1879, 43 U.S.C. 31 and
Executive Order 12906.

Applications may be submitted by
State and local government agencies,
educational institutions, private firms,
private foundations, and Federally
acknowledged or state-recognized
Native American tribes or groups.

DATES: The program announcement and
application forms are expected to be
available on or about November 29,
1996. Applications must be received on
or before February 29, 1997.

ADDRESSES: Copies of Program
Announcement #1434-HQ-97-PA-
00022 may be obtained by writing to
Ms. Kathleen Craig, U.S. Geological
Survey, Office of Procurement and
Contracts, Mail Stop 205B, 12201
Sunrise Valley Drive, Reston, Virginia
20192, (703) 648-7357.

FOR FURTHER INFORMATION CONTACT:

Ms. Jennifer Fox, FGDC, U.S. Geological
Survey, 590 National Center, 12201
Sunrise Valley Drive, Reston, Virginia
20192; telephone number (703) 648-
5514; facsimile (703) 648-5755. Internet
"gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: Under this
FY 1997 program announcement,
proposals are to be directed towards
four components of the NSDI. The first
component deals with creation of a
distributed clearinghouse for finding
and accessing geospatial data. Efforts
considered applicable include the
creation (inventory, evaluate, catalog
data, and establish internet access) and
management of a node within the
National Geospatial Data Clearinghouse
that provides users with a means for
finding, accessing, and sharing
geospatial data.

The second component involves
development and promulgation of the
use of standards in data collection,
documentation, transfer, and search and
query. Applicable efforts include
stimulating the development of
applicable geospatial data standards by:
(1) creating new standards or adapting
existing standards that fall within the
realm of NSDI, and which may or may
not be within the scope of current FGDC
Subcommittees and Working Groups, or
(2) conducting studies to determine
what standards are needed to effectively
share geospatial data; and, creating new
data elements for specific data themes
that complement the FGDC Digital
Geospatial Metadata content standards
by supporting documentation of data
sets which are not explicitly geospatial.

The third component focuses on the
initial implementation of a geospatial
data framework that provides a base on
which to collect, register, or integrate
information accurately. Applicable
efforts include creating and managing a
node on the National Geospatial Data
Clearinghouse that provides users with
a means for finding, accessing, and
sharing framework-like data; testing and
implementing techniques needed to
support framework roles of area
integration or data distribution;
conducting a feasibility project for
implementing technical or institutional
aspects of the framework; and,
identifying, justifying, and
implementing elements of metadata at
the "feature" level, required to support
framework operations.

The fourth component addresses
developing and implementing
educational outreach programs to
increase awareness and understanding
of the vision and concepts of the NSDI.
Applicable efforts involve developing

educational or outreach material or
programs that explain the use of
geographic information systems
technology for community
development, the benefits of data
sharing, the use of networking for data
sharing, and the importance of data
documentation to targeted audiences
within the community; conducting
programs to increase user
comprehension and adoption of the
FGDC Content Standards for Digital
Geospatial Metadata and the Spatial
Data Transfer Standard; establishing,
developing, or expanding programs or
projects, through development of
training programs, information guides
and other explanatory materials, that
increase the contributions of local,
regional, or national data sets to the
National Geospatial Data Clearinghouse;
developing programs to integrate the
vision and concepts of the NSDI into
formal and informal education at all
levels, K through 16; and, activities to
strengthen or to help form statewide or
regional geographic information
coordination mechanisms.

Dated: November 12, 1996.

Wendy Budd,

Associate Chief, Programs and Finances.

[FR Doc. 96-29779 Filed 11-20-96; 8:45 am]

BILLING CODE 4310-31-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the
United States Advisory Committee on
Rules of Criminal Procedure.

ACTION: Notice of Cancellation of Open
Hearing.

SUMMARY: The Criminal Rules public
hearing scheduled to be held in
Oakland, California, on December 13,
1996, has been canceled. (Original
notice of hearing appeared in the
Federal Register of August 28, 1996 (61
FR 44345).)

FOR FURTHER INFORMATION CONTACT: John
K. Rabiej, Chief, Rules Committee
Support Office, Administrative Office of
the United States Courts, Washington,
D.C. 20544, telephone (202) 273-1820.

Dated: November 14, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96-29787 Filed 11-20-96; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the
United States Committee on Rules of
Practice and Procedure.

ACTION: Notice of Alteration of Dates of
Open Meeting.

SUMMARY: The dates of the public
meeting of the Committee on Rules of
Practice and Procedure, scheduled to be
held in Tucson, Arizona, on January 8-
10, 1997, have been altered to January
9-10, 1997. (Original notice of meeting
appeared in the Federal Register of
August 28, 1996 (61 FR 44345).)

FOR FURTHER INFORMATION CONTACT: John
K. Rabiej, Chief, Rules Committee
Support Office, Administrative Office of
the United States Courts, Washington,
D.C. 20544, telephone (202) 273-1820.

Dated: November 14, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96-29782 Filed 11-20-96; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1996 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented
Policing Services, Department of Justice.
ACTION: Notice of availability.

SUMMARY: The Department of Justice,
Office of Community Oriented Policing
Services ("COPS") announces the
availability of funding to provide
comprehensive and innovative
education, training, and technical
assistance to COPS grantees and other
departments through Regional
Community Policing Institutes. Eligible
applicants are state, local and Indian
tribal law enforcement agencies, state or
regional training providers, local or
county agency training academies,
POST commissions, and universities/
colleges. However, this initiative is
specifically directed at applicants that
already have a solid background in
community policing training as well as
a basic structure, such as an existing
police academy, that can support the
development of an Institute.

Partnerships are required for
Community Policing Institutes and
applicants are encouraged to engage
more than one partner. For example, if
the applicant is a university, POST
Commission, or an academy, it must
partner with local law enforcement
agencies and a non-profit organization.

If the applicant is a law enforcement agency, it must partner with a university or academy or a POST Commission, and a non-profit community organization. Partnering with other departments is encouraged.

DATES: Regional Community Policing Institute Application Kits will be available after November 19, 1996. The COPS Office will accept completed Application Kits for Regional Community Policing Institutes on or before January 31, 1997.

ADDRESSES: Regional Community Policing Institute Application Kits may be obtained by writing to Regional Community Policing Institutes, 1100 Vermont Avenue, NW, Washington, DC, 20530, or by calling the Department of Justice Response Center, (202) 307-1480 or 1-800-421-6770. Completed Application Kits should be sent to Regional Community Policing Institute Applications, COPS Office, Eleventh Floor, 1100 Vermont Avenue, N.W., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307-1480 or 1-800-421-6770.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322) authorizes the Department of Justice to provide technical assistance, including the establishment and operation of training centers and facilities, in the implementation of community policing.

Community policing requires a substantial investment in training. Regional Community Policing Institutes can facilitate an infusion of community policing principles into all forms of police training. Regional Community Policing Institutes will be expected to apply the principles of adult learning to all training and professional development activities. Institutes will need to demonstrate how they will differ from traditional training academies, how they will apply critical thinking to complex enforcement, community and organizational problems, and how they will integrate capacity development into the scope of their activities. This initiative will permit organizations to develop a training infrastructure that will help institutionalize and sustain community policing after federal funding has ended.

The COPS Office will fund the expansion of current ongoing community policing training efforts and establish a network of Community Policing Institutes across the United

States. The work of a Regional Community Policing Institute can be performed within an agency's training academy, a state training academy, POST Commission, community college or university.

Partnerships are required for Community Policing Institutes and applicants are encouraged to engage more than one partner. The partnership consists of one or more police departments, an academic institution, and a recognized community or non-profit organization. At least one of the partners will have been engaged in comprehensive community policing training for at least two years.

An Institute is a partnership created to provide comprehensive and innovative education, training, and technical assistance to COPS grantees and other departments throughout a designated region. Generally a region is considered to be state-wide. However, other intra- and inter-state configurations also will be considered. An Institute provides basic community policing training as well as training in a community policing specialty. Specialty training could include executive or management development, ethics training, problem solving, technology-based training, building partnerships, organizational transformation, organizational/community assessment, or implementing community policing. Although an Institute differs from a traditional police academy, it may co-exist with a department's training academy.

An Institute partnership will have one primary grantee and signed collaboration agreements with all partners. The agreements will clarify roles and responsibilities of partners. The primary grantee will be responsible for the financial management of the grant. An Institute will ensure that training reaches as many grantees as possible by including a train-the-trainer component for developing community policing trainers who will be available throughout the region.

An Institute will have a program director and a core staff. It is expected that current training staff will participate in the training. Institute core staff will be housed by one of the partners but the training can occur in different facilities provided either by the partners or hosted by local departments throughout the region.

All awards made under Regional Community Policing Institutes will be cooperative agreements, instead of grants. Cooperative agreements are entered into when the Federal government plans to have substantial

program oversight of the funded agency during the performance of the proposed activity. Funding will be for one year and each award will range up to \$1 million total. The amount of funding is dependent upon jurisdiction/agency size and the nature of the proposed training efforts. Although a local match is not required for this program, applicants are encouraged to contribute cash or in-kind resources to their proposed projects.

Regional Community Policing Institutes have special requirements on funding allocation. Applicants are required to allocate at least 5 percent of the total award budget for research or evaluation efforts. Additionally, applicants are required to allocate at least 5 percent of the total award budget for hosting conferences, and up to 10 percent for travel stipends that will ensure access to training.

Application Kits will be available after November 19, 1996. Completed Application Kits must be received by the COPS Office on or before January 31, 1997.

An award under the Regional Community Policing Institutes will not affect the eligibility of an agency's application for a grant under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: November 14, 1996.

Joseph E. Brann,
Director.

[FR Doc. 96-29740 Filed 11-20-96; 8:45 am]
BILLING CODE 4410-AT-M

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that two proposed consent decrees in *United States v. Farmer Oil, et al.*, Civil Action No. 95-CV-3231, were lodged on November 1, 1996, with the United States District Court for the Northern District of Georgia. The consent decrees settle claims against separate defendants brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), for response costs incurred by the United States at the Daytona Antifreeze site (the "Daytona site") in Marietta, Georgia. Under the proposed consent decrees, defendants Watkins Omega, Inc. ("Watkins") and Enterprise Waste Oil, Inc. ("Enterprise") will pay \$25,000 and \$20,000, respectively, to the United States in reimbursement of response

costs incurred by the Environmental Protection Agency ("EPA") in connection with the Daytona site. EPA has incurred costs in excess of \$357,000 in connection with the Daytona site. Efforts to secure additional reimbursement continue against several other defendants named in the lawsuit.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Farmer Oil, et al.*, DOJ Ref. #90-11-2-1145A.

The proposed consent decrees may be examined at the office of the United States Attorney, Richard Russell Federal Building, Suite 1800, 75 Spring Street, S.W., Atlanta, Georgia 30335; the Region 4 Office of the Environmental Protection Agency, 100 Alabama St., S.W., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of either proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of either decree please refer to the referenced case and enclose a check in the amount of \$4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,
Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
[FR Doc. 96-29741 Filed 11-20-96; 8:45 am]
BILLING CODE 4410-15-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree with thirteen settling defendants in *United States versus Stephen D. Heleva, et al.*, Civ. Act. No. 93-1339 (E.D. Pa.) was lodged on October 28, 1995.

The proposed decree resolves the claims of the United States against thirteen parties under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, for past response costs and certain response actions at the Heleva Landfill Superfund Site in North Whitehall Township, Pennsylvania. The thirteen settling defendants are Air Products and

Chemicals, Inc.; American Nickeloid Company; the American Telephone & Telegraph Company ("ATT"); General Electric Company; Howmet Cermet (U.S.A.), Inc.; Olin Corporation; Pennsylvania Power & Light Company; Robert J. McAuliffe, Inc. and Robert J. McAuliffe; Gramet Holdings Corp. as successor in interest to Alpo Pet Foods, Inc.; GAF Corporation; Pfizer, Inc.; and Mack Trucks, Inc. The decree obligates the Settling Defendants to reimburse \$12,067,696.32 of the United States' past response costs. In exchange, the United States covenants not to sue the Settling Defendants under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, to recover past response costs or to perform prior response actions listed in the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States versus Stephen D. Heleva, et al.*, DOJ Ref. # 90-11-2-684.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$10.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. Attachments to the proposed partial consent decree can be obtained for an additional amount.

Joel M. Gross,
Chief, Environmental Enforcement Section.
[FR Doc. 96-29742 Filed 11-20-96; 8:45 am]
BILLING CODE 4410-15-M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Intelligent Modular Array System

Notice is hereby given that, on October 11, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 et seq. ("the Act"), Sawtek, Inc. has filed written

notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of one member to the venture. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Perkin Elmer Corporation, Wilton, CT, has become a member to the venture.

No other changes have been made in either the membership or planned activity of the venture. Membership in the venture remains open and Sawtek, Inc. intends to file additional written notification disclosing any future changes in membership.

On October 11, 1995, Sawtek, Inc. filed the original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 5, 1995 (60 FR 62261).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 96-29743 Filed 11-20-96; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

November 18, 1996.

The Department of Labor has submitted the Work Opportunity Tax Credit (WOTC) administrative forms and information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). OMB approval has been requested by November 21, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa O'Malley ((202) 219-5096 x. 166).

Comments and questions about the WOTC ICR should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316).

The Office of Management and Budget is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility, and clarification of the information to be collected; and

- * Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, e.g., permitting submissions of responses.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit (WOTC).

OMB Number: 1205-0new.

Agency Number: ETA 9061-9064.

Number of Responses: 7,800.

Estimated Time per Response: 20 minutes.

Total Burden Hours: 2,800.

Affected Public: State, Local or Tribal Government.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: The Employment and Training Administration (ETA) has oversight responsibilities for the Work Opportunity Tax Credit (WOTC) under the Small Business Jobs Protection Act of 1996 (Pub. L. 104-188). Data collected on the WOTC will be collected by the State Employment Security Agencies and provided to the U.S. Employment Service, Division of Planning and Operations, Washington, DC, through the appropriate Department of Labor regional office. The data will be used, primarily, to supplement IRS Form 8850, help expedite the processing of, either, employer requests for Certifications generated through IRS Form 8850 or issuance of Conditional Certifications (CCs) and processing of employer requests for Certifications as a result of individuals' bearing SESAs or participating agencies' generated CCs, help streamline SESAs verification mandated activities, aid and expedite the preparation of the quarterly reports, and provide a significant source of information for the Secretary's Annual Report to Congress on the WOTC program. The data recorded through the use of these forms will also help in the preparation of an annual report to the

Committee House Ways and Means of the U.S. House of Representatives.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96-29886 Filed 11-20-96; 8:45 am]

BILLING CODE 4510-35-M

Pension and Welfare Benefits Administration

[Exemption Application No. D-00000]

Proposed Class Exemption for Bank Collective Investment Fund Conversion Transactions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

On November 13, 1996, the Department published in the Federal Register (61 FR 58224) a notice of proposed class exemption (the Notice) which would permit an employee benefit plan (the Client Plan) to purchase shares of a registered investment company (the Fund), the investment adviser for which is a bank (the Bank) that serves as a fiduciary of the Client Plan, in exchange for plan assets transferred in-kind to the Fund from a collective investment fund maintained by the Bank. The Notice was filed on behalf of Federated Investors.

With respect to the information included in the preamble to the Notice, the second column on page 58224 (after the paragraph captioned SUMMARY and prior to the paragraph captioned ADDRESSES) should be modified to contain the following new paragraph:

"* * * DATES: Written comments and requests for a public hearing must be received by the Department on or before January 13, 1997."

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady or Mr. E. F. Williams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, D.C. at (202) 219-6381 or 219-8194, respectively, or Ms. Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C., at (202) 219-4600, ext. 105. (These are not toll-free numbers.)

Signed at Washington, D.C., this 18th day of November, 1996.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 96-29778 Filed 11-20-96; 8:45 am]

BILLING CODE 4510-25-P

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public meeting.

TIME AND DATES: Tuesday, December 17, 1996; 8:45 A.M. to 5:00 P.M. and Wednesday, December 18, 1996; 8:30 A.M. to 2:30 P.M.

PLACE: U.S. House of Representatives Rayburn Office Building, Meeting Room: 2237, Located at the corner of Independence Avenue and South Capitol Street, Washington, D.C.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: During its plenary sessions, the Commission will consider consumer bankruptcy, future claims, Chapter 11, pending matters (including venue proposal and Article I/III issues) and initial proposals as well as general administrative matters. Commission working groups will consider the following substantive matters: small businesses, focusing on single asset real estate cases; consumer bankruptcy, including consumer education; and service and ethics—formulation of material adverse interest standard. An open forum for public participation will be held on Wednesday, December 18, 1996, from 8:30 A.M. to 9:30 A.M.

SUPPLEMENTARY INFORMATION: It is recommended that the public use the South Capitol Street entrance to the meeting site at the U.S. House of Representatives Rayburn Office Building.

Persons who would like to make an oral presentation to the Commission at the open forum may register in advance by calling the National Bankruptcy Review Commission at (202) 273-1813 no later than Monday, December 16, 1996, before 5:00 P.M. EST, by providing name, organization (if applicable), address and phone number, or register in person at the National Bankruptcy Review Commission registration desk at the meeting site. If the volume of requests to speak to the Commission at the open forum exceeds the time available to accommodate all such requests, the speakers will be chosen on the basis of order of registration. Oral presentations may be limited to five minutes per speaker.

Persons speaking are requested, but not required, to supply twenty (20) copies of their written statements prior to their presentations to the National Bankruptcy Review Commission.

Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G-350, Washington, DC 20544. Written submissions are not subject to any limitations.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G-350, Washington, D.C. 20544; Telephone Number: (202) 273-1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 96-29749 Filed 11-20-96; 8:45 am]

BILLING CODE 8320-36-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, in Room 730, from 9:00 a.m. to 5:30 p.m., on Friday, November 22, 1996.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 1997.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Acting Advisory Committee Management Officer, Michael Shapiro, 1100 Pennsylvania Avenue, N.W.,

Washington, D.C. 20506, or call 202/606-8322.

Michael Shapiro,

Acting Advisory Committee Management Officer.

[FR Doc. 96-29772 Filed 11-20-96; 8:45 am]

BILLING CODE 7520-31-M

Combined Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel (Creation & Presentation Section) to the National Council on the Arts will be held on December 9-13, 1996. The meeting will be held from 9:00 a.m. to 7:30 p.m. on December 9 & 10; from 9:00 a.m. to 8:30 p.m. on December 11; from 9:00 a.m. to 7:30 p.m. on December 12; and from 9:00 a.m. to 5:00 p.m. on December 13. This meeting will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

A portion of this meeting, from 2:30 p.m. to 5:00 p.m. on December 13, will be open to the public for a discussion of guidelines and policy related issues. The remaining portions of this meeting, from 9:00 a.m. to 7:30 p.m. on December 9 and 10; from 9:00 a.m. to 8:30 p.m. on December 11; from 9:00 a.m. to 7:30 p.m. on December 12; and from 9:00 a.m. to 2:30 p.m. on December 13 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682-5691.

Dated: November 15, 1996.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 96-29784 Filed 11-20-96; 8:45 am]

BILLING CODE 7520-31-M

Partnership Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Partnership Advisory Panel to the National Council on the Arts will be held on December 2-4, 1996. The panel will meet from 9:00 a.m. to 6:00 p.m. on December 2, from 9:00 to 5:00 on December 3, and from 9:00 a.m. to 4:00 p.m. on December 4, 1996 for application review. Guideline and policy discussion will be held from 4:00 p.m. to 5:00 p.m. on December 4. This meeting will be held in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

This meeting will be open to the public on a space available basis. If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682-5691.

Dated: November 15, 1996.

Kathy Flowitz-Worden,

Panel Coordinator, Panel Operations,
National Endowment for the Arts.

(FR Doc. 96-29783 Filed 11-20-96; 8:45 am)

BILLING CODE 7537-01-7

NATIONAL SCIENCE FOUNDATION**Notice of Permit Application Received Under the Antarctic Conservation Act of 1978**

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field support and emergency provisions for the Expedition Vessel the Kapitan Khlebnikov for the 1996-1997 and four following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Nadene Kennedy at the above address or (703) 306-1033.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of three expeditions per year to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) or helicopter for approximately two to four hours at a time. On each helicopter landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be returned to the vessel. All wastes will be removed from Antarctica and disposed of in Ushuaia, Argentina, Port Stanley,

Falkland Islands, Lyttleton, New Zealand, Hobart, Tasmania, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency where passengers are forced to spend a night on shore.

Application for permit is made by: Mike McDowell, President, Quark Expeditions, 980 Post Road, Darien, CT 06820.

The permittee has volunteered to collect information at each site visited and to make that information available as described in the waste permit application utilizing the forms, Site Visit Report and Environmental Impacts Observed. At the conclusion of the austral summer, the permittee will report specific uses or releases of designated pollutants and releases of wastes in an annual report summarizing each season's activities. The permittee will take necessary provisions to ensure that any spilled fuel or lubricants will be promptly cleaned-up, containerized, and removed from Antarctica. Based upon successful completion of required waste management procedures and annual reporting of results, the permit will continue in effect until December 31, 2000.

Nadene Kennedy,

Permit Office, Office of Polar Programs,
National Science Foundation.

(FR Doc. 96-29825 Filed 11-20-96; 8:45 am)

BILLING CODE 7555-01-M

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science (NSF) has received a waste management permit application for operation of a small research camp at Cape Shirreff, Livingston Island, Antarctica by Dr. Rennie S. Holt, a citizen of the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Nadene Kennedy at the above address, or (703) 306-1033.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the construction of a field camp at Cape Shirreff, Livingston Island, Antarctica (62°28' S 60°47' W) during the 1996-1997 austral summer. The camp is to be maintained and used each austral summer through 2001. The permit period requested is from January 1, 1997 through April 30, 2001. Cape Shirreff is an ice-free peninsula towards the western end of the north coast of Livingston Island, Antarctica and is designated as a Site of Special Scientific Interest (SSSI No. 32) under the Antarctic Treaty. The camp will consist of four semi-permanent structures totaling 864 square feet of enclosed work and storage space. During the field season from early September through the end of March of each year, four to six scientists will utilize the camp.

The permit applicant is: Dr. Rennie S. Holt, Chief Scientist, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shore Dr., La Jolla, CA 92038.

Based upon research results, the camp may remain in service beyond April 30, 2001. Use of the camp beyond that date would require modification of the waste permit. At the conclusion of operations, all material will be removed from Antarctica. Specifics regarding the camp, an environmental assessment and finding of no significant impact, and a description of planned operating procedures are available at the Office of Polar Programs Permit Office during business hours.

Nadene Kennedy,

Permit Officer, National Science Foundation.

(FR Doc. 96-29826 Filed 11-20-96; 8:45 am)

BILLING CODE 7555-01-M

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-

463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: December 9, 1996, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306-1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREERS proposals in the New Technologies Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

(FR Doc. 96-29753 Filed 11-20-96; 8:45 am)

BILLING CODE 7555-01-M

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: December 13, 1996, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306-1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of CISE Postdoctoral Research Associates in Computational Science and Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

(FR Doc. 96-29755 Filed 11-20-96; 8:45 am)

BILLING CODE 7555-01-M

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: December 10 and 11, 1996, 8:00 am-5:00 pm.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Vernon L. Pankonin, Program Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306-1826.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate proposals in the Planetary Astronomy Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

(FR Doc. 96-29754 Filed 11-20-96; 8:45 am)

BILLING CODE 7555-01-M

Special Emphasis Panel in Computer and Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer and Computation Research (1192).

Date: December 9, and 13, 1996.

Time: 8:00 a.m.-5:00 p.m.

Place: Rooms 310, 320, 330, 340, 360, 365, 370, 380, and 390, National Science

Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bruce Barnes, Deputy Division Director, CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306-1910.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Faculty Early Career Development (CAREER) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

(FR Doc. 96-29751 Filed 11-20-96; 8:45 am)

BILLING CODE 7555-01-M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: December 9, 10, 1996, 8:30 a.m. to 5:00 p.m.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Interactive Systems Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

(FR Doc. 96-29750 Filed 11-20-96; 8:45 am)

BILLING CODE 7555-01-M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: December 13, 1996, 8:30 am-10:00 pm.

Place: The Berlin Room, The O'Hare Hilton, O'Hare Airport, Chicago, IL 60686.

Type of Meeting: Closed.
Contact Person: Lloyd Douglas, Infrastructure Program, Program Officer, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1874.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate Mathematical Sciences Postdoctoral Research Fellowship applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(4) and (6) of the Government in the Sunshine Act.

Dated: November 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96-29752 Filed 11-20-96; 8:45 am]

BILLING CODE 7550-01-M

Special Emphasis Panel in Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (1766).

Date and Time: December 10, 1996; 9:00 am-5:00 pm.

Place: Room 330, National Science Foundation, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Open.

Contact Person: Mary V. Burke, Research and Development Statistics Program, Division of Science Resources Studies, Room 965-33, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1772, ext. 6933.

Purpose of Meeting: To advise on survey preparation, sample design, questions and categories, and response assurance for the upcoming survey of Research and Development Funding and Performance by Nonprofit Institutions.

Agenda: To review and evaluate survey plans and instruments, sample design, and to provide written recommendations on survey methods and procedures.

Dated: November 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96-29756 Filed 11-20-96; 8:45 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-220]

Niagara Mohawk Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 63, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1 located in Oswego County, New York.

The proposed amendment would change the Technical Specifications (TSs) to add TS 3/4.7.2, "Special Test Exception—System Leakage and Hydrostatic Testing." The proposed addition would allow the reactor to be considered in cold shutdown (defined as reactor coolant temperatures below 212 °F) when the actual reactor coolant temperature is greater than 212 °F (i.e., hot shutdown) but less than 275 °F while performing reactor vessel system leakage testing, hydrostatic testing, and scram time testing. The change would permit reactor vessel system leakage or hydrostatic testing and scram time testing without primary containment integrity, with two Core Spray subsystems (rather than four) operable, and with other operational flexibility. The change would require that secondary containment (reactor building integrity) be maintained during hot shutdown conditions, or restored within 28 hours (which includes 24 hours to be in cold shutdown). Shutdown margins would not need to be demonstrated when performing a pressure test (but would continue to be demonstrated when performing scram time testing in conjunction with systems leakage or hydrostatic testing).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 23, 1996, the licensee may file a request for a hearing with

respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be

litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to S. Singh Bajwa: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 26, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 15th day of November 1996.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96-29787 Filed 11-20-96; 8:45 am]

BILLING CODE 7550-01-P

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-70 and DPR-75, issued to Public Service Electric and Gas Company (the licensee), for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would revise the response time of item 2.h (Containment Fan Coolers) of Technical Specification Table 3.3-5 from 45.0 seconds to 60.0 seconds. The proposed amendment would also add a new note (7) to Table 3.3-5 to clarify that the containment fan cooler units (CFCUs)

response time includes the time to automatically align service water flow to the CFCUs following an accident coincident with a loss of offsite power and that it also includes the time delays associated with isolation of the Turbine Generator Area service water header.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 23, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the

following message addressed to John F. Stolz, Director, Project Directorate I-2: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 25, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 15th day of November 1996.

For the Nuclear Regulatory Commission,
John F. Stolz,
Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96-29788 Filed 11-20-96; 8:45 am]
BILLING CODE 7590-01-P

Seeks Qualified Candidates for Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking qualified candidates to fill prospective vacancies on its Advisory Committee on Reactor Safeguards (ACRS).

ADDRESSES: Submit résumés to: Ms. Jude Himmelberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

FOR APPLICATION MATERIALS, CALL: 1-800-952-9678. Please refer to Announcement Number 97-1001.

SUPPLEMENTARY INFORMATION: Congress established the ACRS to provide the NRC with independent expert advice on matters related to regulatory policy and the safety of existing and proposed nuclear power plants. The Committee work currently emphasizes safety issues associated with the operation of 110 commercial nuclear power plants in the United States; the pursuit of a risk-informed, performance-based regulatory approach; digital instrumentation and control systems; and technical and policy issues related to standard plant designs.

The ACRS membership includes individuals from national laboratories, academia and industry who possess specific technical expertise along with a broad perspective in addressing safety concerns.

Committee members are selected from a variety of engineering and scientific disciplines, such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, and instrumentation and process control systems. At this time, candidates are being sought with 15-20 years of specific experience, including graduate level education, in the areas of computational fluid dynamics, thermal hydraulics, and risk assessment as related to plant operations.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks, availability of candidates to serve, and possible conflicts of interest. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views so that the membership on the Committee will be fairly balanced in terms of the point of views represented and functions to be performed by the Committee.

Because conflict-of-interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be weighed. Each qualified candidate's financial interests

must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities issued by nuclear industry entities, or discontinuance of industry-funded research contracts or grants.

Copies of a résumé describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address and telephone number should be provided. All qualified candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 50-100 days per year to Committee business. Applications will be accepted until December 31, 1996.

Date: November 15, 1996.

Andrew L. Bates
Advisory Committee Management Officer.
[FR Doc. 96-29785 Filed 11-20-96; 8:45 am]
BILLING CODE 7590-01-P

[Docket No. 40-7102]

Receipt of Petition for Director's Decision Under 10 CFR § 2.206

Notice is hereby given that by an undated letter received by the U.S. Nuclear Regulatory Commission (NRC or Commission) on October 11, 1996, Mr. Sherwood Bauman requested the NRC to take action with regard to NRC licensee Shieldalloy.

The Petition requests that Shieldalloy's license for its Newfield, New Jersey site be revoked and "downgraded" to a license permitting possession of low-level radioactive waste for the purpose of decommissioning only. As a basis for this request, the Petitioner asserts that Shieldalloy cannot meet NRC financial assurance requirements.

The Petition is being treated pursuant to 10 C.F.R. § 2.206 of the Commission's regulations. The Petition has been referred to the Director of Nuclear Material Safety and Safeguards (NMSS). As provided by Section 2.206, action will be taken on this Petition within a reasonable time. A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland this 14th day of 1996.

For The Nuclear Regulatory Commission,
Carl J. Paperiello,
Director, Office of Nuclear Material Safety and Safeguards.
[FR Doc. 96-29786 Filed 11-20-96; 8:45 am]
BILLING CODE 7590-01-P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the Peace Corps Request for Information Card. A copy of the information collection may be obtained from Stephen R. Abbott, Office of Communications, Marketing Department, United States PEACE CORPS, 1990 K Street, NW, Washington, DC 20526. Mr. Abbott may be contacted by telephone at (202) 606-3780. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Request for Information Card.

Need for and Use of this Information: Peace Corps needs this information in order to identify prospective applicants for Volunteer service. The information is used to determine what program specific information to send to interested individuals.

Respondents: Individuals interested in learning more about Peace Corps service.

Respondents Obligation to Reply: Voluntary.

Burden on the Public:

- Annual reporting burden: 1,021 hrs.
- Annual record keeping burden: 0 hrs.
- Estimated average burden per response: 1.75 min.
- Frequency of response: one time.
- Estimated number of likely respondents: 35,000.
- Estimated cost to respondents: \$0.35.

This notice is issued in Washington, DC on November 15, 1996.

Stanley D. Sayat,

Associate Director for Management.

[FR Doc. 96-29701 Filed 11-20-96; 8:45 am]
BILLING CODE 6051-01-M

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), Peace Corps of the United States has submitted to the Office of Management and Budget a request for emergency clearance and normal clearance to approve the collection of names of groups and/or individuals which make use of the Peace Corps name or logo by Peace Corps Office of General Counsel. A copy of the information collection may be obtained from Robert L. Martin, Peace Corps Office of General Counsel, 1990 K Street, NW, Washington, DC 20526. Mr. Martin may be contacted at (202) 606-3114. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Authority to Use Peace Corps Name and Logo.

Need for and use of the Information: The information will be provided by organizations who intend to use the Peace Corps name. These organizations will normally be charitable or non-profit. The information requested from the respondents is necessary for determining whether these organizations are eligible to use the name and logo of the Peace Corps in their activities and are formed for the purposes of carrying out one or more of the goals of the Peace Corps Act. This information will be kept on file for reference purposes by the Office of General Counsel.

Respondents: Returned Peace Corps Volunteer organizations, other entities using or intending to use the Peace Corps name.

Respondents obligation to reply: Mandatory.

Burden on the Public:

a. Annual reporting burden: 12.5 hrs.
b. Annual recordkeeping burden: 0 hrs.

c. Estimated average burden per response: 5 min.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 150.

f. Estimated cost to respondents: \$1.01.

This notice is issued in Washington, DC on November 15, 1996.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 96-29770 Filed 11-20-96; 8:45 am]

BILLING CODE 3001-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Submission for OMB emergency review; comment request.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve a collection of information under the Paperwork Reduction Act. The information collection is needed to locate and pay participants and beneficiaries who are entitled to pension benefits under terminated defined benefit pension plans.

DATES: The PBGC has requested that OMB approve this request by November 29, 1996.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the OMB with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The PBGC is requesting OMB approval of a collection of information needed to locate and pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The information consists of identifying information that the individual would provide as part of an initial contact with the PBGC and additional information he or she would provide in connection with any application for benefits.

The PBGC estimates that up to 8,000 individuals will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 2,000 hours (15 minutes per individual). The PBGC further estimates that it will request that up to 1,800 of these individuals submit applications for benefits and that the associated burden is 950 hours (approximately 38 minutes per individual). Thus, the total estimated burden associated with this collection of information is 2,950 hours.

The PBGC solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and
(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The PBGC has requested that OMB approve this collection on an emergency basis by November 29, 1996, so that it can promptly initiate a search effort, with a view toward locating individuals entitled to benefits as soon as possible.

Issued at Washington, D.C., this 19th day of November, 1996.

Martin Slato,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96-29881 Filed 11-20-96; 8:45 am]

BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22336; 812-10182]

American AAdvantage Funds, et al.; Notice of Application

November 15, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: American AAdvantage Funds (the "AAdvantage Trust"), American AAdvantage Mileage Funds (the "Mileage Trust"), AMR Investment Services Trust (The "AMR Trust," collectively with the AAdvantage Trust and the Mileage Trust, the "Trusts"), AMR Investments Strategic Cash Business Trust (the "Strategic Cash Trust"), AMR Investments Enhanced Yield Business Trust (the "Enhanced Yield Trust," collectively with the Strategic Cash Trust, the "Investment Funds"), and AMR Investment Services, Inc. ("Advisor"), on behalf of themselves and all future investment companies that are advised by the Advisor or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Advisor.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from section 12(d)(1), under sections 6(c) and 17(b) of the Act from section 17(a), and under section 17(d) of the Act

and rule 17d-1 thereunder for an exemption from section 17(d) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Trusts to invest cash collateral received from the borrowers of their portfolio securities in shares of the Investment Funds, private investment companies that are affiliated persons of the Trusts.

FILING DATES: The application was filed on June 3, 1996, and amended on November 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 4333 Amon Carter Boulevard, MD 5645, Fort Worth, Texas 76155.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942-0583, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The AAdvantage Trust, which currently has eight series funds (the "AAdvantage Funds"), and the Mileage Trust, which currently has seven series funds (the "Mileage Funds," collectively with the AAdvantage Funds, the "Funds"), are Massachusetts business trusts registered under the Act as open-end management investment companies. Each Fund is a separate investment series of the AAdvantage Trust or the Mileage Trust and has distinct investment objectives and policies.

2. The Funds implemented a "master-feeder" structure on November 1, 1995. Under this structure, each Fund (other

than the American AAdvantage Short-Term Income Fund, which invests directly in investment securities) invests all of its investable assets in a corresponding series fund ("Portfolio") of the AMR Trust, a New York common law trust that is registered under the Act as an open-end management investment company.¹ Each of the seven Portfolios has investment objectives identical to those of the corresponding investing Funds. As a result of this arrangement, all investment management for the Funds takes place at the Portfolio level, rather than at the Fund level.

3. The Adviser, a wholly-owned subsidiary of AMR Corporation, the parent corporation of American Airlines, Inc., is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser provides the AMR Trust with administrative and asset management services, and provides administrative services to the Funds.

4. The Strategic Cash Trust, a newly formed Massachusetts business trust of which the Adviser is the sole trustee, invests exclusively in high-quality, U.S. dollar-denominated obligations eligible for purchase pursuant to rule 2a-7 under the Act. The Strategic Cash Trust will seek to achieve a stable \$1.00 net asset value per share. Shares of the Strategic cash Trust, together with any other outstanding securities (other than short-term paper) will not be beneficially owned by more than 100 persons. The Strategic Cash Trust is not making and presently does not propose to make a public offering of its shares or other securities.² The Enhanced Yield Trust, a Massachusetts business trust formed in 1994 of which the Adviser is the sole trustee, seeks to achieve higher current income and total returns than bank short-term investments and money market instruments while providing relative principal stability and liquidity. Shares of the Enhanced Yield Trust, together with any other outstanding securities (other than short-term paper) will not be beneficially owned by more than 100 persons. The Enhanced Yield Trust is not making and presently does not propose to make a public offering of its shares or other securities. Both the Strategic Cash Trust and the Enhanced

¹ Interests in the AMR Trust are offered to the AAdvantage Trust and the Mileage Trust pursuant to an exemption from registration under the private offering exemption contained in section 4(2) of the Securities Act of 1933 (the "Securities Act").

² Shares in the Investment Funds will be offered to institutional investors in reliance on the private offering exemption contained in section 4(2) of the Securities Act.

Yield Trust offer daily redemption of their shares.

5. Each Investment Fund has entered into an advisory contract with the Adviser, under which the Adviser makes investment decisions with respect to the Investment Fund's assets and administers each Investment Fund in accordance with the declaration of trust and the policies of each Investment Fund. The Adviser will receive an annualized fee from each Investment Fund equal to .10% of the average daily net assets of each Investment Fund, accrued daily and paid monthly.

6. Each Fund, through its corresponding Portfolio, has the ability to increase its income by lending portfolio securities to registered broker-dealers or other institutional investors deemed by the Adviser to be of good standing ("Borrowers"). These loans may not exceed one third of a Portfolio's total assets taken at market value. The AMR Trust, the Adviser, and NationsBank of Texas, N.A. ("Agent") have entered into a securities lending agreement ("Agreement") to permit each Portfolio to participate in the securities lending program ("Program") administered by the Agent. The Agent is the custodian for each Portfolio, and also acts as lending agent for each Portfolio. The Program has been approved by the independent trustees of each Trust, who will monitor the Program on an ongoing basis.

7. Under the Program, the Agent enters into agreements with Borrowers to lend them the Portfolios' securities ("Loan Agreements"). Pursuant to the Loan Agreements, the Agent delivers the Portfolios' securities to Borrowers, who agree to return such securities on demand. The Agent may enter into Loan Agreements only with Borrowers from a list approved by the Portfolios' Board of Trustees ("Board").

8. Borrowers are required to post collateral having a market value at least equal to 100% of the market value of loaned securities plus accrued interest. The Agent may accept as collateral only cash, securities issued or backed by the U.S. Government or its agencies or instrumentalities, or letters of credit from certain banks. Cash collateral may be invested in shares of registered or unregistered investment companies, including the Investment Funds, acceptable to the Adviser that are consistent with the investment restrictions and guidelines of the participating Portfolios without limitation (except as investment in any such company or companies may be limited by section 12(d)(1) of the Act). Because one or more of the Funds and Portfolios participating in the Program

are money market funds that comply with rule 2a-7, cash collateral from transactions in which such Funds or Portfolios participate will be used only to acquire shares of the Strategic Cash Trust. In all cases, the investment of cash collateral will comply with all present and future applicable SEC staff positions regarding securities lending arrangements. Cash collateral, however, will be excluded from the Portfolio's determination of the maximum and/or minimum percentage of the Portfolio's other assets that will be invested in specific types of securities.³

9. The Trusts will submit a supplement to their respective investment advisory agreements with the Adviser to their shareholders and the Board of each Trust. If the supplement is approved by a majority of the outstanding voting securities and the Board of each Trust, the Adviser will provide certain services to the Portfolios that participate in the Program, including ensuring compliance with all applicable regulatory and investment guidelines, determining which securities are available for loan, and having the discretion and power to prevent any loan from being made or to terminate any loan. The Adviser also will monitor the Agent to ensure that the securities loans are effected in accordance with its instructions and the procedures adopted by the Board of the AMR Trust, and will prepare periodic reports for, and seek approval from, the Board of the AMR Trust.

10. Under each Loan Agreement, the Borrower receives a specified cash collateral fee, computed daily based on the amount of cash held as collateral at such rates as the Borrower and Agent may agree. The cash collateral fee is not based on the investment return of the cash collateral. Net annual interest income earned by a Portfolio from participation in the Program will be divided between the Portfolio, the Agent, and, if the proposed supplement is approved as described above, the Adviser.⁴

Applicants' Legal Analysis

1. Applicants seek an order to permit the Portfolios to purchase shares of the Investment Funds ("Shares") with the cash collateral received from Borrowers.

³ Applicants acknowledge that they are not seeking relief from the Commission with respect to this issue.

⁴ Net annual interest income for this purpose means the gross interest income earned by the investment of cash collateral, less the amount paid to the Borrower and related expenses such as investment management, custody and accounting or audit fees, or other costs typically incurred when investments are made.

Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Applicants believe that the Investment Funds will be excluded from the definition of an investment company under section 3(c)(1) of the Act because they will issue only non-voting securities.⁵ Applicants request relief from section 12(d)(1), however, because they are concerned that the Investment Funds' non-voting securities could be deemed to be "voting securities" for purposes of section 3(c)(1). Applicants believe that if interests in the Investment Funds were deemed to be voting securities, applicants then must rely on the second 10% test of section 3(c)(1) in order to avoid a look through to the shareholders of the Portfolios for purposes of determining the number of persons owning shares of the Investment Funds. Reliance on the second 10% test would cause the Investment Funds to be deemed investment companies for purposes of section 12(d)(1) of the Act pursuant to the last sentence of section 3(c)(1)(A).

3. Section 12(d)(1) is intended, among other things, to protect an investment

⁵ Section 3(c)(1) provides, in pertinent part, that the term "investment company" shall not include:

Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if such company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).

company's shareholders against: (a) undue influence over portfolio management through the threat of large-scale redemptions, and the disruption of orderly management of the investment company through the maintenance of large cash balances to meet potential redemptions, and (b) the layering of sales charges, advisory fees, and administrative costs. Applicants state that the Investment Funds will be managed specifically to maintain a highly liquid portfolio. Access to the Investment Funds will enhance each Portfolio's ability to manage and invest cash collateral received from Borrowers. In addition, the Investment Funds will not charge any sales charges, underwriting, or distribution fees. Applicants therefore believe that the proposed transactions create none of the abuses intended to be addressed by section 12(d)(1).

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. As the investment adviser of the Funds, the Portfolios, and the Investment Funds, the Adviser is an affiliated person of each of these entities under section 2(a)(3) of the Act. The Funds, the Portfolios, and the Investment Funds therefore may be considered affiliated persons of each other under section 2(a)(3) by virtue of being deemed to be under common control of the Adviser. Accordingly, if the cash collateral posted by the Borrowers is considered the property of the Portfolios, the sale of Shares to the Portfolios, and the redemption of such Shares, would be prohibited under section 17(a).

6. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company

concerned, and the proposed transaction is consistent with the general policy of the Act. Section 17(b) could be interpreted to exempt only a single transaction. However, the SEC, under section 6(c), may exempt a series of transactions that otherwise would be prohibited by section 17(a).

7. Applicants believe that the terms of the proposed transactions are reasonable and fair and consistent with the general purposes of the Act as well as with the policy of each Fund and Portfolio as recited in each Fund's and Portfolio's registration statement. The Portfolios will be treated like any other investors in the Investment Funds. The Portfolios will purchase and sell Shares on the same terms and on the same basis as Shares are purchased and sold by all other shareholders of the Investment Funds. Permitting the Portfolios to invest cash collateral in the Investment Funds enables the Portfolios to invest in vehicles that applicants expect will offer the Portfolios a higher return on their investment at a lower cost than the cost typically incurred when investing in a registered investment company. Specifically, applicants anticipate that the investment of cash collateral in Shares will enable the Portfolios to benefit from economies of scale that maximize investment opportunities, minimize investment risk, facilitate the management of liquidity, and minimize administrative costs. Accordingly, applicants believe that the proposed transactions are in the best interests of the Funds, the Portfolios, and their shareholders.

8. Section 17(d) of the Act and rule 17d-1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The Portfolios (by purchasing Shares), the Adviser (by managing the portfolio securities of the Portfolios and the Investment Funds at the same time that the Portfolios' cash collateral is invested in Shares), and the Investment Funds (by selling Shares to and redeeming them from the Portfolios) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d-1.

9. Rule 17d-1 permits the SEC to exempt by order a joint transaction under section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the

participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

10. Applicants believe that the proposal satisfies these standards. The Portfolios will invest in Shares on the same basis as any other shareholder. All investors in Shares will be subject to the same eligibility requirements imposed by the Investment Funds. In addition, all Shares will be priced in the same manner and will be redeemable under the same terms. Finally, applicants believe that participation in the Program will offer the Portfolios and Funds greater flexibility and higher returns than they could obtain by investing the cash collateral separately while still offering the benefits of investing in a pooled investment vehicle in terms of diversity and lower costs.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may participate in the Program, a majority of the Board (including a majority of the independent trustees) will approve the Portfolio's participation in a securities lending program. Such trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of cash collateral in the Investment Funds is in the best interest of the shareholders of the funds and their corresponding Portfolios.

2. Investment in Shares will be in accordance with each Portfolio's respective investment restrictions regarding the types of securities in which it may invest and will be consistent with its corresponding Fund's policies as recited in such Fund's registration statement.

3. Cash collateral from loans by Portfolios that are money market funds will not be used to acquire Shares of any Investment Fund that does not comply with the requirements of rule 2a-7 under the Act.

4. The Adviser will adopt procedures that are designed, taking into account current market conditions and the Strategic Cash Trust investment objectives, to stabilize the Strategic Cash Trust's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at a single value. These procedures will be reviewed annually by the Board of each Portfolio that enters into a securities lending program ("Lending Portfolio").

5. The Investment Funds will comply with the requirements of sections 17(a),

(d), and (e), and 18 of the Act as if the Investment Funds were registered open-end investment companies. With respect to all redemption requests made by a Lending Portfolio, the Investment Funds will comply with section 22(e) of the Act. The Adviser, as sole trustee of the Investment Funds, will adopt procedures designed to ensure that the Investment Funds comply with sections 17(a), (d), and (e), 18, and 22(e) of the Act. The Adviser will periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), and 31a-1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

6. The Strategic Cash Trust will value its shares at the close of business each business day using the "amortized cost method" as defined in rule 2a-7 to determine the net asset value per share of the Strategic Cash Trust. In this regard, the Strategic Cash Trust will comply with rule 2a-7(c)(6), except that the Adviser, subject to approval by the sole trustee of the Strategic Cash Trust, shall adopt the procedures described in that provision, and the Adviser shall monitor such procedures and take such other actions as are required to be taken by a board of directors pursuant to that provision.

7. The Shares will not be subject to a sales load, redemption fee, asset-based charge or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the National Association of Securities Dealers).

8. Each Lending Portfolio will purchase and redeem Shares as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Investment Funds. A separate account will be established in the shareholder records of each Investment Fund for the account of each Lending Portfolio.

9. Except as set forth herein, the Program will comply with all present and future applicable SEC staff positions regarding securities lending arrangements, i.e., with respect to the type and amount of collateral, voting of loaned securities, limitations on the percentage of portfolio securities on loan, prospectus disclosure, termination of loans, receipt of dividends or other

distributions, and compliance with fundamental policies.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-29714 Filed 11-20-96; 8:45 am]
BILLING CODE 8010-01-M

[Investment Advisers Act Release No. 1597; 803-100]

BlackRock Financial Management, Inc.; Notice of Application

November 15, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (the "Act").

APPLICANT: BlackRock Financial Management, Inc.

RELEVANT ACT SECTIONS: Order requested under section 206A for an exemption from section 205(a)(1).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to charge a performance fee to BlackRock Assets Investors (the "Trust"), a closed-end investment company. Applicant requests the order because a limited number of its senior employees or senior employees of a Trust subsidiary who do not meet the minimum financial standards prescribed by rule 205-3(b)(1) under the Act may become shareholders of one of the Trust's feeder funds.

FILING DATES: The application was filed on November 28, 1995, and amended and fully restated applications were filed on April 28 and October 3, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 345 Park Avenue, New York, N.Y. 10154.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an investment adviser registered under the Act. The Trust and BlackRock Fund Investors I, II and III (the "Funds") are each closed-end, non-diversified management investment companies formed as Delaware business trusts and registered under the Investment Company Act of 1940. The Trust and the Funds are organized in a master-feeder structure. Each Fund invests all of its assets in the Trust, which conducts all investment operations.

2. The Funds have conducted an offering of interests exempt from registration under the Securities Act of 1933 pursuant to the exemption provided by section 4(2) thereof. At the conclusion of this private offering in the spring of 1995, the Funds had obtained capital commitments for approximately \$560 million from institutional and higher net worth investors and in turn entered into back-to-back commitments with the Trust.¹ The Funds have drawn approximately \$130 million in committed capital and have invested that amount in the Trust.

3. Applicant formed the Trust and the Funds to provide institutional investors with a way to participate in real estate debt markets. The primary investment objective of the Trust is to earn a high total rate of return through investment in a portfolio consisting primarily of subordinate commercial mortgage-backed securities ("CMBS") and from its equity investments in mortgage affiliates engaged in acquiring, working out, pooling and repackaging real estate debt and issuing CMBS. The Trust and the Funds are scheduled to terminate on January 17, 2002.

4. The Trust owns BlackRock Capital Finance L.P. ("BCF"), which was formed to acquire performing and distressed commercial and residential loans and work out its distressed investments and pool and repack its performing mortgage loans as mortgage-

¹ Investors in the Funds signed subscription agreements restricting the transferability of their shares of investors who do not meet the objective financial standards set forth in rule 205-3(b)(1) under the Act. Moreover, consent by the applicable Fund is required for any transfer other than among affiliates.

backed securities or otherwise dispose of loans and related properties. Most of the Trust's approximately \$130 million in capital has been invested in BCF.

5. Under an investment advisory agreement between the Trust and applicant, the Trust will pay to applicant both a semi-annual management fee equal to .75% per year of the capital commitments (during the three-year commitment period ending in 1998) or average capital invested (after the commitment period) and a performance fee (the "Performance Fee"). The Performance Fee is payable as of the first anniversary of the commencement of the Trust's operations, as of each October 31 thereafter and as of the Trust's termination date.

6. The Performance Fee was extensively negotiated between applicant and three "lead investors," large institutional investors in Funds II and III whose commitment represents almost 48% of the capital commitments of all the Funds. The Performance Fee was designed both to require that the Trust achieve at least a 10% annualized total return before applicant is entitled to any Performance Fee and then to further delay its entitlement to such fees until the investors have received distributions at least equal to the amount of capital invested in the Trust.

7. The maximum Performance Fee is 20% of realized total return net of any unrealized losses plus an interest factor related to the delayed payment feature discussed above. In order to "catch up" after the 10% minimum annualized return is achieved, the stated rate of the Performance Fee is 40% on the total return between 10% and 20% per year and then reverts to the 20% rate for all incremental returns once the average annual performance has reached 20%.

Applicant's Legal Analysis

1. Section 205(a)(1) of the Act prohibits an investment adviser from performing under an investment advisory contract that provides for compensation to the adviser based on a share of capital gains upon or capital appreciation of a client's funds. Section 206A authorizes the SEC to exempt any person from any provision of the Act to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the Act.

2. Rule 205-3 under the Act allows a registered adviser to charge a fee based upon a share of capital gains or capital appreciation of a client's account under certain conditions. Paragraph (b)(1) of the rule requires that the client must

have either a minimum account size of \$500,000 or a net worth over \$1 million.

3. Although the Performance Fee is assessed against the Trust (rather than directly against investors in the Funds), paragraph (b)(2) of the rule requires in effect that each investor in each of the Funds must meet the objective financial test of \$500,000 under management or \$1,000,000 in net worth set forth in paragraph (b)(1). Applicant represents that, except for the objective financial qualifications established by rule 205-3, all the other requirements of rule 205-3 are satisfied.²

4. Individuals who do not have \$1,000,000 in net worth and who are employees either of applicant or of BCF seek to invest in Fund III in amounts less than \$500,000. These individuals do not satisfy the objective financial test set out in rule 205-3(b)(1). Consequently, rule 205-3 does not permit, and section 205(a)(1) would prohibit, applicant from charging the Performance Fee to the Trust if such individuals invest in Fund III. Applicant requests that the SEC allow it to charge the Performance Fee to all investors, including the non-qualifying employees of applicant and BCF.

5. Applicant represents that each of the individuals in question has a college degree or graduate school training and years of experience in the mortgage securities investment business and is closely involved in the daily business of applicant or BCF. In addition, such non-qualifying personnel all hold positions of vice-president and above (including principal and managing director). Accordingly, each of these individuals has a professional understanding of the risk associated with the Trust's investment program as well as the degree of risk being undertaken by applicant in achieving the program.

6. Applicant argues that the financial sophistication of the non-qualifying employees is exactly what the SEC sought to assure by imposing the exemptive conditions of rule 205-3. In the adopting release, the SEC stated that the objective financial criteria set forth in rule 205-3 are intended to assure that the rule will be limited to advisory contracts with clients who are financially sophisticated and capable of bearing the increased risks associated

² Rule 205-3 requires, first, that the adviser's compensation must be based upon a formula that includes realized capital losses, and under certain conditions, unrealized capital depreciation. Second, the compensation must be based upon performance over a period of not less than one year. Third, the adviser must disclose certain information to the client. Finally, the adviser must reasonably believe that the advisory contract represents an arm's-length arrangement and that the client understands the performance fee and its risks.

with incentive fee arrangements.³ In addition, applicant states that it will make a good faith judgment as to the sophisticated nature of each investor relative to the affairs of the Trust.

7. Applicant further states that each of the individual employees who does not qualify under rule 205-3(b)(1) is an "accredited investor," as such term is defined in rule 501 of Regulation D under the Securities Act of 1933.⁴ Each such employee who chooses to invest in Fund III also would execute a binding subscription agreement committing to invest between \$25,000 and \$100,000.

8. Substantially all of applicant's most senior personnel who do qualify under rule 205-3(b)(1) have committed up to \$28 million for Fund III and also share in applicant's profits through incentive compensation plans. Applicant believes that the fact that they have substantial amounts at stake moderates any incentive to take the kinds of investment risks that concerned Congress when it adopted section 205(a)(1) and tends to ensure a community of interest with all other investors, including the proposed non-qualifying investors.

9. Applicant believes that there is also a strong commonality of interest between the qualifying personnel and non-qualifying employees who may wish to invest in Fund III, because the two groups work closely together in conducting the business of the Trust or BCF. The non-qualifying employees are, for example, actively involved in meeting with prospective sellers and buyers of real estate debt, structuring potential transactions, and preparing financial statements and reports to investors. These functions all require a high degree of financial sophistication. As members of the term who expect to make the Trust successful, they would like to be able to participate in that success along with the more senior personnel through an equity investment.

10. Applicant believes that the terms of the Performance Fee eliminate the ability—and any incentive—for applicant to engage in speculative trading practices or artificially enhance its fee by loading profits into one year and losses into another year. The Performance Fee takes into account both realized and unrealized losses, but only realized gains. In addition, it is measured only against cumulative

³ See Investment Advisers Act Release No. 986 (Nov. 14, 1985) (adopting rule 205-3).

⁴ Rule 501 of Regulation D defines an accredited investor to include, as here relevant, any natural person having an income of greater than \$200,000 for each of the previous two years and an expectation of the same income level for the current year.

performance over the life of the Trust and is payable only after a cumulative minimum return to investors has been achieved. Further, its accrual and payment are further delayed to minimize the possibility that Performance Fees paid for good performance in the early years could not be recovered by the Trust in later years if performance fell. Applicant also notes that investors in the Funds will receive annual and semi-annual reports with attached financial statements regarding the Funds, the Trust and the Trust's "downstream affiliates" as well as tax information regarding those entities, including BCF.

Applicant's Conditions

Applicant agrees that any order granting the requested exemptive relief may be made subject to the following conditions.

1. Applicant's investment advisory arrangement with the Trust will satisfy all the conditions of rule 205-3 of the Act, except for the objective financial standards set forth in paragraph (b)(1) thereof as they apply to the "non-qualifying" employees of applicant or BCF.

2. Applicant will use its best efforts to ensure that no shares of any of the Funds or any interests therein are transferred to any person that does not satisfy the applicable objective financial standards of rule 205-3(b)(1).

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-29715 Filed 11-20-96; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-22336; 813-158]

Elfun Trust, et al.; Notice of Application

November 14, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Amendment of Prior Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Elfun Trusts, Elfun Tax-Exempt Income Fund, Elfun Income Fund, Elfun Global Fund, Elfun Diversified Fund, Elfun Money Market Fund, General Electric S&S Program Mutual Fund, and General Electric S&S Long Term Interest Fund (collectively, "Fund").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(b) of the Act for an exemption from section 2(a)(13) of

the Act and to amend a previous order granting relief from certain sections of the Act.

SUMMARY OF APPLICATION: The order would permit the beneficial owners of applicants, each applicant an employees' securities company, to donate units ("Units") of applicants to charities of their choosing, which Units must, on the first business day following the later of the 90th day after their receipt as described in the application or the cessation of circumstances described in paragraphs (1)-(3) of section 22(e) of the Act, be redeemed by the holder or involuntarily by the appropriate applicant, or be transferred to an investor eligible for investing in an Elfun Fund or an S&S Fund.

FILING DATE: The application was filed on November 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 9, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney (202) 942-0574, or Merger E. Bullard, Branch Chief (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are diversified, open-end, management investment companies, and each is organized and operated to meet the definition of an "employees' securities company" within the meaning of section 2(a)(13) of the Act. Elfun Trusts is a trust created pursuant to an agreement among the Fund's trustees dated May 27, 1935 and most recently amended July 18, 1978. Elfun Tax-Exempt Income Fund is a

trust created pursuant to an agreement among the Fund's trustees dated March 14, 1977 and most recently amended July 12, 1978. Elfun Income Fund is a trust created pursuant to an agreement among the Fund's trustees dated December 22, 1982. Elfun Global Fund is a trust created pursuant to an agreement among the Fund's trustees dated May 15, 1987. Elfun Diversified Fund is a trust created pursuant to an agreement among the Fund's trustees dated June 1, 1987. Elfun Money Market is a trust created pursuant to an agreement among its trustees dated July 15, 1989. General Electric S&S Program Mutual Fund is a trust created pursuant to an agreement among the Fund's trustees dated May 1, 1967, as amended and restated January 1, 1976. General Electric S&S Long Term Interest Fund is a trust created pursuant to an agreement among the Fund's trustees dated as of September 15, 1979.

2. Pursuant to prior orders issued by the SEC, each of the applicants has received exemptions from certain provisions of the Act permitting the formation of various employees' securities companies. Under three prior orders, the SEC has granted Elfun Trusts an exemption from sections 8(b), 10a, 15a, 15c, 16(b), 20(a), 22(f), 30(b)(1) and 32(a) of the Act.¹ The SEC also has issued orders exempting each of Elfun Tax-Exempt Income Fund,² Elfun Income Fund,³ Elfun Global Fund,⁴ Elfun Diversified Fund⁵ and Elfun Money Market Fund⁶ from sections 10(a), 13(a)(4), 15(a), 15(c), 16(a), 30(d) and 32(a) of the Act. In addition, the order for the Elfun Tax-Exempt Income Fund also provided for an exemption from sections 8(b) and 22(f). Finally, the SEC has issued orders exempting the General Electric S&S Long Term Interest Fund⁷ and the General Electric S&S Program Mutual Fund⁸ from sections 8(b), 10(a), 13(a)(4), 15, 16(a), 18(i),

¹ Investment Company Act Release Nos. 584 (Dec. 2, 1943), 10375 (Aug. 23, 1976) (notice) and 10414 (Sept. 20, 1976) (order), and 17036 (Jun. 30, 1989) (notice) and 17063 (July 25, 1989) (order).

² Investment Company Act Release Nos. 9839 (July 5, 1977) (notice) and 9879 (Aug. 2, 1977) (order).

³ Investment Company Act Release Nos. 13485 (Sept. 7, 1983) (notice) and 13612 (Nov. 2, 1983) (order).

⁴ Investment Company Act Release Nos. 16042 (Oct. 8, 1987) (notice) and 16114 (Nov. 5, 1987) (order).

⁵ Investment Company Act Release Nos. 16146 (Nov. 24, 1987) (notice) and 16186 (Dec. 22, 1987) (order).

⁶ Investment Company Act Release Nos. 17284 (Mar. 16, 1990) (notice) and 17433 (Apr. 13, 1990) (order).

⁷ Investment Company Act Release Nos. 10920 (Nov. 6, 1979) (notice) and 10971 (Dec. 4, 1979) (order).

⁸ General Electric Co., 44 S.E.C. 87 (1969).

22(e), 22(f), 24, 30(d) and 32(a)(1); and 8(b), 10(a), 13(a)(4), 15, 16(a), 22(e), 22(f), 24, 30(d) and 32(a) of the Act, respectively.

3. Applicants propose to offer holders of Units ("Unitholders")⁹ the opportunity to realize the tax advantages associated with gifts of appreciated property by permitting Unitholders to donate appreciated Units to charities of their choosing, provided, however, that the charities qualify as tax-exempt entities under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and are not private foundations.¹⁰

4. Applicants have been advised by special tax counsel that a donee-charity's right to hold the appreciated property for a reasonable period of time during which market fluctuations and other events can affect the value of a Unit will help assure that the donor's gift will receive the desired tax treatment. Applicants propose that a charity may hold the Units for up to 90 days during which time it may voluntarily dispose of the Units to eligible participants or submit the Units for redemption. If, after 90 days, a charity remains a Unitholder, the Fund's trustees will use their power under the trust agreement to redeem involuntarily the Units and the charities will be paid the next determined net asset value for the Units they hold.¹¹

Applicant's Legal Analysis

1. Section 2(a)(13) of the Act defines "employees' securities company" generally as an investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned by employees and former employees of a company.

2. Section 6(b) of the Act provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. The applicants believe that the Proposal satisfies the requirements of section 6(b).

3. Applicants state that many of the Unitholders have held Units for significant periods of time. In many

⁹ Unitholders includes only those persons eligible to invest in applicants under the Prior Orders.

¹⁰ With regard to the S&S Funds, this Proposal is limited to those Units that are held outside of the GE Savings and Security Program, a qualified employee benefit program.

¹¹ Each Fund's net asset value per share is calculated on each day the New York Stock Exchange is open for business. Under each Fund's trust agreement, the trustees have the power to cause the involuntary redemption of Units if the Unitholder would cause the Fund to lose its status as an employees' securities company.

cases, these Units have net asset values that are substantially higher than the basis at which they are carried, causing the Unitholder to realize a gain upon redemption of the Units. Applicants state that their proposal would provide the Unitholder with the tax advantages associated with gifts of appreciated property while the charity receives a security that it can then present to the Fund for redemption in return for cash.

4. Applicants assert that their proposal is an attempt to promote the economic welfare of their employee-investors. The proposal, applicants contend, simply provides the Unitholders with the option of divesting themselves of appreciated property, gaining the associated tax advantages, and avoiding what could otherwise be a substantial tax burden, while donating to the charity of their choosing. Applicants contend that, without this option, many of the Unitholders may be subject to substantial taxes upon redemption of their Units owing to the long holding periods and the appreciation in the value of the Units that has occurred over time. Applicants believe that a Unitholder wishing to use his or her ownership interest in the applicants for philanthropic purposes thus would be forced to submit the shares for redemption, pay the taxes associated with the gain realized by the Unitholder, and then donate the cash proceeds to the charity of his or her choice. Applicants contend that the Unitholder consequently will be forced to redeem more Units than would otherwise be required in order to cover the associated taxes if the Unitholder has an established amount that he or she wishes to donate to a charity.

5. Applicants state that the gift of appreciated property to a charity is a commonly used strategy in philanthropy. Applicants contend that their proposal would permit the Unitholders to do nothing more than they would be entitled to do if the security at issue were any other form of security or asset. The applicants believe that their status as employees' securities companies should not cause detriment to the very people that status is intended to benefit.

6. Applicants also believe that, owing to the short holding period, the charities are less in need of the protections afforded by the Act. The charities will only be permitted to hold the Units for up to 90 days before mandatory redemption is instituted by the applicants at an amount equal to their net asset values.

7. Applicants note that the donee-charities, like all eligible investors, will have many of the protections afforded

by the Act. Applicants state that, except for the prospect of involuntary redemption, each donee-charity will be treated as any other Unitholder and therefore will not be disadvantaged by their temporary ownership of Units. Applicants also assert that, so long as the donee-charities qualify as tax-exempt entities under section 501(c)(3) of the Code, the donee-charities will not be subject to any tax liability by reason of their holding Units in applicants or by the redemption of such Units.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the condition that on the first business day following the later of the 90th day after receipt of Units donated as described in the application or the cessation of circumstances described in paragraphs (1)-(3) of section 22(e) of the Act, the Units will be redeemed by the holder or involuntarily by the appropriate applicant or be transferred by the holder to an investor who is eligible to invest in an Elfun Fund or an S&S Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-29717 Filed 11-20-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26607]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 15, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 9, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or,

in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

TUC Holding Company (70-8953)

TUC Holding Company ("TUC Holding"), located at Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201, a Texas corporation not currently subject to the Act, has filed an application for an order under sections 9(a)(2) and 10 of the Act authorizing its proposed acquisition of all of the issued and outstanding common stock of (1) Texas Utilities Company ("TUC"), a Texas electric public-utility holding company exempt under section 3(a)(1) from all provisions of the Act except section 9(a)(2), and, through such acquisition, TUC's Texas public-utility subsidiary companies, Texas Utilities Electric Company ("TU Electric") and Southwestern Electric Service Company ("SESCO"); and (2) ENSERCH Corporation ("ENSERCH"), a Texas gas public-utility company. TUC Holding also requests an order under section 3(a)(1) exempting it from all provisions of the Act except section 9(a)(2), following consummation of the proposed transactions.

TU Electric and SESCO operate as public utilities exclusively in the State of Texas.¹ Both are subject to regulation with respect to retail electric rates and other matters by the Public Utility Commission of Texas ("Texas Commission") and by certain municipalities with regard to their rates.²

TUC also has eight nonutility subsidiaries. Texas Utilities Australia Pty. Ltd, an Australia limited liability company, owns all of the common stock of an Australia foreign utility company, as defined in section 33 of the Act. Texas Utilities Fuel Company, a Texas corporation, owns a natural gas pipeline

¹ TU Electric is engaged in the generation, purchase, transmission, distribution and sale of electric energy in the north central, eastern and western parts of Texas, an area with a population estimated at 5,280,000. SESCO is engaged in the purchase, transmission, distribution and sale of electric energy in ten counties in the eastern and central parts of Texas, with a population estimated at 125,000.

² In addition, TU Electric is subject to regulation by the Nuclear Regulatory Commission in connection with its ownership of the Comanche Peak nuclear generating facility.

system and acquires, stores and delivers fuel gas and provides other fuel services at cost to TU Electric. Texas Utilities Mining Company, a Texas corporation, owns, leases and operates fuel production facilities for the surface mining and recovery of lignite at cost for TU Electric. Texas Utilities Services Inc., a Texas corporation, provides administrative services at cost to TUC system companies. Texas Utilities Properties Inc., a Texas corporation, owns, leases and manages properties, primarily TUC's corporate headquarters. Texas Utilities Communications Inc., a Delaware corporation, was organized to provide access to advanced telecommunications technology, primarily for the TUC system's expected expansion of the energy services business. Basic Resources Inc., a Texas corporation, was organized to develop natural resources, primarily energy sources, and other business opportunities. Chaco Energy Company, a New Mexico corporation, currently leases coal reserves in that state.

For the year ended December 31, 1995, TUC's operating revenues on a consolidated basis were approximately \$5.64 billion, of which approximately \$5.61 billion was derived from TU Electric's and SESCO's electric operations. Consolidated assets of TUC and its subsidiaries at December 31, 1995 were approximately \$21.5 billion, of which approximately \$17.7 billion consists of utility assets. As of March 31, 1996, there were 225,841,037 outstanding shares of the common stock, no par value, of TUC.

ENSERCH, an integrated company that focuses on natural gas, is the successor to a company organized in 1909 for the purpose of providing natural gas service to north Texas. Through its Lone Star Gas Company division ("Lone Star"), ENSERCH is a gas utility company that purchases and distributes natural gas to over 1.3 million residential, commercial, industrial and electric-generation customers in approximately 550 cities and town, including the Dallas/Fort Worth Metroplex.³ Lone Star is subject to regulation by the Railroad Commission of Texas ("Railroad Commission") with respect to rates charged to customers for gas delivered outside incorporated cities and towns and with respect to certain other corporate matters. Rates within incorporated cities and towns in Texas are subject to the original jurisdiction of

³ Lone Star also provides consulting services with respect to gas distribution.

the local city council with appellate review by the Railroad Commission.

ENSERCH also has various nonutility operations.⁴ Lone Star Pipeline Company, a division of ENSERCH, owns a natural gas pipeline in Texas and is engaged in the gathering, processing and marketing of natural gas. Lone Star Pipeline is regulated with respect to gas transportation rates by the Railroad Commission. Enserch Processing Company, a division of ENSERCH, is engaged in the processing of natural gas for the recovery of natural gas liquids. Enserch Energy Services, Inc., a wholly-owned subsidiary of ENSERCH, is a marketer of natural gas and natural gas services, primarily in the Northeast and Midwest and on the West Coast. Enserch Development Corporation, a division of ENSERCH, is engaged in development activities relating to independent electric power generation projects. Fleet Star of Texas, L.C. ("Fleet Star") and TRANSTAR Technologies, Inc. ("TRANSTAR"), each of which is 50% owned by ENSERCH, are engaged in compressed natural gas businesses.⁵

For the year ended December 31, 1995, ENSERCH's operating revenues on a consolidated basis were approximately \$1.9 billion, of which approximately \$887 million was attributable to natural gas distribution activities and approximately \$220 million to oil and gas exploration and production. Consolidated assets of ENSERCH and its subsidiaries at December 31, 1995 were \$3.4 billion, of which approximately \$948 million consists of gas distribution property, plant and equipment and \$2.6 billion consists of oil and gas exploration and production property, plant and equipment. As of March 15, 1996, there were 68,626,602 outstanding shares of the common stock, par value \$4.45 per share, of ENSERCH.

TUC Holding was formed under Texas law to become a holding company for TUC and ENSERCH following consummation of the transactions contemplated by the terms of an Amended and Restated Agreement and Plan of Merger, dated as of April 13, 1996 ("Merger Agreement"), among

⁴ The application states that certain of these interests will not become part of the TUC Holding system. These include ENSERCH's direct and indirect ownership of 83.4% of the outstanding common stock of Enserch Exploration, Inc., a company engaged in the exploration for, and development, production and sale of, natural gas and crude oil. Two other subsidiaries of ENSERCH that are engaged in the compressed natural gas business, Lone Star Energy Company and its wholly-owned subsidiary, Lone Star Energy Plant Operations, Inc., also will not become part of the TUC Holding system.

⁵ Fleet Star owns public natural gas fueling stations and TRANSTAR provides turnkey natural gas vehicle conversions and related services.

TUC, ENSERCH and TUC Holding.⁶ The Merger Agreement provides for the merger of TUC Merger Corp., a wholly-owned subsidiary of TUC Holding, with and into TUC, with TUC as the surviving corporation, and for the merger of ENSERCH Merger Corp., a wholly-owned subsidiary of TUC Merger Corp., with and into ENSERCH, with ENSERCH as the surviving corporation (together, "Mergers").

The application states that the Mergers are expected to create significant operational and administrative economies and efficiencies through combined meter reading, meter testing and billing operations, as well as customer service operations, savings in facility maintenance and emergency work coordination, and other administrative and general savings. In addition, as a result of the Mergers, TUC Holding is expected to be better positioned to remain competitive as the utility industry evolves.

Upon consummation of the Mergers: (1) Each issued and outstanding share of TUC common stock (other than any shares owned by TUC, any subsidiary of TUC, ENSERCH or any subsidiary of ENSERCH, all of which will be cancelled without consideration and will cease to exist) will be converted into the right to receive one share of the common stock, without par value, of TUC Holding; (2) each issued and outstanding share of ENSERCH common stock, together with associated rights to purchase, in certain specified circumstances, interests in ENSERCH voting preference stock or, in other specified circumstances, shares of ENSERCH common stock;⁷ (other than any shares owned by ENSERCH, any subsidiary of ENSERCH, TUC or any subsidiary of TUC, all of which will be cancelled without consideration and will cease to exist) will be converted into that number of shares of TUC Holding common stock obtained by dividing \$8.00 by the average closing sales price of TUC common stock as reported on the New York Stock Exchange Consolidated Transactions Tape on each of the 15 consecutive trading days preceding the fifth trading day prior to the consummation of the Mergers ("Average TUC Price"); provided, however, that in no event will the Average TUC Price be deemed to be less than \$35.625 or more than \$43.625; and (3) all shares of capital stock of TUC

⁶ At present, the common stock of TUC Holding is owned equally by TUC and ENSERCH.

⁷ These rights are governed by the terms of a Rights Agreement between ENSERCH and Harris Trust Company of New York, as Rights Agent thereunder, dated as of March 26, 1996.

Holding issued and outstanding immediately prior to the transaction will be cancelled. Outstanding shares of ENSERCH preferred stock and ENSERCH convertible debentures will remain outstanding ENSERCH securities after the Mergers, and the debentures will be convertible into TUC Holding common stock. The Mergers are expected to qualify as tax-free transactions under section 351 of the Internal Revenue Code of 1986, as amended. Based on the Average TUC Price if the Mergers had been consummated on April 12, 1996 (the date of the Merger Agreement), and the capitalization of TUC and ENSERCH on that date, the shareholders of TUC and ENSERCH would own securities representing approximately 94.3% and 5.7%, respectively, of the outstanding common stock of TUC Holding.

As a result of the Mergers, TUC Holding will be a public-utility holding company as defined in section 2(a)(7) of the Act with three public-utility subsidiaries, TU Electric, SESCO and ENSERCH. TUC Holding will change its name to Texas Utilities Company. It states that following consummation of the Mergers, it will be entitled to an exemption from all provisions of the Act except section 9(a)(2) because it and each of its public-utility subsidiaries from which it derives a material part of its income will be predominantly intrastate in character and will carry on their utility businesses substantially within the state of Texas.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-29790 Filed 11-20-96; 8:45 am]
BILLING CODE 9010-01-M

[Release No. 35-25605]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 15, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 9, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company (70-8943)

Notice of Proposal to Issue Common Stock; Order Authorizing Solicitation of Proxies

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York 14203, a gas registered holding company, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

By resolutions adopted by the Board of Directors of NFG ("Board") on September 19, 1996, NFG's By-laws were amended to establish a shares payment policy ("Plan") whereby nonemployee NFG directors ("Eligible Directors") would receive compensation in the form of NFG Common Stock, \$1 par value ("Common Stock") for serving on the Board. Under the Plan one hundred shares of Common Stock would be issued quarterly to each Eligible Director and would constitute a portion of such Eligible Director's annual retainer. The Plan provides for a proration of such payments for any quarter during which an Eligible Director has rendered only partial service. Common Stock issued pursuant to the Plan would be non-transferable until the later of two years from date of issuance or six months after the Eligible Director's cessation of service as a director. NFG states that from time to time the Board will make adjustments in the number of shares issuable to each Eligible Director, as the Board in its discretion deems appropriate in light of then existing circumstances. It is anticipated that the initial issuance of Common Stock under the Plan will take place in respect of the quarter commencing January 1, 1997.

One hundred thousand shares of Common Stock, which may be

authorized but unissued shares, treasury shares or a combination thereof, have been reserved for issuance under the Plan. The Board may also adjust the number of these shares, reserved or issued, in order to prevent dilution or enlargement in the event of a stock split, reverse stock split, reorganization or similar event with respect to which the Board determines that an equitable adjustment is appropriate.

NFG requests authorization to implement the Plan through December 31, 2001, to issue up to one hundred thousand shares of Common Stock pursuant to the Plan, effective January 1, 1997, and to adjust the number of shares of Common Stock that may be issued under the Plan. In addition, NFG proposes to solicit proxies from its shareholders to approve amendments to NFG's By-laws establishing the Plan at the next annual meeting, scheduled for February 20, 1997. Accordingly, NFG requests that an order authorizing the solicitation of proxies be issued as soon as practicable pursuant to rule 62(d).

It appearing to the Commission that NFG's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, pursuant to rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-29793 Filed 11-20-96; 8:45 am]
BILLING CODE 9010-01-M

[Release No. 34-37960; International Series Release No. 1028; File No. SR-Amex-96-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Listing and Trading of Index Warrants Based on the BEM Latin America Index

November 15, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 15, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with

¹ 15 U.S.C. 78s(b)(1)

² CFR 240.19b-4.

the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b-4 of the Act proposes to approve for listing and trading under Section 106 of the Amex *Company Guide* index warrants based on the BEMI Latin America Index ("Index"), a market capitalization-weighted broad-based index developed by ING Barings Securities Limited comprised of companies from seven Latin American countries representing eleven different industry groups.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 106 (Currency and Index Warrants) of the Amex *Company Guide*, the Exchange may approve for listing index warrants based on foreign and domestic market indices. The Amex has received approval to trade a number of index warrant products pursuant to Section 106.³ The Amex represents that the listing and trading of warrants on the Index will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants.

Warrant issues on the Index will conform to the listing guidelines under

Section 106, which provide, among other things, that (1) the issuer shall have tangible net worth in excess of \$250,000,000 and otherwise substantially exceed earnings requirements in Section 101(A) of the *Company Guide* or meet the alternate guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to three years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of \$4,000,000.

Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to purchasers of Index warrants and transactions in customer accounts. Amex Rule 411, Commentary .02 recommends that index warrants under Section 106 of the *Company Guide* be sold only to investors whose accounts have been approved for options trading pursuant to Rule 921. The requirements under Rule 923 (Suitability) shall apply to recommendations in index warrants both with respect to customer accounts that have been approved for options trading and customer accounts that have not been so approved. Amex Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading of Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Amex is proposing to list index warrants based on the Index, an internationally-recognized capitalization-weighted index

representing a broad-based portfolio of 119 large, actively traded stocks from seven Latin American countries.⁴ The total market capitalization of the Index was \$237.4 billion on September 30, 1996. The total available market capitalization⁵ of the Index was \$104.5 billion on September 30, 1996. The median available capitalization of the companies in the Index on that date was \$429 million and the average available market capitalization of these companies was \$878 million. The individual available market capitalization of the companies ranged from \$15.9 million to \$8.8 billion.

The Index was designed by and is maintained by ING Barings. The stocks selected for inclusion in the Index were chosen on the basis of both country and company criteria. To be included in the Index a country must have a minimum Gross Domestic Product per capita of \$400 and a minimum market trading value of \$2 billion per year, in at least one of the last three years. The companies included in the Index are drawn from a database of stock entities, which may represent individual companies in their entirety, or separate lines of stock, e.g. A shares and B shares, of the same company. The criteria for stock entities to be included are: Capitalization value greater than 1% of the ING Barings database for that country, minimum free-float of 10%, minimum average daily trading value of \$100,000. In addition shares that rank first or second in their industry sector may be included if they have a minimum capitalization of 0.5% of the ING Barings database for that country and meet the normal free-float and daily trading value rules.

The number of stocks and weighting in the Index as of 9/30/96 is as follows: Argentina 22 stocks/12.71% weighting, Brazil 23 stocks/39.36% weighting, Chile 16 stocks/12.30% weighting, Columbia 13 stocks/1.94% weighting, Mexico 27 stocks/25.35% weighting, Peru 12 stocks/7.13% weighting, and Venezuela 8 stocks/1.19% weighting. The Index is composed of companies from 11 industry groups including: consumer goods, energy, capital equipment, basic materials, agriculture/food and financial. The largest stock accounts for 8.43% of the Index, while

³ The list of the component securities and their respective weights in the Index were attached to the proposed rule filing as Exhibit A, and are available for examination at the Amex or at the Commission as specified in Item IV.

⁴ Available market capitalization refers to market capitalization that is available to foreign investors and that reflects the restrictions in place in many emerging markets where large and variably defined portions of a company's market capitalization are not available to foreign investors.

the smallest accounts for 0.015%. The top five stocks in the Index by weight account for 29.62%. The Exchange believes that the Index is a Stock Index Group and a Broad Stock Index Group pursuant to Rule 1100(b).

The Exchange also believes that the proposed Index complies with the information sharing standards of Section 106(g) of the *Company Guide*.⁶ In this regard, the Commission previously has permitted U.S. derivatives markets to list derivatives on securities where the home market for such securities is located in Argentina, Brazil, Chile and Mexico based upon the Commission's and the Exchange's information sharing arrangements with the appropriate government or self-regulatory authorities in such countries. (The Commission has Memoranda of Understanding with government authorities in Argentina, Brazil, Chile and Mexico; the Exchange has information sharing agreements with the securities markets and/or self-regulators in Argentina, Brazil and Chile.) Because Argentinean, Brazilian, Chilean, and Mexican securities comprise 89.73% of the value of the Index, the Exchange represents that the Index meets the information sharing standards of Section 106(g) of the *Company Guide*.

The Index is capitalization-weighted and based on available capitalization. The Index is quoted in U.S. dollars and disseminated daily shortly after 4 p.m. New York time using local market closing prices and Reuters 4 p.m. exchange rates. The Index was first calculated on January 7, 1992 with a benchmark value of 100.

The Index is maintained by ING Barings Recomposition Committee. The Recomposition Committee, established at the time of the launch of the Index, reviews on a quarterly basis the Index rules and composition. The committee implements changes or fixes standards as appropriate and oversees the security environment of the Index and its record-keeping. The quarterly recomposition meeting is normally held in the second week of the last month of the quarter. The date of these meetings is posted at least two months in advance on Reuters and the results are posted on Reuters the day after a committee meeting. Any changes in the composition of the Index are implemented on the last day of the

⁶ Section 106(g) of the *Company Guide* states that foreign country securities or American Depository Receipts thereon that are not subject to a comprehensive surveillance agreement, and have less than 50% of their global trading volume in dollar value within the United States, shall not in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading.

month that the committee meeting is held. This is approximately two weeks after the committee meeting.

According to the Exchange, membership of the committee is regulated by a "Fire Wall." All members are isolated from sales, trading functions and corporate finance functions. Members are drawn from Index research, calculations group, and the legal department of ING Barings. To ensure impartiality and good practice, the committee has retained Russell Systems Limited (Part of the Frank Russell Group) to attend all meetings and to provide an audit of attendance and appropriateness of the agenda. Russell Systems Limited also provides advice on good practice in indexation and on how to ensure the use of the best available information on emerging markets.

2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

⁷ 15 U.S.C. 78f(b)(5).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-38 and should be submitted by December 12, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-29789 Filed 11-20-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-37946; File No. SR-CHX-96-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Permanent Approval of Its Pilot Program for Automatic Execution of Limit Orders

November 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 15, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

⁸ 17 CFR 200.30-3(a)(12).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of its system enhancement relating to the automatic execution of non-marketable limit orders.

On July 12, 1995, the Commission approved this system enhancement on a pilot basis, expiring on July 31, 1996.¹ The pilot program was extended in a subsequent Commission approval order and is currently scheduled to expire on December 31, 1996.² In the Pilot Approval Order, as amended by the Pilot Extension Order, the Commission requested that the CHX provide a report to the Commission, by August 31, 1996, describing its experience with the pilot program. This report has been submitted to the Commission.

The proposed system enhancement ("Auto-Ex") is a feature of the Exchange's automated execution system ("MAX") that CHX specialists may voluntarily choose to activate to execute automatically non-marketable limit orders³ on the specialist's book. Auto-Ex will operate by comparing the size of the CHX-entered limit order against the amount of stock ahead of that order in the primary market when the issue is trading in the primary market at the limit price. The Auto-Ex System will begin comparing CHX-entered limit orders when the limit price equals the bid or offer quoted in the primary market (as the case may be) for the first time.⁴ Thereafter, the Auto-Ex system will keep track of all prints in the primary market and will automatically execute the limit order once the required size prints in the primary market.⁵ As additional limit orders at

the same price are received by the specialist, comparisons will be made and entered based upon the shares ahead of those limit orders at the time of receipt, including shares ahead on the CHX. The Auto-Ex feature will not permit a limit order to be filled out of sequence.

The Auto-Ex feature will execute limit orders in accordance with existing CHX rules.⁶ Auto-Ex will be available for all dually traded issues; however, specialists will be permitted to choose Auto-Ex on an issue by issue basis.⁷ Generally, however, Auto-Ex will be used for issues which, based on experience, have demonstrated reliable and accurate quotes in the primary market. Limit orders not subject to Auto-Ex will be "flagged" with a prompt to alert the specialist that a fill may be due. The proposal to establish an Auto-Ex feature applies only to non-marketable limit orders. It is not applicable to marketable limit orders or to market orders. The text of the proposed rule change is available at the CHX and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

offered, 5,000 shares bid and 5,000 shares offered, meaning there are 5,000 shares ahead of the CHX order. The Auto-Ex system will automatically execute the entire CHX limit order after 7,000 shares print at 1/4 or better in the primary market. However, when more than 5,000 but less than 7,000 shares print at 1/4 in the primary market, the order will be flagged with a flashing prompt to alert the specialist that the order may be due at least a partial fill. See CHX Article XX, Rule 37(a) governing primary market protection of certain limit orders.

⁶ Further, the Exchange has stated that the recent adoption of the Order Execution Obligations (Securities Exchange Act Release No. 37619 (August 29, 1996), 61 FR 46290 (September 12, 1996)) will have no impact or effect on the proposed rule change. See Letter from J. Craig Long, Foley & Lardner to Janice Mitnick, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated November 8, 1996.

⁷ The CHX will limit a specialist's ability to activate and then deactivate Auto-Ex regularly by: (1) only permitting as specialist to deactivate Auto-Ex on a certain day each month and (2) requiring that issues remain on Auto-Ex for a minimum of five trading days.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request permanent approval of the Auto-Ex System. The Auto-Ex System further automates the CHX's trading floor functions in order to improve the CHX's performance in filling limited orders. By providing for automatic execution of limit orders in accordance with existing Exchange rules, the CHX is eliminating the need for the manual operation required of specialists in determining when and to what extent limit orders are due fills based on primary market prints. The manual effort expended by specialists in filling limit orders that are entitled to primary market protection is often time-consuming and can result in errors, particularly when there is heavy trading volume. The present proposal, therefore, directly benefits customers because it results in more timely fills while eliminating errors resulting from manual execution.

The Auto-Ex feature does not change or amend any CHX trading rules, nor does it cause or allow limit orders to be filled under different parameters than under existing rules. Auto-Ex only automates the manner in which limit orders are filled. The CHX will continue to monitor specialist execution of limit orders through the Market Regulation/Surveillance Department. In addition, CHX specialists will continue to be responsible for their books to the same degree as they are now under the manual execution system for limit orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. In this regard, Auto-Ex should help to speed execution of non-marketable limit orders on the CHX and may reduce the possibility of missed orders during periods of heavy trading volume.

The Exchange believes the proposed rule change is consistent with the requirements of Section 11A(a)(1)(C) of the Act in that the proposal is designed to contribute to the best execution of investors' orders while assuring the economically efficient execution of transactions, which in turn protects the

public interest and promotes fair and orderly markets. In this regard, incoming orders subject to Auto-Ex, just as any other CHX order entitled to primary market protection, should receive the best execution available because a print on the primary market at the limit price triggers execution on the CHX. In addition, the Exchange's implementation of Auto-Ex should assure fair competition among exchange markets, which benefits public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Room. Copies of such filing will also be available for inspection and copying at the principal

office of the Exchange. All submissions should refer to File No. SR-CHX-96-27 and should be submitted by December 12, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,
Margaret H. McFarland,
Deputy Secretary.
(FR Doc. 96-29718 Filed 11-20-96; 8:45 am)
BILLING CODE 8070-01-M

(Release No. 34-37956; File No. SR-NASD-96-20; Amendment No. 4)

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Changes in the Structure of the NASD Board of Governors

November 15, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 12, 1996, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 4 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.¹ The Commission is

¹ 17 CFR 200.30-3(a)(12).

² The NASD originally filed the rule change on May 28, 1996. On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended Article VI, Section 5 of the NASD By-Laws ("By-Laws") to clarify that, in a contested election, the term of office of a candidate certified by the National Nominating Committee for inclusion on the ballot for the election of Governors pursuant to Article VI, Section 7(c) would be identical to the term of office of a candidate nominated by the National Nominating Committee pursuant to Article VI, Section 7(c). Amendment No. 1 also amended Article VI, Section 7(a) of the By-Laws to clarify that any person elected to the Board of Governors must be nominated or certified by the National Nominating Committee. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated June 4, 1996).

On July 2, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 provided the final report of the vote of the NASD membership with respect to the proposed rule change. 2,227 valid ballots were received from NASD members. 2,101 voted to approve the proposed rule change, 117 voted to disapprove the proposed rule change and 9 did not vote.

On July 10, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requested temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Gallery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 4 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In 1995, the NASD Board of Governors ("Board") appointed The Select Committee on Structure and Governance ("Select Committee") to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. In September 1995, the Select Committee recommended, among other things, that the NASD establish two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market, Inc. ("Nasdaq"). The Select Committee recommended that each subsidiary have an independent Board of Directors with at least 50% public representation and that the NASD remain as parent corporation overseeing the operations of both subsidiaries. The Select Committee recommended that the NASD Board of Governors be composed of a majority of public directors.

In January 1996, the NASD created a new subsidiary, NASD Regulation, Inc. ("NASD Regulation") to provide regulation and member and constituent services, with the NASD retaining responsibility for general oversight over the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries, Nasdaq and NASD Regulation, and final policymaking authority for the association as a whole. The NASD also adopted Select Committee proposals to restructure and reduce the size of the NASD Board and to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards.

On April 11, 1996, the Commission granted temporary approval for a period of 90 days to: (i) amendments to Article VII of the NASD By-Laws to create a national nominating committee to nominate persons to serve on the Board of Governors and reconstitute the Board

The Commission previously published notice of the proposed rule change (Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996)) and granted accelerated approval to the proposed rule change for a period of 120 days (Securities Exchange Act Release No. 37424 (July 11, 1996), 61 FR 37515 (July 18, 1996)).

as a majority non-industry Board²; (ii) NASD Rule 130 providing for the delegation of the authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" ("Delegation Plan"); and (iii) the Delegation Plan.³ The Delegation Plan sets forth certain purposes, functions and governance procedures of the three corporations working together.

On June 11, 1996, the Commission approved the instant proposed rule change for a period of 120 days. The rule change amended the By-Laws to conform them to the Delegation Plan. The rule change provided for the creation of a national nominating committee to identify and nominate for election industry and non-industry persons to serve on the Board; deleted references to the Districts and local administration, because responsibility for the local administration of regulatory affairs under the Delegation Plan has been assigned to NASD Regulation; conformed terms and rule citations to those used in the reorganized *NASD Manual* and made miscellaneous clarifying corrections to the By-Laws; and replaced all references to the NASD "Certificate of Incorporation" with references to the "Restated Certificate of Incorporation" to reflect that the Certificate of Incorporation has been amended to be consistent with the changes previously adopted and proposed herein to the By-Laws.⁴

The NASD hereby files this Amendment No. 4, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the amendments to the By-Laws for a period of six months.⁵ During this interval, there will be no further amendments to the By-Laws, absent Commission approval of a corresponding Rule 19b-4 filing.

² Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 10, 1996) ("Release 34-37106").

³ Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 10, 1996) ("Release 34-37107").

⁴ The Commission separately approved SR-NASD-96-29, amending the Delegation Plan, for a period of 120 days. See Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 10, 1996).

⁵ The NASD also filed Amendment No. 3 to SR-NASD-96-29, requesting an extension of the Commission's temporary approval of the Delegation Plan for a period of six months. The Commission is separately approving that rule change as further amended Amendment No. 3. See Securities Exchange Act Release No. 37957 (November 15, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this Amendment No. 4 is to ensure continued effectiveness of the amended NASD By-Laws while the Commission considers whether to grant permanent approval to the instant NASD rule filing. Amendment No. 4 is intended to ensure that the NASD continues to possess the requisite corporate authority to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee.

2. Statutory Basis

The NASD believes that the proposed rule change as further amended by Amendment No. 4 is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act⁶ in that the restructured organization will: (1) provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not

⁶ 15 U.S.C. § 78o-3.

necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. However, in connection with the publication of certain parts of the proposed rule change for member vote in Notice to Members 95-101, attached as Exhibit 2 to rule filing SR-NASD-96-02, the NASD received three comments, which were attached as Exhibit 4 to SR-NASD-96-02. The NASD's statement on the comments received with respect to Notice to Members 95-101 is set forth in rule filing SR-NASD-96-02 and was published by the Commission in Release 34-37106.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the *Federal Register* to avoid any interruption of the effectiveness of the amended By-Laws. The current authorization for the Service was scheduled to expire by November 18, 1996. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the self-regulatory organization functions currently assumed by NASD Regulation and Nasdaq pending Commission action on the proposed extension.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-96-20, Amendment No. 4 and should be submitted by December 12, 1996.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act⁷ in that the restructured organization will: (1) provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by NASD members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

The NASD has requested that the Commission approve the proposed rule change on or before November 18, 1996, which is prior to the 30th day following publication of notice of the filing of the proposed rule change in the *Federal Register*, in order to permit the uninterrupted authorization of those corporate actions necessary to effectuate the Delegation Plan.

Pursuant to Section 19(b)(2) of the Act,⁸ the Commission finds good cause for approving the proposed rule change, as further amended by Amendment No. 4, prior to the 30th day after publication in the *Federal Register*. The proposed rule change will permit the NASD to continue to carry out the functions and organize itself in the manner contemplated by the Delegation Plan, which is intended to enable the NASD to meet its regulatory and business obligations. Because the Commission believes that the proposed rule change facilitates the ability of the NASD to manage its affairs in a manner that enhances its ability to carry out the purposes of the Act and enforce compliance by NASD members and their associated persons with the provisions of the Act, the Commission believes that the rule filing should be

⁷ 15 U.S.C. § 78o-3.

⁸ 15 U.S.C. § 78a(b)(2).

approved without delay, for a six-month period.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR-NASD-96-20, as further amended by Amendment No. 4, be, and hereby is, approved effective through May 15, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-29791 Filed 11-20-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-37957; File No. SR-NASD-96-29; Amendment No. 3]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and the Nasdaq Stock Market, Inc.

November 15, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78a(b)(1), notice is hereby given that on November 12, 1996, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 3 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.¹ The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No.

¹ The NASD originally filed the rule change on July 2, 1996. On July 8, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended the language of proposed new Subsections II.C.4 and III.C.3 of the Delegation Plan to clarify that it is proposed that the NASD Board of Governors have authority to determine to both call for review or not call for review a matter of the subsidiary Board during the 15-day period provided for consideration by the NASD Board.

On July 10, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 requests temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

The Commission previously published notice of the proposed rule change and granted accelerated approval to the proposed rule change for a period of 120 days (Securities Exchange Act Release No. 37425 (July 11, 1996); 61 FR 37518 (July 10, 1996) ("Release 34-37425").

3 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to extend the effectiveness of: (1) Rule 0130 to the NASD, NASD's rules delegating to the subsidiaries of the NASD Regulation, Inc. ("NASDR") and The Nasdaq Stock Market, Inc. ("Nasdaq"), the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the NASD Board of Governors and approved by the Commission pursuant to its authority under the Act; and (2) adopt a Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

Rule 0130 and the Delegation Plan originally were filed with the Commission in SR-NASD-96-16 and were simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days.² Release 34-37107 contained the full text of Rule 0130 and the Delegation Plan with the exception of three amendments thereto. On July 11, 1996, the Commission issued a release publishing for comment the three amendments to the Delegation Plan and further approving Rule 0130 and the Delegation Plan as amended for a period of 120 days.³ Release 34-37107 and Release 34-37425 published the complete text of the rule change.

The NASD hereby files this Amendment No. 3, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Delegation Plan as amended for a period of six months.⁴ During this interval, there will be no further amendments to the Delegation Plan, absent Commission approval of a corresponding Rule 19b-4 filing.

² Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 10, 1996) (Release 34-37107).

³ Release 34-37425.

⁴ The NASD also filed Amendment No. 4 to SR-NASD-96-20, requesting an extension of the Commission's temporary approval of the amended NASD By-Laws for a period of six months. The Commission is separately approving that rule change as further amended by Amendment No. 4. See Securities Exchange Act Release No. 37956 (November 15, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this Amendment No. 3 is to ensure continued effectiveness of the Delegation Plan while the Commission considers whether to grant permanent approval to the instant NASD rule filing.

Description of Delegation Plan. The Delegation Plan is organized in three principal parts, one for each of the three major entities that will constitute the reorganized NASD: the parent corporation, National Association of Securities Dealers, Inc.; the regulatory subsidiary, NASD Regulation, Inc.; and the stock market operating subsidiary, The Nasdaq Stock Market, Inc.⁵ The Delegation Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each entity.

The first part of the Delegation Plan describes the parent corporation, National Association of Securities Dealers, Inc. The Delegation Plan sets forth the purpose and function of the NASD; the composition of the Board of Governors, including provisions relating to the qualifications for Governors, election procedures, creation of a National Nominating Committee,⁶ term

⁵ The Delegation Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as, the Securities Dealers Risk Purchasing Group, Inc. and Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NASD not described in the Delegation Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of the Nasdaq Stock Market. In addition, the Delegation Plan does not address the NASD's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

⁶ The National Nominating Committee is composed of at least six and not more than nine members equally balanced between industry and

of office, vacancies and removal from office; the function, composition and reporting structure of the Audit Committee and the Office of Internal Review; the function and composition of the Management Composition Committee; and the Commission's access to and status of officers, directors, employees, books, records and premises of the subsidiaries.

The second part of the Delegation Plan describes the regulatory subsidiary, NASD Regulation, Inc. The Delegation Plan sets forth the delegation of authority to NASDR by the NASD; the purpose, function and authority of NASDR; the composition of and qualifications for members of the Board of Directors from 1997 forward, including provisions relating to election procedures; the function and composition of the National Business Conduct Committee; the Board's procedures for reviewing disciplinary actions, statutory disqualification decisions and proposed rule change recommendations; and the Board's procedures for initiating actions.

The third part of the Delegation Plan describes the stock market operating subsidiary, The Nasdaq Stock Market, Inc. The Delegation Plan sets forth the delegation of authority to Nasdaq; the purpose and function of Nasdaq; the composition of and qualifications for members of the Board of Directors, including, provisions relating to election procedures and the authority of the Board; the Board's procedures for reviewing listing/delisting decisions, and rule change recommendations; the Board's procedures for initiating actions; the functions and composition of the Quality of Markets Committee; and functions of the Stockwatch Department.

2. Statutory Basis for the Proposed Rule Change

The NASD believes that the proposed rule change as further amended by Amendment No. 3 is consistent with the provisions of Section 15A(b)(2) of the Act⁷ in that the terms of the Delegation Plan will provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act,

Non-Industry Committee Members (including at least two Public Committee Members). Two members of the National Nominating Committee are selected by each of the Subsidiaries and the NASD, of which it is anticipated that at least three will be Non-Industry Members.

⁷ 15 U.S.C. 78o-3.

the rules and regulations thereunder, the rules of the Association and the federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change as further amended by Amendment No. 3 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. However, in connection with the publication for member vote of proposed amendments to the By-Laws to implement the Delegation Plan in Notice to Members 95-101 (December 11, 1995), attached as Exhibit 2 to proposed rule change SR-NASD-96-02, the NASD received three comments which were attached as Exhibit 4 to that proposed rule change. The NASD's statement on the comments received with respect to Notice to Members 95-101 is set forth in SR-NASD-96-02 and was published by the Commission in Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996). SR-NASD-96-02 proposed certain of the By-Law amendments issued for member vote in Notice to Members 95-101 (December 11, 1995) in order to permit the reorganization of its Board of Governors consistent with the Delegation Plan submitted in SR-NASD-96-16.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change as further amended by Amendment No. 3 prior to the 30th day after publication in the Federal Register.

IV. Discussion

The Commission finds that the proposed rule change as further amended by Amendment No. 3 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to carry out the purposes of the Act to

comply with, and enforce compliance by its members and associated persons, with the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (with amendments to the NASD By-Laws simultaneously approved in SR-NASD-96-20, as set forth below) to assure a fair representation of the NASD's members, in the selection of its directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these rules and any subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(2) in particular and the Act in general.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries the NASDR and Nasdaq in accordance with the September 1995 recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The Delegation Plan, which is part of this proposed rule change, sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the NASDR and Nasdaq following the reorganization of the NASD. The NASD's Board of Governors, which has been reorganized to be consistent with the proposed rule change, has held meetings to carry out the business of the Association. The subsidiaries also have held meetings of the Board of Directors of NASDR and Nasdaq in order to carry out the business of the subsidiaries during the 90 day period during which the Delegation Plan has been effective.

The proposed rule change, was previously simultaneously published for comment and approved by the Commission on a temporary basis for a period of 120 days in Release 34-37425. The 120 day approval period is scheduled to expire by November 18, 1996. No comment letters concerning the Delegation Plan were received by the Commission. The reorganization of the NASD Board of Governors is also reflected in rule changes to the NASD By-Laws submitted in rule filing SR-NASD-96-20, which also was

previously granted temporary approval for 120 days.⁸ The Commission is extending its temporary approval of that proposed rule change.⁹

Accordingly, the Commission believes that accelerating the approval of the proposed rule change as further amended by Amendment No. 3 will benefit members and the public interest by fully implementing the reorganization of the NASD and its subsidiaries.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 12, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-96-29, as amended by Amendment No. 3, be, and hereby is, approved through May 15, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-29792 Filed 11-20-96; 8:45 am]
BILLING CODE 8010-01-M

⁸ Securities Exchange Act Release No. 37424 (July 11, 1996), 61 FR 37515 (July 18, 1996).

⁹ See Securities Exchange Act Release No. 37956 (November 15, 1996).

¹⁰ 17 CFR 200.30-3(a)(12).

[Release No. 34-37933; File No. SR-Philadep-96-16]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Procedures To Establish a Direct Registration System

November 8, 1996.

On October 16, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-Philadep-96-16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ On October 17, 1996, Philadep filed an amendment to the proposed rule change.² Notice of the proposal was published in the Federal Register on October 30, 1996.³ No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Philadep's proposed rule change will establish (1) a new service called the Direct Registration System ("DRS") and (2) a new category of participants whose use of Philadep's services will be limited to DRS.⁴ DRS permits an investor to hold a security as the registered owner of the security in book-entry form on the books of the issuer rather than (1) indirectly through a financial intermediary that holds the security in street name or in an account with a depository or (2) in the form of a certificate. An investor will have the right at any time to transfer its DRS position from the issuer to a financial intermediary through the facilities of Philadep in order to sell or pledge the security. Alternatively, an investor will have the right at any time to request a certificate.⁵

The transfer agents of issuers interested in participating in Philadep's

¹ 15 U.S.C. § 78e(b)(1) (1988).

² Letter from J. Keith Kessel, Compliance Officer, Philadep, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (October 16, 1996).

³ Securities Exchange Act Release No. 37858 (October 23, 1996), 61 FR 56079.

⁴ For description of The Depository Trust Company's implementation of DRS, refer to Securities Exchange Act Release No. 37931 (November 7, 1996).

⁵ For a complete description of DRS, refer to Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (concept release on a transfer agent operated book-entry registration system) and DTC Important Notice B# 1811-96 (October 7, 1996) and Important Notice B# 1841-96 (October 7, 1996), which are attached as Exhibits A and B to Securities Exchange Act Release No. 37800 (October 9, 1996), 61 FR 54473.

DRS must join Philadep as limited participants. In order for transfer agents to participate in this service, they must have certain electronic interfaces with Philadep, commonly known as fully automated securities transfer ("FAST") interfaces. After a transfer agent has requested that Philadep make an issue DRS eligible, Philadep will add a DRS indicator to its Security Profile On-Line ("SPOL") system to reflect that the issue is DRS eligible and to notify the respective participants accordingly.

To execute any withdrawal/transfer ("WT") activity, participants must supply Philadep with an appropriate code specifying a DRS account or a certificate. Absent the proper code, Philadep will not process these requests. Participants must use indicators to operate the automated WT file (1) to register positions on the books of the issuer, (2) to have a physical certificate issued, (3) to indicate that the submitting broker for the WT request is serving in a correspondent capacity (known as third party transfers) and (4) to reverse the prior DRS transaction.

When a transfer agent completes a WT request for a DRS issue, the transfer agent will return the certificate to Philadep according to the standard procedure for securities shipments. If the investor has requested that his position be held on the books of the issuer through DRS, the transfer agent will establish the position, will mail a transaction advice directly to the investor, and will confirm such activities to Philadep. Philadep will confirm to its participant that the account has been established and will provide the date and the DRS account number to such participant.

In the event that an investor wants to sell a DRS position, the transfer agent will provide the appropriate delivery order ("MDO") instructions and the proper reason code to move the position into the appropriate account at Philadep. If the receiving participant does not recognize the position, it may deliver the position back to the transfer agent's Philadep account. At the end of the processing day, Philadep will reverse the movement and will return all positions. Philadep will produce an activity report for all movements.

II. Discussion

Section 17A(a)(1)(A) of the Act sets forth Congress' findings that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the

protection of investors and persons facilitating transactions by and acting on behalf of investors. Section 17A(b)(3)(F) provides that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁷

Currently, individual investors have the option of either holding a physical certificate or allowing broker-dealers to hold the securities for them in street name. Some investors do not want to hold through a broker-dealer because, among other reasons, of possible delays in receiving correspondences from issuers or because of fees that may be incurred by investors who do not make purchases and sales of securities on a regular basis. However, holding a physical certificate may slow or impede an investor's ability to deliver the security after the sale. By providing individual investors that do not want to have broker-dealers hold their securities for them in street name the option of holding in book-entry form on the books of the issuers and to subsequently have such positions transferred electronically to banks or broker-dealers in connection with the sales or other dispositions of the securities, the Commission believes that Philadep's DRS should help promote efficiencies in the prompt and accurate clearance and settlement of securities transactions and is consistent with Philadep's obligations under Section 17A.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication because accelerated approval will allow Philadep to implement its DRS pilot program on its scheduled date of November 11, 1996.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-Philadep-96-16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

⁷ 15 U.S.C. § 78q-1(a)(3)(F) (1988).
⁸ 17 CFR 200.30-3(a)(12) (1996).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-29716 Filed 11-20-96; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2907; Amendment #1]

Florida; and Contiguous Counties in Georgia; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated November 8, 1996, the above-named Declaration is hereby amended to establish the incident period for this disaster as beginning on October 7, 1996 and continuing through October 22, 1996.

All other information remains the same, i.e., the deadline for filing applications for loans for physical damages is December 14, 1996; and for economic injury the deadline is July 15, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 12, 1996.

Herbert L. Mitchell,
Acting Associate Administrator for Disaster Assistance.
[FR Doc. 96-29702 Filed 11-20-96; 8:45 am]
BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2911; Amendment #1]

New Hampshire; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated November 12, 1996, the above-named Declaration is hereby amended to establish the incident period as beginning October 20, 1996 and continuing through October 26, 1996.

All other information remains the same, i.e., the termination date for filing applications for loans for physical damages may be filed until the close of business on December 28, 1996, and for loans for economic injury until the close of business on July 29, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 14, 1996.

James Rivera,
Acting Associate Administrator for Disaster Assistance.
[FR Doc. 96-29703 Filed 11-20-96; 8:45 am]
BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2896; Amendment #3]

Puerto Rico; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated November 6, 1996, the above-named Declaration is hereby amended to extend the deadline for filing applications for loans for physical damage until November 28, 1996.

All other information remains the same, i.e., the termination date for filing applications for loans for economic injury is June 11, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 12, 1996.

Herbert L. Mitchell,
Acting Associate Administrator for Disaster Assistance.
[FR Doc. 96-29704 Filed 11-20-96; 8:45 am]
BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Advisory Council on Transportation Statistics; Meeting

AGENCY: Advisory Council on Transportation Statistics, Bureau of Transportation Statistics.
ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72-363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Tuesday, December 10, 1996, 10:00 to 4:00 pm. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW, Washington, DC, in conference room 10234 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102-240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366-6946 prior to December 9. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting.

Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366-6946 at least seven days prior to the meeting.

Robert A. Kniesly,
Executive Director, Advisory Council on Transportation Statistics.
[FR Doc. 96-29801 Filed 11-20-96; 8:45 am]
BILLING CODE 4910-FE-P

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an emergency 90-day processing approval from OMB. This voluntary health questionnaire contains information collections which are subject to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). At the agency's request OMB conducted an emergency review of this information collection as provided by 5 CFR 1320.13. The Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60 day notice in the Federal Register concerning each information collection. To comply with this requirement DOT is publishing a notice of the information collection. As it relates to this information collection comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have

practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Comments should be sent to the Office of the Secretary, U.S. Department of Transportation, 400 7th Street, S.W., Washington, DC 20590-0002, Attention: Mr. Richard Cronin. Copies of Indoor Air Quality Medical Questionnaire can be obtained from Mr. Richard Cronin at the address above and telephone number shown below.

DATES: Comments on this notice must be received on or before January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Cronin. Telephone: (202) 366-9424.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Indoor Air Quality Medical Questionnaire.

OMB Control Number: 2105—new.

Type of Request: Emergency processing approval for 90 days.

Affected Entities: 5,500 Occupants of the U.S. Department of Transportation workers in the Nassif Building.

Abstract: The Department of Transportation (DOT) is announcing a 3-year voluntary health questionnaire to conduct surveys to provide medical evaluations of DOT workers in the Nassif Building. Participation is entirely voluntary. Health surveys of the Nassif Building occupants will be conducted to help determine the role that the building conditions play in employees' health. In several weeks, a survey will be conducted to establish a baseline of information. The same survey will be conducted again after the cleaning and repair of the building is complete to further identify the link between employees' symptoms and building conditions. The results of the survey will provide updated data on the status of employees' health as it relates to the Nassif Building.

Estimated Total Burden on Respondents: 1,500 hours.

Issued in Washington, DC, on November 18, 1996.

Phillip A. Leach,
Clearance Officer, United States Department of Transportation.
[FR Doc. 96-29800 Filed 11-20-96; 8:45 am]
BILLING CODE 4910-ES-P

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requests (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for reinstatement, with change, of a previously approved collection for which approval has expired. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice soliciting comments on following collection of information was published on July 12, 1996 (61 FR 36777).

DATES: Comments must be submitted on or before December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Edward Kosek, (202) 366-2590, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

1. Title: Designation of Agent.
Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Control Number: 2127-0040.
Form Number: N/A.

Affected Public: Registered Importers of vehicles or parties with contracts with Registered Importers.

Abstract: This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (foreign manufacturers). Every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States is statutorily required to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of the manufacturer. (49 U.S.C. 30164) These designations are required to be filed with NHTSA.

Need for the Information and Proposed Use: NHTSA needs this information in case it needs to advise a foreign manufacturer of a safety related defect in its products so that the manufacturer can, in turn, notify purchasers and correct the defect. This information also enables NHTSA to serve a foreign manufacturer with all

administrative and judicial processes, notices, orders, decisions and requirements.

Estimate of the Total Annual Reporting Burden: NHTSA estimates the total annual burden is 70 hours.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 18, 1996.

Phillip A. Leach,
Clearance Officer, United States Department of Transportation.

[FR Doc. 96-29799 Filed 11-20-96; 8:45 am]

BILLING CODE 4810-02-P

White House Commission on Aviation Safety and Security; Open Meeting

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of meeting.

SUMMARY: The White House Commission on Aviation Safety and Security will hold a meeting to discuss aviation safety and security issues. Part of the meeting is open to the public, and part is not.

DATES: The open part of the meeting will be held on Wednesday, November 20, 1996, from 1:00 PM to 3:00 PM, unless adjourned earlier; the closed part will be held from 3:00 PM to 4:00 PM.

ADDRESSES: The meeting will take place in the Commerce Department Auditorium, 14th Street, between Constitution and Pennsylvania Avenues, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Room 6210, GSA Headquarters, 18th & F Streets, NW, Washington, DC 20405; telephone 202-501-3863; telecopier 202-501-6160.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), DOT gives notice of a meeting of the White House

Commission on Aviation Safety and Security ("Commission"). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally. The principal purpose of the meeting on November 20 is to take testimony from relatives of persons killed in aviation accidents.

Part of the meeting will be open to the public, the part from 1:00 PM to 3:00 PM. Thereafter, from 3:00 PM to 4:00 PM, the Commission will meet in closed session to receive from the Central Intelligence Agency and the Federal Bureau of Investigation information that is properly classified in the interest of national security; the authority for closing that session of the meeting is Exemption 1 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(1).

Exceptional circumstances exist for providing less than fifteen days' public notice of this meeting, the circumstances being uncertainty of the availability of the Vice President of the United States, Chair of the Commission. It should also be noted that ample notice of this meeting has been given by other means, and therefore the shortness of this notice is not likely to disadvantage anyone.

Limited seating for the public portion of the meeting is available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Mr. Pemberton at the address and telecopier number shown above.

Issued in Washington, DC on November 14, 1996.

Nancy E. McFadden,
General Counsel, Department of Transportation.

[FR Doc. 96-29802 Filed 11-20-96; 8:45 am]

BILLING CODE 4810-02-P

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and Disapprovals. In October 1996, there were 11 applications approved. Additionally, five approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103-272)

and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Volusia, Daytona Beach, Florida.

Application Number: 96-02-C-00-DAB.

Application Type: Impose and use PFC revenue.

PFC Level: \$3.00.

Total Approved Net PFC Revenue in This Decision: \$4,318,671.

Estimated Charge Effective Date: February 1, 2001.

Estimated Charge Expiration Date: February 1, 2005.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Terminal facility.

Decision Date: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Orlando Airports District Office, (407) 648-6586.

Public Agency: City of Boise, Idaho.
Application Number: 96-02-C-00-BOI.

Application Type: Impose and use PFC revenue.

PFC Level: \$3.00.

Total Approved Net PFC Revenue in This Decision: \$9,646,000.

Estimated Charge Effective Date: November 1, 1997.

Estimated Charge Expiration Date: October 1, 2000.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators of public or private charters in aircraft with a seating capacity of 10 or more.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Boise Air Terminal.

Brief Description of Project Approved for Collection and Use: Runway 10L/28R extension, Runway 10R/28L overlay and lighting, Terminal access road improvements.

Decision Date: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra M. Simmons, Seattle Airports District Office, (206) 227-2656.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.
Application Number: 96-02-U-00-RNO.

Application Type: Use PFC revenue.
PFC Level: \$3.00.

Total Approved Net PFC Revenue To Be Used: \$4,200,000.

Charge Effective Date: January 1, 1994.

Estimated Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: May 1, 1999.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for use of PFC Revenue: Snow removal equipment, Taxiway B south extension, Perimeter road extension.

Decision Date: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriguez, San Francisco Airports District Office, (415) 876-2805.

Public Agency: City of El Paso, Texas.
Application Number: 96-01-C-00-ELP.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved Net PFC Revenue: \$40,271,000.

Estimated Charge Effective Date: January 1, 1997.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at El Paso International Airport.

Brief Description of Project Approved for Collection and Use: Terminal renovation project, Reconstruct runway 4/22, Terminal ramp reconstruction, Airfield pavement evaluation study.

Brief Description of Project Approved for Collection: Construct runway 4/22 extension.

Decision Date: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222-5614.

Public Agency: Northwestern Regional Airport Commission, Traverse City, Michigan.

Application Number: 96-01-I-00-TVC.

Application Type: Impose a PFC.
PFC Level: \$3.00.

Total Approved Net PFC Revenue: \$14,846,381.

Estimated Charge Effective Date: January 1, 1997.

Estimated Charge Expiration Date: January 1, 2017.

Classes of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Cherry Capital Airport.

Brief Description of Projects Approved for Collection: Design and construct new airline terminal building, Ramp for new terminal, Taxiway to new terminal.

Decision Date: October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Jon Gilbert, Detroit Airports District Office, (313) 487-7281.

Public Agency: Municipal Airport Authority, Fargo, North Dakota.

Application Number: 96-01-C-00-FAR.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved Net PFC Revenue: \$1,720,410.

Estimated Charge Effective Date: January 1, 1997.

Estimated Charge Expiration Date: February 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Hector International Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire snow removal equipment, Acquire and install snow removal equipment/security vehicle radio system, Construct hangar taxiways, Improve airport security, Install/modify runway intersection and taxiway signs, Refurbish rotating beacon, Construct runway 8/26, stage I, Construct parallel taxiway, stage I, Relocate and extend fence, Construct runway 8/26 and parallel taxiway, stage II, Construct parallel taxiway, stage II, Rehabilitate runway 17/35, Pavement sensors, runways 8/26 and 17/35, Construct runway 8/26, stage III, Construct parallel taxiway, stage III, Install medium intensity taxiway lights, taxiway D, General aviation apron and connecting taxiways, phase I, Vehicle access road, phase I,

Install security fencing,
General aviation apron and connecting
taxiways, phase II,
Vehicle access road, phase II,
Construct general aviation taxilanes,
phase I,
Construct general aviation taxilanes,
phase II,
Rehabilitate runway 13/31,
Rehabilitate taxiway A shoulders,
Surface drainage, runway 17/35,
Construct service road,
PFC development costs.

Brief Description of Project Approved for Collection: Install box culvert in County drain 10.

Decision Date: October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Irene Porter, Bismarck Airports District Office, (701) 250-4385.

Public Agency: Akron Canton Regional Airport Authority Board, Akron, Ohio.

Application Number: 96-02-C-00-CAK.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved Net PFC Revenue in This Decision: \$1,784,490.

Estimated Charge Effective Date: November 1, 1996.

Estimated Charge Expiration Date: October 1, 1999.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Akron-Canton Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition—Kelby,
Land acquisition—Cueto,
Land acquisition—Dailey,
Land acquisition—Central Allied,
Land acquisition—Wilken,
Runway 19 approach clearing and grubbing.

Heavy duty runway snow broom,
Security identification display area positive access control system,
Perimeter security fence and gate,
Design of airfield improvements,
Airfield signage upgrade installation,
Runway 1/19 high intensity runway lighting installation.

Access taxiway overlay to southwest general aviation area,
South apron rehabilitation,
Ground/runup noise study,
Part 150 noise study/master plan update,

High speed rotary snow blower,

Runway 1/19 environmental assessment,
Taxiway C overlay/runway 5/23 joint rehabilitation,
Airfield drainage study/design,
Snow plow truck,
Snow removal tractor,
Passenger lift,
Runway surface condition sensors,
Extended runway safety area grading runway 14,
Stormwater management,
Snow removal equipment maintenance storage facility.

Decision Date: October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Detroit Airports District Office, (313) 487-7293.

Public Agency: City of Dayton, Ohio.
Application Number: 96-03-U-00-DAY.

Application Type: Use PFC revenue.

PFC Level: \$3.00.

Total Approved Net PFC Revenue To Be Used: \$24,363,804.

Charge Effective Date: October 1, 1994.

Estimated Charge Expiration Date: April 1, 2011.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use of PFC Revenue: Central aircraft deicing area.

Decision Date: October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Detroit Airports District Office, (313) 487-7293.

Public Agency: Port of Portland, Portland, Oregon.

Application Number: 96-03-C-00-PDX.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved net PFC Revenue in This Decision: \$55,522,000.

Estimated Charge Effective Date: September 1, 1999.

Estimated Charge Expiration Date: April 1, 2002.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Portland International Airport.

Brief Description of Projects Approved for Collection and Use: Terminal roadway program,

Runway 10R/28L (south) rehabilitation.

Brief Description of Disapproved Project: Federal Inspection Station (FIS) expansion.

Determination: Disapproved. The Port of Portland did not provide adequate documentation of current capacity constraints or future demand which would necessitate an expansion of the FIS facilities. Nor did the Port of Portland provide any information as to why the existing facility was inadequate to meet current and future demand. Therefore, the FAA has determined that the project is not adequately justified and is disapproving the project.

Decision Date: October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227-2660.

Public Agency: Port of Portland, Portland, Oregon.

Application Number: 96-04-U-00-PDX.

Application Type: Use PFC revenue.

PFC Level: \$3.00.

Total Approved net PFC Revenue To Be Used: \$203,000.

Charge Effective Date: November 1, 1994.

Estimated Charge Expiration Date: April 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use of PFC Revenue: Taxiway T NE strengthening.

Decision Date: October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227-2660.

Public Agency: Tulsa International Airports Trust, Tulsa, Oklahoma.

Application Number: 96-03-C-00-TUL.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved Net PFC Revenue in This Decision: \$12,206,000.

Estimated Charge Effective Date: January 1, 1997.

Estimated Charge Expiration Date: August 1, 1999.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Stormwater drainage improvements,
Deicing fluid treatment area,
North sanitary sewer installation,
Public access/perimeter roadway improvements,

Taxiway Juliet rehabilitation and taxiway lighting improvements and airfield surface movement guidance and control system lighting.

Terminal building heating, ventilation, and air conditioning, sewer, and electrical service improvements.

Decision Date: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222-5614.

Public Agency: Blair County Airport Authority, Altoona, Pennsylvania.

Application Number: 96-02-C-00-AOO.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total Approved Net PFC Revenue in This Decision: \$144,620.

Estimated Charge Effective Date: January 1, 1997.

Estimated Charge Expiration Date: December 1, 1999.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Use: Acquire runway protection zone phase I—70± acres, Conduct environmental assessment for runway 12/30 extension.

Brief Description of Projects Approved for Collection and Use:

Prepare PFC application,
Construct of snow removal equipment storage building and electrical vault room with equipment,
Airport roadway and terminal building access improvements,

• Upgrade airfield signage.

High intensity runway lighting system for runway 2/20.

Brief Description of Project Approved for Collection: Construction of deicing pad.

Brief Description of Withdrawn Project: Design runway 12/30 extension.

Determination: This project was withdrawn from the application by the public agency by letter dated August 16, 1996.

Decision Date: October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Harrisburg Airports District Office, (717) 782-4548.

Amendments to PFC Approvals:

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
93-01-02-ALB/95-02-U-01-ALB, Albany, NY	05/12/95	\$40,706,674	\$104,968,211	04/01/05	01/01/23
93-02-C-02-GPT, Gulfport, MS	07/31/96	854,952	598,989	09/01/97	09/01/97
93-01-C-01-MSN, Madison, WI	09/17/95	6,746,000	5,175,000	03/01/98	04/01/97
93-01-C-01-LAN, Lansing, MI	10/01/95	7,355,483	5,225,575	03/01/02	06/01/99
94-02-C-01-DAY, Dayton, OH	10/21/96	23,467,251	34,742,669	10/01/01	03/01/05

Issued in Washington, D.C. on November 12, 1996.

Joseph M. Hebert,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 96-29824 Filed 11-20-96; 8:45 am]
BILLING CODE 4910-12-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Boston Logan International Airport, Boston, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Boston Logan International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 23, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Stephen P. Tocco, CEO/Executive Director, Massachusetts Port Authority at the following address: Massachusetts Port Authority, 10 Park Plaza, Boston, Massachusetts, 02116.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Massachusetts Port Authority under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238-7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Boston Logan International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 18, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Massachusetts Port

Authority was substantially complete within the requirements of § 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than January 18, 1997.

The following is a brief overview of the impose and use application.

PFC Project #: 96-02-C-00-BOS

Level of proposed PFC: \$3.00

Charge effective date: November 1, 1993

Estimated charge expiration date: August 31, 2012

Estimated total net PFC revenue: \$705,128,000

Brief description of project:

Use only Projects;

Residential Sound Insulation
Terminal E Modernization
Reconstruction and Construction of Circulating Roadway

Impose and Use Projects:

Construction of Elevated Walkways

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Massachusetts Port Authority, 10 Park Plaza, Boston, Massachusetts, 02116.

Issued in Burlington, Massachusetts on November 7, 1996.
Bradley A. Davis,
Assistant Manager, Airports Division New England Region.
[FR Doc. 96-29817 Filed 11-20-96; 8:45 am]
BILLING CODE 4910-13-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a

modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 6, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
6971-M	Chem Service, Inc., West Chester, PA (See Footnote 1)	6971
10741-M	Northern Natural Gas Co., West Des Moines, IA (See Footnote 2)	10741
11447-M	Saes Pure Gas, Inc., San Luis Obispo, CA (See Footnote 3)	11447
11506-M	OEA, Inc., Denver, CO (See Footnote 4)	11506
11650-M	Morton International Inc., Ogden, UT (See Footnote 5)	11650
11660-M	Olsen Tuckpointing Co. Rolling Meadows, IL (See Footnote 6)	11660

- (1) To modify exemption to authorize shipment of certain hazardous materials which exceed the quantities authorized under 173.4 and to authorize the return shipment of unused chemicals from customers as essentially non-regulated.
(2) To modify the exemption to provide for additional size non-DOT specification cylinders for use in transporting compressed natural gas.
(3) To modify the exemption to authorize cargo vessel as an additional mode of transportation.
(4) To modify the exemption to provide for additional size non-DOT specification cylinders for use as components of airbags.
(5) To reissue exemption originally issued on an emergency basis to authorize the transportation of non-DOT specification non-refillable cylinders charged with pyrotechnic initiating device classed as igniters, Division 1.4G and modify to remove quantity limitations.
(6) To reissue the exemption originally issued on an emergency basis to authorize the transportation of non-DOT specification cargo tanks containing Class 8 material.

Application	Applicant	Parties to exemption
3549-P	Lawrence Livermore National Laboratory, Livermore, CA	3549
4453-P	Tri-State Motor Transit Co., Joplin, MO	4453
4588-P	EG&G Mound Applied Technologies, Inc., Miamisburg, OH	4588
6658-P	Lawrence Livermore National Laboratory, Livermore, CA	6658
6658-P	EG&G Mound Applied Technologies, Inc., Miamisburg, OH	6658
6670-P	Airgas, Inc.—Cryodyne Division, Chester, CT	6670
7269-P	Lawrence Livermore National Laboratory, Livermore, CA	7269
7269-P	EG&G Mound Applied Technologies, Inc., Miamisburg, OH	7269
8451-P	Westinghouse Savannah River Company, Aiken, SC	8451
8451-P	PyroLabs, Inc., Whitewater, CO	8451
8453-P	Tri-State Motor Transit Co., Joplin, MO	8453
8554-P	Tri-State Motor Transit Co., Joplin, MO	8554
8723-P	Tri-State Motor Transit Co., Joplin, MO	8723
8748-P	Los Alamos National Laboratory, Los Alamos, NM	8748
9723-P	EnviroChem Services, L.C., Orem, UT	9723
9723-P	Eldredge, Inc., West Chester, PA	9723
9769-P	Eldredge, Inc., West Chester, PA	9769
9769-P	Tri-S, Inc., Ellington, CT	9769
9769-P	Allwaste Environmental Services, Inc., San Martin, CA	9769
10001-P	Roberts Oxygen Company, Inc., Rockville, MD	10001
10114-P	Delta Air Lines, Inc., Atlanta, GA	10114
10298-P	Hondu Carib Cargo, Inc., Fairbanks, AK	10298
10441-P	Allwaste Environmental Services, Inc., San Martin, CA	10441
10441-P	Eldredge, Inc., West Chester, PA	10441
10441-P	Tri-S, Inc., Ellington, CT	10441
10441-P	ROMIC Environmental Technologies Corporation, East Palo Alto, CA	10441
10441-P	MSE Environmental, Inc., Camarillo, CA	10441

Application	Applicant	Parties to exemption
10536-P	Lawrence Livermore National Laboratory, Livermore, CA	10536
10594-P	Mountain Environmental, Inc., Dolores, CO	10594
10594-P	AFFTRET, LTD., Clairton, PA	10594
10594-P	Crowley Construction, Inc., Monticello, UT	10594
10594-P	Mountain Region Corporation, Grand Junction, CO	10594
10594-P	OHM Remediation Services Corp., Monticello, UT	10594
10594-P	Wastren-Grand Junction, Grand Junction, CO	10594
10594-P	MACTEC Environmental Restoration Services, LLC, Grand Junction, CO	10594
10789-P	C&L Aqua Professionals, Sulphur, LA	10789
10885-P	Lawrence Livermore National Laboratory, Livermore, CA	10885
10933-P	Lawrence Livermore National Laboratory, Livermore, CA	10933
10933-P	Allwaste Environmental Services, Inc., San Martin, CA	10933
10949-P	Safeway Chemical Transportation, Inc., Wilmington, DE	10949
10949-P	Allwaste Environmental Services, Inc., San Martin, CA	10949
10981-P	Austin Powder Company, Cleveland, OH	10981
10987-P	Scott Specialty Gases, Inc., Plumsteadville, PA	10987
11043-P	Tri-S, Inc., Ellington, CT	11043
11043-P	Allwaste Environmental Services, Inc., San Martin, CA	11043
11153-P	Allwaste Environmental Services, Inc., San Martin, CA	11153
11197-P	Varian Associates, Inc., Palo Alto, CA	11197
11197-P	Rho-Chem, Incorporated, Inglewood, CA	11197
11197-P	Chemical Reclamation Services, Avalon, TX	11197
11197-P	Solvent Recovery Corporation, Kansas City, MO	11197
11207-P	Panhandle Eastern Pipe Line Company, Houston, TX	11207
11207-P	Texas Eastern Transmission Corporation, Houston, TX	11207
11207-P	Trunkline Gas Company, Houston, TX	11207
11207-P	Algonquin Energy, Inc., Boston, MA	11207
11294-P	Allwaste Environmental Services, Inc., San Martin, CA	11294
11298-P	Pollution Control Industries, Inc., East Chicago, IN	11298
11298-P	ROMIC Environmental Technologies Corporation, East Palo Alto, CA	11298
11298-P	MSE Environmental, Inc., Camarillo, CA	11298
11358-P	W. C. Richards Company, Blue Island, IL	11358
11373-P	Callaway Chemical Company, Smyrna, GA	11373
11602-P	Jay Metals, Inc., Lorain, OH	11602
11602-P	J. Kuhl Metals Co., Inc., Harrison, NJ	11602
11602-P	International Extrusion Corporation-Texas, Waxahachie, TX	11602
11602-P	EPP-MAR Metal Company, Evanston, IL	11602
11602-P	Thorock Metals, Inc., Compton, CA	11602
11602-P	Beck Aluminum Corp., Cleveland, OH	11602
11602-P	National Metals, Inc., Leeds, AL	11602
11602-P	Keystone Aluminum, Inc., Mars, PA	11602
11624-P	Allwaste Environmental Services, Inc., San Martin, CA	11624
11624-P	ENSCO, Inc., dba Division Transport, El Dorado, AR	11624
11624-P	Dart Trucking Company, Inc., Canfield, OH	11624
11624-P	MSE Environmental, Inc., Camarillo, CA	11624
11650-P	Morton International—Automotive Safety Products, Brigham City, UT	11650
11666-P	The Carbide/Graphite Group, Inc., Pittsburgh, PA	11666
11753-P	Olin Corporation, Norwalk, CT	11753
11753-P	General Chemical Corporation, Parsippany, NJ	11753

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 14, 1996.

J. Suzanne Hedgespeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96-29744 Filed 11-20-96; 8:45 am]

BILLING CODE 4910-30-M

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is

indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 23, 1996.

ADDRESS COMMENTS TO: Docket Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:
Copies of the application are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW, Washington, DC.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 15, 1996.
J. Suzanne Hodgspeth,
Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11777-N	Morton International, Automotive Safety Products Ogden, UT.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To authorize the transportation in commerce of certain cartridges, power devices classed as Division 1.4S and airbag inflators or airbag modules classed as Division 4.1 or Class 9 exempt from the marking and labeling requirements. (modes 1, 4)
11778-N	National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of the Faint Object Spectrograph, which contains compressed and liquefied gases in non-DOT specification containers. (modes 1, 4)
11779-N	Columbia Helicopters, Inc., Portland, OR.	49 CFR 173.202, 173.24(c)	To authorize the transportation in commerce of gasoline, Class 3, in UL approved non-bulk polyethylene containers in support of log-cutting operation. (mode 1)
11780-N	Hewlett-Packard Co., Washington, DC.	49 CFR 173.304(a)(2), 175.3	To authorize the transportation in commerce of certain x-ray systems containing sulfur hexafluoride, Division 2.2. (modes 1, 2, 3, 4, 5)
11781-N	USA Jet Airlines, Belleville, MI	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of Class 1 explosives that are not permitted for shipment by air or in quantities greater than those prescribed. (mode 4)
11782-N	Aeronex, Inc., San Diego, CA	49 CFR 173.212	To authorize the transportation in commerce of non-specification cylinders constructed of 316L stainless steel for use in transporting a Division 4.2 material. (mode 1)
11786-N	Dow Corning Corp. Midland, MI.	49 CFR 174.67(i) & (j)	To authorize tank cars to remain connected during unloading of various hazardous materials without the physical presence of an unloader. (mode 2)

[FR Doc. 96-29745 Filed 11-20-96; 8:45 am]
BILLING CODE 4910-06-M

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Steptoe & Johnson on behalf of Koch Pipeline Company (WB511-11/8/96), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927-8196.

Vernon A. Williams,
Secretary.

[FR Doc. 96-29776 Filed 11-20-96; 8:45 am]
BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96-79]

Announcement of Suspension of Collection of Special Tonnage Taxes and Light Money Upon Entry Into the United States of Vessels of Ukraine

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces that the United States has determined that the Government of Ukraine has ceased discriminating against vessels of the United States in the collection of certain fees and taxes from such vessels which enter that country. As a consequence, it has become possible to suspend the collection of special tonnage taxes and light money from vessels of Ukraine upon entering United States ports.

EFFECTIVE DATE: The change discussed in this notice became effective on November 14, 1996.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Office of Regulations and Rulings (202) 482-7040.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton denominated "light money", on all foreign vessels which enter United States ports (46 U.S.C. App. 121 and 128). Vessels of a foreign nation may, however, be exempted from the payment of such special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on United States vessels or their cargoes (46 U.S.C. App. 141). The list of nations whose vessels have been found to be reciprocally exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money is found at § 4.22, Customs Regulations (19 CFR 4.22). Nations granted these commercial privileges that subsequently impose discriminatory duties are subject to retaliatory suspension of the commercial privileges (46 U.S.C. App. 141 and 142).

The list of countries in 19 CFR 4.22 is compiled as the result of international agreements between the United States and the governments of those nations listed. Customs either adds or deletes

the names of countries only upon the request of the Department of State. The present list includes the former Union of Soviet Socialist Republics (USSR) and, following the dissolution of that country, Customs was guided by a policy determination of the Department of State which holds that absent a separate agreement to the contrary, the states emerging from the break-up of the USSR take the same rights and obligations as existed for the USSR.

By a letter received on September 16, 1996, Customs was informed by the Department of State that the Government of Ukraine was assessing discriminatory tonnage fees against vessels of the United States which enter at Ukrainian ports. As a consequence, the Department of State requested that action be taken to end the exemption from the assessment of special tonnage taxes and light money extended to Ukrainian vessels entering United States ports. Normally, Customs would be supplied with the names of countries to add to or delete from the regulatory list, but since discussion with other former Soviet states was on-going, it was determined to issue a non-amendatory notice by which to limit the exemption privilege by excluding Ukraine. The Department of State informed Customs that upon the conclusion of necessary discussions, Customs would be formally requested to add the names of certain countries to 19 CFR 4.22, and to delete the USSR from the regulation.

Therefore, effective immediately upon publication of a September 26, 1996, General Notice, vessels of Ukraine entering ports of the United States were no longer exempted from the assessment of special tonnage taxes and light money. Special tonnage taxes and light money in the amounts authorized under law were collected on all such vessels.

Customs has now been informed by the Department of State that appropriate written assurances have been supplied by the Government of Ukraine, indicating that vessels of the United States will be accorded the treatment called for under the Maritime Agreement which expired in December of 1995. Accordingly, it has been requested by the Department of State that for a period of thirty days from the date of notification to the Customs Service, vessels of Ukraine have restored to them the statutory exemption from the collection of special tonnage taxes and light money.

Therefore, effective immediately upon publication of this General Notice, and for a period of thirty calendar days which will expire on December 14, 1996, vessels documented under the laws of Ukraine are exempted from the collection of special tonnage taxes and light money.

Dated: November 15, 1996.
Stuart P. Seidel,
Assistant Commissioner, Office of Regulations and Rulings
[FR Doc. 96-29774 Filed 11-20-96; 8:45 am]
BILLING CODE 4830-03-P

Office of Thrift Supervision

[AC-53; OTS No. 5120]

First Federal Savings Bank of America, Fall River, MA; Approval of Conversion Application

Notice is hereby given that on November 12, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of America, Fall River, Massachusetts, to convert to the

stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 15, 1996.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 96-29720 Filed 11-20-96; 8:45 am]
BILLING CODE 6720-01-M

[AC-52; OTS No. 2997]

Investors Federal Bank and Savings Association, Chillicothe, MO; Approval of Conversion Application

Notice is hereby given that on November 8, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Investors Federal Bank and Savings Association, Chillicothe, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039-2010.

Dated: November 15, 1996.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 96-29719 Filed 11-20-96; 8:45 am]
BILLING CODE 6720-01-M

Federal Register

Thursday
November 21, 1996

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 67

Special Insurance of Third-Class Airman
Medical Certificates to Insulin-Treated
Diabetic Airman Applicants; Policy
Statement; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

(Docket No. 26493)

RIN 2120-AG30

Special Issuance of Third-Class Airman Medical Certificates to Insulin-Treated Diabetic Airman Applicants

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: This document announces the new policy of the Federal Aviation Administration (FAA) regarding individuals with insulin-treated diabetes mellitus (ITDM) who apply for airman medical certification. It also addresses comments received concerning this policy as requested in a December 1994 Federal Register notice. The new policy will permit special issuance of third-class airman medical certificates to certain ITDM individuals who meet selection criteria and who successfully comply with an FAA-approved monitoring protocol.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT:

Tina Lombard, Program Analyst; Aeromedical Standards Branch (AAM-210); Office of Aviation Medicine; Federal Aviation Administration, 800 Independence Avenue, SW.; Washington, DC 20591; telephone (202) 267-9655; telefax (202) 267-5399.

SUPPLEMENTARY INFORMATION:

Background

In late 1994, the FAA published a notice in the Federal Register (59 FR 67246, December 29, 1994) of its intent to consider a policy change concerning ITDM individuals who apply for airman medical certificates. The FAA opened docket no. 26493 and invited comment to it on a medical evaluation and monitoring protocol for possible use as the basis of a policy change that would permit certain insulin-using diabetic individuals to receive special issuance of airman medical certificates. The 90-day comment period on this proposed policy closed on March 29, 1995. This document responds to the comments received from the 1994 notice and to the comments from a 1991 petition of the American Diabetes Association (ADA). This document also states the policy of the Federal Air Surgeon concerning the special issuance of medical certificates to diabetic airman applicants.

Part 67 of Title 14 of the Code of Federal Regulations (CFR) (14 CFR part

67) details the standards for the three classes of airman medical certificate. A first-class medical certificate is required to exercise the privileges of an airline transport pilot certificate, while a second- and third-class medical certificate is required to exercise the privileges of a commercial pilot and private pilot certificate, respectively. An airman applicant who is found to meet the appropriate medical standards, based on medical examination and evaluation of the individual's history and condition, is entitled to a medical certificate without restrictions other than the limit of its duration prescribed in the regulations. Paragraph (a) of §§ 67.113, 67.213, and 67.313 of part 67 sets forth the standards for determining an individual's eligibility for first-, second-, or third-class medical certification based on a medical history or clinical diagnosis of diabetes mellitus. An individual with diabetes using oral hypoglycemic drugs or insulin for control is not eligible for medical certification under these standards.

Under § 67.401, Special Issue of Medical Certificates, the Federal Air Surgeon has the discretion to issue a medical certificate to an individual who does not meet the applicable provisions of subparts B, C, or D of part 67. The Federal Air Surgeon considers relevant factors on a case-by-case basis to determine whether the individual's medical conditions, medication, or other treatment is consistent with aviation safety and will permit special issuance of a medical certificate. The Federal Air Surgeon may authorize a special medical flight test, practical test, or medical evaluation to ensure that the duties authorized by the class of medical certificate applied for can be performed without endangering air commerce during the period in which the certificate would be in force. In determining whether the special issuance of a third-class medical certificate should be made to an applicant, the Federal Air Surgeon considers the freedom of an airman, exercising the privileges of a private pilot certificate, to accept reasonable risks to his or her person and property that are not acceptable in the exercise of commercial or airline transport pilot privileges, and, at the same time, considers the need to protect the public safety of persons and property in other aircraft and on the ground. Special issuance of a medical certificate may impose conditions and limitations on an individual to ensure safety. These conditions may include limiting the duration of a certificate, operational

and/or functional limitations, and the results of subsequent medical evaluations.

In the late 1980's, the FAA began to grant special issuance of medical certificates to individuals who controlled their diabetes with diet and oral hypoglycemic drugs. It has been, however, the long-standing policy of the Federal Air Surgeon not to consider an individual for special issuance of a medical certificate where the individual has a clinical diagnosis of insulin-treated diabetes mellitus.

This policy was based on concerns about the long-term medical risks associated with diabetes, including cardiovascular, neurological, ophthalmological, and renal pathologies. Of even greater concern, especially in the aviation environment, was the immediate risk posed by hypoglycemia or low blood glucose. Every diabetic is at some risk for hypoglycemia which can produce impaired cognitive function, seizures, unconsciousness, and death. Moreover, functional incapacitation associated with hypoglycemia may occur insidiously and may not be recognized by the diabetic or by other observers. Diabetics using insulin are at greater risk for hypoglycemia than those treated by diet or oral hypoglycemic agents.

The FAA has continued to review its policy of not granting special issuance of medical certificates to ITDM individuals. In 1992, the FAA instituted a program to permit, in select cases, ITDM air traffic control specialists (ATCS) to continue their safety-related duties. These ATCS's are individually evaluated and, if appropriate, returned to duty with intensive monitoring under a special medical protocol.

The protocol implemented for ATCS's with ITDM was developed by a panel of distinguished endocrinologists at the request of the Federal Air Surgeon and includes careful evaluation of the individual's medical history, risk stratification, and the efficacy of his or her efforts to control the disease. Those determined acceptable by the FAA to perform air traffic control duties are monitored by frequent blood glucose measurements while on duty. In addition, the blood glucose level is maintained somewhat higher than usual to prevent or reduce the likelihood of incapacitating hypoglycemia. The protocol also requires close supervision and prohibits solo duty.

In February 1991, the ADA petitioned the FAA to amend its policy to permit ITDM individuals to be issued airman medical certificates on a case-by-case basis. The petition was published in the Federal Register (56 FR 10383, March

12, 1991). The ADA further requested the creation of an FAA-appointed medical task force to develop a medical protocol capable of permitting case-by-case review.

In view of its ongoing success with ATCS's, the FAA reviewed its experience and collected data and presented them to the same panel of distinguished endocrinologists for its consideration and recommendations. A new, modified protocol was proposed by the panel for possible use as the basis for a change in the current special issuance policy regarding ITDM airman applicants.

Policy Statements

After careful consideration of the (1) comments to Docket No. 26493, Policy Concerning the Special Issuance of Medical Certificates to Diabetic Airman Applicants; Request for comments; (2) comments to the 1991 petition by the American Diabetes Association (56 FR 10383, March 12, 1991); (3) monitoring experience of the FAA medical waiver program for ATCS's with ITDM; (4) medical advances in the treatment of diabetes; and (5) evaluation of the proposed medical protocol, the Federal Air Surgeon has determined that selected ITDM individuals can be considered for special issuance of an airman medical certificate under the conditions of the evaluation and monitoring protocol with the following restrictions:

(1) ITDM individuals may be issued only a third-class airman medical certificate.

(2) ITDM individuals may exercise only the privileges of a student, recreational, or private pilot certificate.

(3) ITDM individuals are prohibited from operating an aircraft as a required crewmember on any flight outside the airspace of the United States of America.

(4) ITDM individuals are required to be in compliance with the monitoring requirements of the following protocol while exercising the privileges of a third-class airman medical certificate:

I. Initial Evaluation of Individuals With Insulin-Treated Diabetes Mellitus

A. Individuals with ITDM who have no otherwise disqualifying conditions, especially significant diabetes-related complications such as arteriosclerotic coronary or cerebral disease, retinal disease, or chronic renal failure, will be evaluated for special issuance of a third-class medical certificate if they:

1. Have had no recurrent (two or more) hypoglycemic reactions resulting in a loss of consciousness or seizure within the past 5 years. A period of 1

year of demonstrated stability is required following the first episode of hypoglycemia; and

2. Have had no recurrent hypoglycemic reactions requiring intervention by another party within the past 5 years. A period of 1 year of demonstrated stability is required following the first episode of hypoglycemia; and

3. Have had no recurrent hypoglycemic reactions resulting in impaired cognitive function which occurred without warning symptoms within the past 5 years. A period of 1 year of demonstrated stability is required following the first episode of hypoglycemia.

B. In order to provide an adequate basis for an individual medical determination, the person with ITDM seeking special issuance of a medical certificate must submit the following to: Federal Aviation Administration, Civil Aeromedical Institute, AAM-310, 6500 South MacArthur, Oklahoma City, OK 73125.

1. Copies of all medical records concerning the individual's diabetes diagnosis and disease history and copies of all hospital records, if admitted for any diabetes-related cause, including accidents and injuries.

2. Copies of complete reports of any incidents or accidents, particularly involving moving vehicles, whether or not the event resulted in injury or property damage, if due in part or totally to diabetes;

3. Results of a complete medical evaluation by an endocrinologist or other diabetes specialist physician acceptable to the Federal Air Surgeon (hereafter referred to as "specialist"). This report should detail the individual's complete medical history and current medical condition. The report must include a general physical examination and, at a minimum, the following information:

(a) Two measurements of glycated hemoglobin (total A1 or A1C concentration and the laboratory reference normal range), the first at least 90 days prior to the current measurement;

(b) A detailed report of the individual's insulin dosages (including types) and diet utilized for glucose control;

(c) Appropriate examinations and tests to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

(d) Confirmation by an ophthalmologist of the absence of clinically significant eye disease. The eye examination should assess, at a minimum, visual acuity, ocular tension,

and presence of lenticular opacities, if any, and include a careful examination of the retina for evidence of any diabetic retinopathy or macular edema. The presence of microaneurysms, exudates, or other findings of background retinopathy, by themselves, are not sufficient grounds for disqualification unless it prevents the subject from meeting visual standards. However, individuals with active proliferative retinopathy or vitreous hemorrhages will not be considered for special issuance of a medical certificate until the condition has stabilized and this has been confirmed by an ophthalmologist; and

4. Verification by a specialist that the individual has been educated in diabetes and its control and has been thoroughly informed of and understands the monitoring and management procedures for the condition and the actions that should be followed if complications of diabetes, including hypoglycemia, should arise. Such verification should also contain the specialist's evaluation as to whether the individual has the ability and willingness to properly monitor and manage his or her diabetes and whether diabetes will adversely affect his or her ability to safely control an aircraft. The presence or absence of recurrent severe hypoglycemia and hypoglycemia unawareness should be noted. (See I.A. 1., 2. and 3. above.)

C. The ITDM individual applying for special issuance of a medical certificate should have been receiving appropriate insulin treatment for at least 6 months prior to submitting a request for special issuance of a medical certificate.

D. Special medical flight test. If the Federal Air Surgeon determines that there is need for an ITDM applicant to demonstrate his or her ability to comply with the medical protocol, the Federal Air Surgeon, under the provisions of § 67.401, may require a special medical examination and/or medical flight test prior to a determination of the applicant's eligibility for special issuance of a medical certificate.

II. Guidelines for Individuals With ITDM Who Have Been Granted Special Issuance of Airman Medical Certificates

A. Individuals with ITDM who are granted special issuance of third-class airman medical certificates must:

1. Submit to a medical evaluation by a specialist every 3 months. This evaluation must include a general physical examination and a report of glycated hemoglobin (total A1 or A1C) concentration. This evaluation shall also contain an assessment of the

individual's continued ability and willingness to monitor and manage properly his or her diabetes and of whether the individual's diabetes or its complications could reasonably be expected to adversely affect his or her ability to safely control an aircraft.

2. Carry and use a digital whole blood glucose measuring device with memory that is acceptable to the FAA. Provide records of all daily blood glucose measurements for review by the specialist at each 3-month evaluation required above and, if required, to the FAA at any time.

3. Provide to the FAA, on an annual basis, written confirmation by a specialist that the individual's diabetes remains under control and without significant complications and that he or she has demonstrated reasonable accuracy and recordation of his or her blood glucose measurements with the above described device.

4. Provide to the FAA, on an annual basis, confirmation by an ophthalmologist of the absence of clinically significant disease that would prevent the individual from meeting current visual standards.

5. Provide to the FAA, immediately, a written report of any episode of hypoglycemia associated with cognitive impairment, whether or not it resulted in an accident or adverse event.

6. Provide a written report to the FAA, immediately, of involvement in any accidents, including those involving aircraft and motor vehicles, or other significant adverse events, whether or not they are believed related to an episode of hypoglycemia.

7. Provide to the FAA, immediately upon determination by a specialist or other physician, any evidence of loss of diabetes control, significant complications, or inability to manage the diabetes. In such a case, the individual shall cease exercising the privileges of his or her airman certificate until again cleared medically by the FAA.

III. Glucose Management Prior to Flight, During Flight, and Prior to Landing

A. Individuals with ITDM shall maintain appropriate medical supplies for glucose management at all times while preparing for flight and while acting as pilot-in-command (or other flightcrew member). At a minimum, such supplies shall include:

1. An FAA-acceptable whole blood digital glucose monitor with memory;
2. Supplies needed to obtain adequate blood samples and to measure whole blood glucose; and

3. An amount of rapidly absorbable glucose, in 10 gram (gm) portions, appropriate to the potential duration of the flight.

B. All disposable supplies listed above must be within their expiration dates.

C. The individual with ITDM, acting as pilot-in-command or other flightcrew member, shall establish and document a blood glucose concentration equal to or greater than 100 milligrams/deciliter (mg/dl) but not greater than 300 mg/dl within ½ hour prior to takeoff. During flight, the individual with ITDM shall monitor his or her blood glucose concentration at hourly intervals and within ½ hour prior to landing. If a blood glucose concentration range of 100–300 mg/dl is not maintained, the following action shall be taken:

1. Prior to flight. The individual with ITDM shall test and record his or her blood glucose concentration within ½ hour prior to takeoff. If blood glucose measures less than 100 mg/dl, the individual shall ingest an appropriate 10 gm glucose snack (minimum 10 gm) and recheck and document blood glucose concentration after ½ hour. This process shall be repeated until blood glucose concentration is in the 100–300 mg/dl range. If blood glucose concentration measures greater than 300 mg/dl, the individual shall follow his or her regimen of blood glucose control, as provided to the FAA by his or her attending physician, until the measurement of blood glucose concentration permits adherence to this protocol.

2. During flight.

(a) One hour into the flight, at each successive hour of flight, and within ½ hour prior to landing, the individual shall measure and document his or her blood glucose concentration. Listed below are blood glucose concentration ranges and the actions to be taken when they occur during flight:

(1) Less than 100 mg/dl: The individual shall ingest a 20 gm glucose snack and recheck and document his or her blood glucose concentration after 1 hour.

(2) 100–300 mg/dl: The individual may continue his or her flight as planned.

(3) Greater than 300 mg/dl: The individual shall land as soon as practicable at the nearest suitable airport.

(b) The individual, as pilot, is responsible for the safety of the flight and must remain cognizant of those factors that are important in its successful completion. Accordingly, in recognition of such elements as adverse weather, turbulence, air traffic control

changes, or other variables, the individual may decide that a scheduled, hourly measurement of blood glucose concentration during the flight is of lower priority than the need for full, undivided attention to piloting. In such cases, the individual shall ingest a 10 gm glucose snack. One hour after ingesting of this glucose snack, the individual shall measure and document his or her blood glucose concentration. If the individual is unable to perform the measurement of his or her blood glucose concentration for the second consecutive time, the individual shall ingest a 20 gm glucose snack and shall land as soon as practicable at the nearest suitable airport. The individual, under these circumstances, is not required to measure and document his or her blood glucose concentration within ½ hour prior to landing.

3. Prior to landing. Except as noted above, the individual must measure and document his or her blood glucose concentration within ½ hour prior to landing.

Rationale for Policy Statement

The Federal Air Surgeon has found that the medical certification of selected ITDM individuals who agree to comply with the above protocol is appropriate. As noted above, this decision was reached after reexamining the policy concerning ITDM individuals, reviewing the comments received from the 1991 ADA petition and the 1994 diabetes notice, and by evaluating the proposed protocol of the expert panel of endocrinologists. In formulating this new policy, the Federal Air Surgeon also reviewed the success of FAA's program for ATCS's with ITDM and considered the medical and technological advances in the treatment of diabetes.

This protocol requires thorough screening of an ITDM individual's medical history for evidence of hypoglycemic episodes or impaired mentation. Findings from medical studies indicate that such screening should effectively exclude those at significant risk for incapacitation caused by hypoglycemia. In the report of the "Conference on Diabetic Disorders and Commercial Drivers," prepared for the Federal Highway Administration in March 1988, the authors recommended certification for certain ITDM drivers whose history revealed the absence of recurrent hypoglycemia resulting in loss of consciousness or seizure, the absence of development of seizure or coma without antecedent prodromal symptoms, and the absence of recurrent ketoacidosis. In a more recent technical review entitled "Hypoglycemia,"

published in *Diabetes Care*, Volume 17, Number 7, July 1994, Philip E. Cryer, M.D., Joseph N. Fisher, M.D., and Harry Shamoon, M.D., discuss clinical issues and current knowledge related to hypoglycemia. Cited in this review is a study which found that a history of prior severe hypoglycemia is the most powerful predictor of subsequent severe hypoglycemia. Another study discussed in this review presents data which show that ITDM individuals with histories of hypoglycemic unawareness are at about sevenfold increased risk for severe hypoglycemia as opposed to those ITDM individuals who are able to recognize developing hypoglycemia and take action to prevent its progression to severe hypoglycemia. Further data regarding the significance of histories of severe hypoglycemia are contained in a study conducted by the Diabetes Control and Complications Trial (DCGT) Research Group of Bethesda, MD, and reported in *The American Journal of Medicine*, Volume 90, April 1991, entitled "Epidemiology of Severe Hypoglycemia in the Diabetes Control and Complications Trial." This study describes the epidemiology of severe hypoglycemia and identifies patient characteristics or behaviors associated with severe hypoglycemia in patients with insulin-dependent diabetes mellitus. Data obtained from this study indicate that a history of severe hypoglycemia and longer duration of diabetes predicts a higher risk for hypoglycemia. Finally, on May 24, 1990, in testimony before the Subcommittee on Post Office and Civil Service, House of Representatives, Robert Ratner, M.D., Director, Diabetes Center, George Washington University Medical Center, emphasized that "(h)istory provides us with the greatest independent indicator of those individuals at highest risk for this complication (hypoglycemia) of diabetes care, and it does allow exclusion of this group."

The Federal Air Surgeon has found that advancements in the knowledge, treatment, and self-management of diabetes have made certification of ITDM individuals possible under certain circumstances. More efficient techniques for self-monitoring blood glucose, a better understanding of the dietary needs of diabetic individuals, and the improved education level of diabetic individuals result in better control of diabetes, enabling an individual to significantly mitigate the risk of hypoglycemia. The protocol that an ITDM individual must follow, as outlined under this policy, will allow for adequate blood glucose control prior

to and during flight through a comprehensive regimen of blood glucose monitoring and management, thus providing an appropriate level of safety during operation of an aircraft.

In developing this policy, consideration was given to the performance of FAA ATCS's with ITDM in continuing their safety-related duties. This program has been closely monitored since it was instituted in 1991 and has been incident-free since its inception. This record was maintained despite the 40-hour rotating work week required of an ATCS, a significantly longer daily work period of concern for safety than that of a student, recreational, or private pilot who flies for relatively short periods on a daily, weekly, monthly, or occasional basis.

Special issuance of an airman medical certificate to an ITDM individual is restricted by this policy to an applicant for a third-class medical certificate. In determining whether the special issuance of a third-class medical certificate should be made to an applicant, the Federal Air Surgeon, under § 67.401, considers the freedom of an airman, exercising the privileges of a student, recreational, and private pilot certificate, to accept reasonable risks to his or her person and property that are not acceptable in the exercise of commercial or airline transport pilot privileges, and, at the same time, considers the need to protect the safety of persons and property in other aircraft and on the ground.

Discussion of Comments

As noted above, in December 1994, the FAA published a notice requesting comment on a possible policy change concerning ITDM individuals who apply for airman medical certification. The FAA invited comment on a medical evaluation and monitoring protocol for possible use as the basis of a policy change. In addition, it invited comment on whether ITDM individuals should be restricted by class of medical certificate (e.g., only third-class medical certificate), restricted by class of airman certificate (e.g., private pilot, etc.), or restricted by operational limit (e.g., dual pilot operation only or no multiengine aircraft operation). This notice drew a large response from the aviation community, the medical community, members of Congress, and the general public. Over 800 comments were received and placed in the docket.

The FAA received comments on this notice from 93 pilots; 26 medical organizations, including university-affiliated associations and diabetes treatment centers; 150 physicians, including 13 aviation medical

examiners; 2 aviation trade associations; and 541 private individuals and members of Congress.

The ADA, an organization with more than 280,000 members and 800 chapters and affiliates, strongly urged the FAA to end its blanket prohibition of medical certification of ITDM individuals. The ADA urged the implementation of a policy without restriction to class of medical certificate, class of airman certificate, or by operational limitation. The Association endorsed a waiver system with stringent guidelines, such as the guidelines set out for comment by the FAA.

ADA stressed the need for case-by-case review of ITDM individuals. The Association stated that, just as not all nondiabetic persons should be certified, not all individuals with ITDM should be certified. The ADA stated that individuals who are not impacted by diabetic conditions affecting judgment and performance in the cockpit should be considered for medical certification. In their letter of March 2, 1995, they advocated exclusion of ITDM individuals at highest risk for incapacitation (e.g., history of hypoglycemic reaction resulting in unconsciousness, and episode of severe hypoglycemia without warning symptoms, or recurrent severe hypoglycemia). The ADA contended that blood glucose monitoring and the availability of carbohydrates can eliminate the majority of incidents of severe hypoglycemia and substantially reduce the number of episodes of mild hypoglycemia. The Association, a strong advocate of fair and equitable legal and societal standards for persons with diabetes, also contended that FAA's current policy on ITDM airman applicants is inconsistent with FAA's own policy of providing individual evaluation of ATCS's with ITDM.

In February 1991, the ADA petitioned the FAA to amend the special issuance provisions of part 67, or, alternatively, amend the FAA special issuance policy to permit the special issuance of medical certificates to individuals with ITDM on a case-by-case basis. The ADA also requested the creation of an FAA-appointed medical task force to develop a medical protocol to permit case-by-case review. Comments received on the petition totaled 160, most of which supported the special issuance of medical certificates for individuals with ITDM. These comments are similar to those received in response to FAA's notice requesting comments on a proposed policy change (59 FR 672463, December 29, 1994) and are addressed below. That portion of ADA's 1991 petition which requests a rulemaking

amendment of the special issuance section of part 67 was addressed in "Revision of Airman Medical Standards and Certification Procedures and Duration of Medical Certificates; Final Rule," (Docket No. 27940), that was published in the *Federal Register* on March 19, 1996 (61 FR 11238).

Comments were received from 24 state affiliates of the ADA. They unanimously supported a change in FAA policy to individually evaluate ITDM airman applicants. The affiliates emphasized the need for this policy to include stringent medical standards to ensure aviation safety. They stressed that ITDM applicants must meet all the conditions of the proposed medical evaluation and monitoring protocol, with the provision that, if any single condition is not met, no medical certificate should be granted.

The Aircraft Owners and Pilots Association (AOPA) supported a change in FAA policy concerning ITDM individuals, citing the improved education level of ITDM individual, enhanced self-management techniques, and state-of-the-art blood glucose monitoring meters. AOPA pointed to the success of the FAA policy of case-by-case certification of diabetics using oral hypoglycemic agents. AOPA stated that they believe this policy does not compromise safety; and, therefore, it is reasonable to extend this policy to ITDM individuals. AOPA urged that special issuance of medical certificates to ITDM applicants be available for any class of certificate. According to the Association, individuals should be considered based on their medical condition and not on the type of flying activities in which they engage.

The Experimental Aircraft Association (EAA) supported the special issuance of medical certificates to ITDM applicants. EAA supported the protocol which requires tight control of the initial issuance of medical certification after individual evaluation and a continuing program to ensure compliance.

Comments from five FAA aviation medical examiners (AME), all who support a change in policy, urged restriction of medical certification to private pilots. Three of these AME's stated that if the program with those restrictions proved successful, the program should be extended after a period of time to include first- and second-class medical certification. One AME, who is also a pilot, stated that an ITDM individual who is shown to have consistently and methodically maintained blood glucose control would have the self-discipline to follow an approved protocol and the self-

discipline required of a safety conscious pilot.

In general, private individuals supported a change in FAA's policy concerning the special issuance of medical certificates to ITDM airman applicants. Most commenters contended that medical certification of diabetic individuals should be conducted on an individual, case-by-case basis and that only applicants meeting strict eligibility guidelines be considered for medical certification. Many commenters stated that advances in medical knowledge and improved technology make control of blood glucose easier and more effective and, therefore, should allow certain ITDM individuals to be medically certified without compromising aviation safety.

Those individuals who commented on the medical evaluation and monitoring protocol cited it as being appropriately stringent; and they stated that adherence to this protocol should address any safety concerns of the aviation community and the public. The requirement of the protocol to individually assess an ITDM applicant's physical condition, assess his or her medical background and records, and review the ability of the applicant to manage his or her disease was emphasized repeatedly in responses from individual commenters as being appropriate. In addition, most of the comments received from certified diabetes educators, registered dietitians, registered nurses, etc. were in favor of a policy change and echoed the above individual commenters.

There was a divergence of opinion as to the class of airman medical certificate that should be offered under a special issuance, with the majority of individual commenters stating that special issuance should be offered for all classes of airman medical certification. A smaller but significant number of respondents advocated granting special issuance of third-class medical certificates only.

In addition, many individual commenters stated that a requirement for dual pilot operation would be in the interest of safety and would address the issue of hypoglycemic reaction and incapacitation during flight. Opinion was split on whether the requirement for dual pilot operation should apply to all classes of airman medical certificates or only to third-class medical certificates held by private pilots.

In opposition to the policy was the American Association of Clinical Endocrinologists (AACE). AACE opposed any policy change which would permit ITDM individuals to be eligible for medical certification. It

stated that the associated risks of this disease cannot be eliminated and that granting medical certification would pose unnecessary risks to both the patient and the general populace. AACE contended that the physiological effects of flight and the constraints of operating an aircraft decrease the likelihood of proper monitoring and management of blood glucose levels while in flight and increases the risk of impairment or incapacitation of ITDM individuals.

The Endocrine Society also opposed any change of FAA policy regarding ITDM individuals. The Society stated that, if a special issuance of a medical certificate is to be granted, an ITDM individual who has had even one severe hypoglycemic reaction within the last 3 years should not be eligible for issuance of a medical certificate. It further contended that food ingestion should never be permitted in lieu of hourly in-flight glucose testing, that an ITDM individual should have another qualified pilot in the cockpit at all times, and that an ITDM individual should not be allowed to pilot commercial aircraft. The Society pointed to the results of a recent study on the treatment of individuals with ITDM which shows that proper treatment of patients with ITDM requires tighter control of blood glucose levels and leads to an unavoidably higher risk of hypoglycemic reaction. According to the Society, tight control of the blood glucose level of an ITDM individual produces significantly better long term outcome through the reduction of the occurrence of nephropathy, retinopathy, and neuropathy. Therefore, the Society stated, appropriate treatment of ITDM individuals would unavoidably lead to a higher risk of hypoglycemic reaction, which should preclude these patients from obtaining special issuance of a medical certificate.

There was opposition by 17 physicians, one of whom is a pilot, to the proposed change in policy. They stated that the FAA's primary mission is public safety, and the agency should not be pressured to change its policy by special interest groups. In addition to those physicians, eight AME's opposed the policy change.

Many pilots and individual commenters who opposed the policy change stated that the proposed monitoring system is unwieldy and will detract from the pilot's ability to control the aircraft. They considered the proposed guidelines too complex. Some pilots contended that it would be extremely difficult to carry out the proposed monitoring protocol in the best visual flight rules conditions and

that it would be impossible to comply in adverse flight conditions. Concern was expressed regarding the danger of the combined effects of hypoglycemia and hypoxia in flight.

Some of the above commenters also suggested that the implementation of the proposed guidelines relies too heavily on the applicant's objectivity and honesty in assessing his or her medical situation.

The majority of commenters who opposed a policy change stated that controlled diabetics are always in jeopardy of insulin reactions and that the risk of hypoglycemia is not satisfactorily reduced or eliminated by the proposed protocol.

Finally, although the FAA has recently changed its policy to allow medical clearance of ATCS's under some circumstances, many individual commenters pointed out that pilots and ATCS's cannot be compared since ATCS's are subjected to close supervision and prohibited from solo duty.

FAA Response

In its comment, the ADA stressed the need to restrict some ITDM individuals from consideration for special issuance of a medical certificate. It advocated excluding ITDM individuals at risk of hypoglycemia, i.e., "individuals with a history of severe hypoglycemic reactions resulting in the loss of consciousness or seizure, recurrent severe hypoglycemic reactions requiring intervention by another party, or recurrent hypoglycemia without warning symptoms." The panel of endocrinologists who served at the request of the Federal Air Surgeon and whose recommendations were included in FAA's notice of December 29, 1994 (59 FR 6724) also recognized the need to restrict ITDM individuals at risk of hypoglycemia from consideration for special issuance of a medical certificate. The recommendation of the panel proposed restricting consideration of eligibility for special issuance to ITDM individuals who "have had no recurrent (two or more) severe hypoglycemic reactions requiring intervention by another party during the past 3 years and have no current history of hypoglycemia resulting in impaired cognitive function without warning symptoms (hypoglycemia unawareness)."

In its new policy, the FAA developed eligibility criteria to consider only those ITDM individuals who have had no recurrent hypoglycemic reactions resulting in a loss of consciousness or seizure within the past 5 years; had no recurrent hypoglycemic reactions

requiring intervention by another party within the past 5 years; and had no recurrent hypoglycemic reactions resulting in impaired cognitive function which occurred without warning symptoms in the past 5 years. The agency has determined that this 5-year time frame and the requirement for a period of 1 year of demonstrated stability following the first episode of hypoglycemia in each of the above instances provides an adequate basis for a medical determination of the applicant's eligibility. By restricting consideration for special issuance of a medical certificate to those individuals who meet these eligibility criteria, the FAA will ensure that only those individuals at low risk of hypoglycemia are considered under this protocol.

Some individual commenters and pilots stated that the proposed blood glucose monitoring guidelines to be followed during flight are complex, unwieldy, and detract from a pilot's ability to control the aircraft. Under this policy, blood glucose monitoring guidelines to be followed during flight require an individual with ITDM to monitor his or her blood glucose concentration at hourly intervals. An individual may, if he or she is unable to perform an hourly measurement of blood glucose concentration during flight, ingest a 10 gm glucose snack. One hour after ingestion of this glucose snack, an individual must measure his or her blood glucose concentration. If, at this time, the individual is unable to perform the blood glucose measurement, he or she must ingest a 20 gm glucose snack and land as soon as possible. The decision as to the appropriateness of performing a blood glucose test or ingesting a glucose snack at the prescribed test interval will be made by the pilot, taking into consideration all factors pertaining to the safety of his or her flight. Compliance with these monitoring guidelines during flight should not detract from an individual's ability to concentrate on flight operations given that the pilot can make a judgment of the appropriate action to be taken as his or her flight conditions warrant. The FAA also notes that several commenters point out the ease with which a trained ITDM individual can accomplish a glucose determination. One commenter provided a video tape demonstrating his use of a glucometer during actual flight with a safety pilot.

Many pilots commenting on the protocol stated that the blood glucose monitoring system would be extremely difficult to carry out in VFR conditions and would be impossible to comply with in adverse conditions. The FAA

shares the concern of the commenters that aviation safety be maintained at all times and that adherence to this protocol not interfere with the safe operation of an aircraft. However, compliance with these monitoring guidelines during flight allows a pilot, after taking into consideration the existing flight conditions, to determine the appropriateness of performing a blood glucose test or, at the required test interval, ingesting a glucose snack to ensure that an appropriate blood glucose level is maintained. This procedure allows a pilot to comply with the monitoring guidelines while ensuring the safe operation of his or her aircraft.

Some individual commenters stated that special issuance of a medical certificate should be offered for all classes of airman medical certificates. The FAA has determined that special issuance to ITDM individuals will be limited to applicants for third-class airman medical certificates. By restricting ITDM individuals to a third-class medical certificate, the FAA policy allows a student, recreational, or private pilot to accept reasonable risks to his or her person or property that are not acceptable in the exercise of commercial or airline transport pilot privileges.

Many individual commenters compared ITDM air traffic control specialists to ITDM pilots operating under this policy, citing the success of the ATCS program and the willingness of the FAA to consider ITDM ATCS's on a case-by-case basis. These commenters urged the FAA to extend these privileges to ITDM pilots also. Other individual commenters pointed out the dissimilar aspects of the two programs, specifically in that ITDM ATCS's are supervised at all times while on duty. The FAA is aware of the differences between the two programs and has considered the responsibilities and the medical certification and operational requirements of both ITDM ATCS's and ITDM pilots. An ATCS has daily responsibility for public safety through the operation of the air traffic control system. In addition to meeting the conditions of the protocol, the FAA requires that ITDM ATCS's, as do all ATCS's, hold a medical clearance which is equivalent to the second-class airman medical certificate required for commercial pilot privileges. And, as an extra measure of safety, the FAA does not permit solo duty by an ITDM ATCS. In contrast, ITDM pilots would fly infrequently, at their own convenience, and would be responsible primarily for the safe operation of one aircraft. Under this new policy, an ITDM individual may be considered for a third-class

airman medical certificate but be restricted to exercise only the privileges of a student, recreational, or private pilot certificate. The FAA believes that, under this protocol for individuals with ITDM, a further restriction from solo flight is not necessary.

The FAA has closely monitored the ITDM ATCS program, and it has been incident-free since its inception in 1991. This incident-free record has been maintained although an ITDM ATCS works a 40-hour week, often on a rotating schedule, which is a significantly longer period of time than ITDM pilots would operate under the conditions of this protocol. The FAA believes that the success of its ITDM ATCS program is an indicator of the feasibility of its new policy concerning ITDM pilots.

Summary

The FAA has reevaluated the proposed medical evaluation and monitoring protocol for ITDM individuals published in its 1994 Federal Register notice (docket no. 26493). After consideration of all the comments received, the FAA has determined that ITDM individuals following the conditions and requirements of the protocol described above will be able to safely perform their airman duties, thus permitting the special issuance of airman medical certificates to selected ITDM individuals who agree to and are capable of following the FAA-prescribed protocol.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that a review of the ICAO Standards and Recommended Practices and JAR's is not warranted because there are no existing comparable rules, and any waiver under this policy would be limited to the territory of the United States.

Regulatory Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the expected benefits to society outweigh the expected costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that

this policy: (1) would generate benefits exceeding costs; (2) is not "significant" as defined in the Executive Order and DOT's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade.

Cost Benefit Analysis

The FAA expects that this policy will impose additional costs on those insulin-using diabetics who seek special issuance of a third-class medical certificate. While the medical records and examinations required for consideration should be readily available to most applicants, the specific evaluation requirements of the protocol will impose those additional requirement costs for all such applicants. Also, additional costs will be incurred if the applicant is required to undergo a medical flight test prior to final consideration of a waiver request. The FAA intends to require most initial ITDM applicants for student pilot privileges to undergo such testing.

Once an individual has been selected for special issuance under this policy, additional costs will also be incurred in meeting the general conditions of the protocol, as well as the individual conditions, if any, imposed for the term of the special issuance. With the exceptions of the quarterly and annual examinations and reporting by appropriate medical specialists of the applicant's diabetes status to the FAA, the medical requirements of the protocol are already met by many insulin-using diabetics. Frequent daily blood glucose measurements using a digital measuring device are a routine activity for many diabetic individuals that may meet the requirements of the protocol and impose no additional cost. However, the protocol may require some to purchase an approved measuring device (approximately \$150), perform more tests (especially while flying), and purchase additional glucose snacks. The FAA believes that there will be little additional cost beyond that identified above for appropriate blood glucose management prior to and during flight.

The FAA believes that this protocol will not have an adverse impact on safety. The protocol will permit those insulin-using diabetics who voluntarily apply for and who are found eligible for special issuance of a third-class medical certificate the opportunity to exercise pilot privileges in a manner that protects the individuals as well as the public. Additionally, those individuals receiving special issuance under this protocol may benefit from the required

increased disease surveillance. The FAA has no data available from which to estimate the number of individuals who may seek special issuance or the number of special issuances that would be granted and thus cannot estimate the total overall cost of this policy. However, the FAA has determined that the benefits to the individual offered by this policy exceed the additional cost voluntarily undertaken by individual applicants. If an individual considers the cost too great, the applicant will not seek the waiver.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule is expected to have a significant (positive or negative) economic impact on a substantial number of small entities. Based on the standards and thresholds specified in FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that this policy would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This policy does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 does not apply.

International Trade Impact

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. The policy would not have any impact on international trade.

Federalism Implications

The policy herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, October 4, 1993, it is determined that this policy would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, including the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this policy is

not significant under Executive Order 12866, Regulatory Planning and Review, issued October 4, 1993. In addition, the FAA certifies that this policy does not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This policy is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, of May 22, 1980.

The Federal Air Surgeon, for the reasons set out above, has determined that the FAA will consider selected

ITDM individuals for special issuance of a third-class airman medical certificate on a case-by-case basis with the conditions and restrictions set forth in this policy statement. Individuals will be closely monitored to determine the effectiveness of this policy. The performance and medical condition of an ITDM individual will be monitored through the review of medical evaluations, records of daily blood glucose measurements, reports of hypoglycemic episodes, and reports of involvement in any accidents or incidents. The Federal Air Surgeon, at his discretion, may modify or terminate this policy at any time. If substantive change is made to this policy, it will be

published in the Federal Register. Publication of this policy statement disposes of the petition submitted by ADA in 1991.

Individuals interested in applying for special issuance of an airman medical certificate should contact: Federal Aviation Administration, AAM-300, Civil Aeromedical Institute, 6500 South MacArthur, Oklahoma City, OK 73125.

Issued in Washington, DC, on November 5, 1996.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 96-29739 Filed 11-18-96; 10:58 am]

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Thursday
November 21, 1996

Part III

**Department of
Education**

**34 CFR Part 99
Family Educational Rights and Privacy;
Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 99

FIN 1800-AA65

Family Educational Rights and Privacy

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Family Educational Rights and Privacy Act (FERPA). The amendments are needed to implement section 249 of the Improving America's Schools Act of 1994 (IASA) (Pub. L. 103-382, enacted October 20, 1994), to eliminate unnecessary requirements, reduce regulatory burden, and incorporate several technical changes.

EFFECTIVE DATE: These regulations take effect December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 800 Independence Avenue, SW., Washington, DC 20202-4605. Telephone: (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 14, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for 34 CFR part 99 in the Federal Register (61 FR 10664-10669). The preamble to the NPRM included a summary and discussion of the 1994 amendments and other major issues that were addressed in the proposed regulations.

These regulations have been reviewed and revised in accordance with the Department's "Principles for Regulating," which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review and are essential to an effective partnership with States and localities. The Secretary amends these regulations because he believes they are necessary to implement the law and give the greatest flexibility to educational agencies and institutions. In addition, the regulations minimize burden while protecting parents' and students' rights.

The final regulations include changes made to the statute by the Improving America's Schools Act of 1994 (IASA). The IASA amended FERPA so that State

educational agencies are required to afford parents access to education records they maintain. The IASA also amended FERPA to permit nonconsensual disclosures of education records to officials in the State juvenile justice system as permitted by State law and, in certain circumstances, to permit the nonconsensual disclosure of information regarding disciplinary action taken against a student for behavior that posed a significant risk to the student or others.

Additionally, these regulations reflect the Department's effort to reduce unnecessary regulatory burdens. In this regard, the Department is removing the nonstatutory requirement that schools adopt a formal written student records policy. Instead, schools will now be required to include additional information in the annual notification of rights, which is required by statute, to ensure that parents are effectively notified of their rights and how to pursue them.

In reviewing the NPRM with respect to the issue of disclosing education records without consent pursuant to subpoenas and court orders, the Secretary has concluded that the language in this provision of the regulations should be revised to highlight that notification to the parent or eligible student of a subpoena or judicial order allows the parent or student the opportunity to seek protective action to prevent redisclosures. Also, the Secretary clarifies that if an educational agency or institution initiates legal action against a parent or student, the records that can be disclosed are those records of that student that are relevant to the action. These additions are not intended to change the meaning of the regulatory requirements as published in the NPRM, but are merely a clarification of the Department's position on this issue. Changes made in response to the public comments on the NPRM are discussed in the following section.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, twenty-eight (28) parties submitted comments on the proposed regulations. An analysis of the public comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain. Suggested changes and comments outside the scope of the NPRM are not addressed because the Secretary lacks the statutory authority to make the changes.

Annual Notification of Rights (§ 99.7)

Comments: Seven commenters submitted letters in support of the proposal to remove the requirement that educational agencies and institutions adopt student records policies. One commenter stated that the proposed change would not only lessen the burden on schools, but would facilitate communication between the schools and parents or eligible students. This commenter further stated that the cost associated with the change would not be significant because the school district updates its notices regardless of statutory requirements. Another commenter, representing a State educational agency (SEA), stated that the proposed changes would "be of benefit to parents." Another commenter representing a large public university stated that "the flexibility offered by not requiring having such a [student records] policy is a laudable goal * * *. A move toward that type of freedom is a positive one."

Six commenters opposed the proposed change. One commenter stated that the current requirements are not burdensome. Two commenters noted that the policy is helpful in educating school officials about FERPA requirements and that the change in the requirements would be burdensome on schools because they would incur costs to publish a longer notification.

Discussion: The Secretary's purpose in removing the requirement that schools maintain a policy is twofold. Specifically, the Secretary believes that this change will help to ensure that parents and eligible students receive more effective notification of their rights under the law, including how to pursue those rights. Second, the Secretary hopes that the change will afford educational agencies and institutions greater flexibility by removing requirements that are not necessary to implement the law.

With respect to those commenters who noted that the student records policy is helpful in educating school officials about FERPA, the removal of the requirement that educational agencies or institutions adopt a formal student records policy does not prevent schools from maintaining a policy. The Department will continue to update and make available a sample model student records policy for any educational agencies and institutions that want to have a policy.

While the Secretary encourages educational agencies and institutions to develop and utilize student records policies, he also recognizes that the statute does not require that schools

have these policies. Because of this regulatory requirement, the Department has had to investigate complaints alleging that the contents of schools' student records policies did not meet the regulatory requirements. Often, the Department found that the policies did not comply.

The removal of the requirement to adopt a written policy aligns the FERPA regulations more closely to the statute and gives educational agencies and institutions flexibility regarding the content of their student records policies. In addition, the amount of Department resources spent on investigating complaints alleging violations of regulatory requirements that are not based on statutory requirements will be reduced.

In response to those comments that expressed concern regarding the burden and cost of publishing additional information in an annual notification, the Secretary has again reviewed the regulations. The Secretary has determined that some of the information proposed to be included in the annual notification is not necessary to meet the statutory requirement. In particular, the Secretary has removed the requirement that the notice list FERPA's exceptions to the prior written consent provision. In addition, the Secretary will not require that the annual notification specify the procedures for a hearing under FERPA's amendment provision, as long as schools provide this information to parents and eligible students seeking to amend education records. Lastly, the Secretary will not require the annual notification to include a reference to directory information.

The Department has created a model annual notification that is not significantly longer than the previous annual notification. The model is available from the address listed in the FOR FURTHER INFORMATION CONTACT section of these regulations and is published as an appendix to these regulations. The model is less than two 8½" by 11" pages in length (single-spaced), minimizing any additional burden on an institution. As noted in the NPRM, the Secretary will allow educational agencies and institutions up to three years to transfer from the current policy requirements and to implement the new requirements concerning an annual notification.

Changes: The Secretary has removed proposed § 99.7(a)(3)(ii) (B) and (C), § 99.7(a)(3)(iii), and § 99.7(a)(3)(v). The remaining provisions have been renumbered accordingly.

Effective Notification

Comment: One commenter requested that the regulations specify what would be acceptable notification to individuals with disabilities or those with limited English proficiency.

Discussion: The Secretary believes that each school is best able to determine what would constitute notice that would be reasonably likely to inform parents and eligible students whom it serves. The regulations give schools flexibility to determine how to effectively notify individuals with disabilities and those who have a primary or home language other than English. Schools must provide notice consistent with applicable civil rights laws. Effectively notifying individuals with disabilities may include, for example, providing notice in alternative formats such as audiotape, braille, computer diskette, or large print, as appropriate. Ideally, schools would consult with parents and eligible students in determining how best to provide them with notice.

Changes: None.

Annual Requirement

Comment: One commenter questioned the requirement that an educational agency or institution provide the notification annually. This commenter suggested that notification be made once, when a student first enters the school.

Discussion: The Secretary believes that requiring an annual notification that is reasonably likely to inform parents and eligible students of their rights strikes the proper balance between placing minimal requirements on educational agencies and institutions and ensuring that parents and students are effectively informed of their rights. The Department does not require schools to individually notify parents or eligible students of their rights, but only that they give notice that is reasonably likely to inform the parents and students of their rights.

Changes: None.

Right To Inspect and Review Education Records (Section 99.10)

Comments: Eleven SEAs submitted comments on the NPRM. Most commenters agreed that the Secretary's proposed requirement that access be provided within 45 days is reasonable. One commenter, while generally in favor of the proposed changes, stated that the 45-day time period was too long.

Discussion: Because most comments the Department received stated that the 45-day requirement is reasonable and

the statute requires that LEAs respond to requests for access within 45 days, the Secretary believes that making the response time consistent with the statutory requirement for LEAs will be less confusing to parents, students, and school officials.

Changes: None.

Costs Associated With Making Records Available

Comments: One commenter stated that SEAs would incur significant costs producing records for review.

Discussion: The Secretary recognizes that there may be some personnel and resource costs associated with affording access to records. However, § 99.11 of subpart B of the FERPA regulations allows SEAs to charge a fee for a copy of education records that is made for a parent or eligible student. This fee would cover most of the nominal costs associated with making records available to parents and eligible students.

Changes: None.

Duplicate Records

Comments: Two commenters suggested that SEAs should not be required to provide access to records that are duplicates of records maintained by an LEA.

Discussion: The requirement that SEAs provide access to education records is statutory. Congress did not make an exception for duplicate records. There is, therefore, no authority for the Department to limit a parent's or eligible student's right to access records maintained by an SEA, even if the records are duplicates of those records maintained by an LEA.

Changes: None.

Prior Consent Provisions

Comments: Three commenters contended that FERPA's provisions requiring the consent of the parent or eligible student prior to disclosure of education records also should apply to records maintained by SEAs, notwithstanding the source of the records.

Discussion: Congress only requires that SEAs comply with the access provisions of FERPA. SEAs are not required to comply with any of the other provisions of FERPA, such as the written consent requirement or the notification requirement. Accordingly, the Secretary has no authority to require SEAs to comply with FERPA's prior consent provisions.

Changes: None.

SEAs and Annual Notification

Comments: Several commenters representing SEAs asked if the annual

notification requirement applies to SEAs and if state-wide notification is required.

Discussion: As discussed in the preamble to the NPRM, FERPA does not apply to SEAs in general. Rather, the only provision in FERPA that applies to SEAs directly is the requirement that SEAs provide parents and eligible students access to education records when so requested. Accordingly, FERPA's notification requirement does not apply to an SEA, unless the SEA is an educational agency or institution under § 99.1 of this part.

Changes: None.

Foster Parents

Comments: One commenter was concerned that there was no proposed provision addressing the rights of a foster parent to inspect and review education records at an SEA.

Discussion: The regulations already define the term parent in § 99.3 to include "a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." Thus, foster parents who are acting as a child's parent would have the rights afforded parents under FERPA with respect to that child's education records.

Changes: None.

Prior Consent Not Required for Disclosures Pursuant to Court Orders and Lawfully Issued Subpoenas (Section 99.31) Subpoenas of Other Issuing Agencies

Comments: Three commenters noted that the NPRM omitted statutory language that allows an educational institution to release education records without notifying the student when an agency (other than a court) issues a subpoena for a law enforcement purpose.

Discussion: The words "or other issuing agency" were inadvertently excluded from the NPRM. The Department did not intend to limit the application of this provision and has corrected the regulations to reflect the statutory language.

Change: The words "or other issuing agency" have been added to § 99.31(a)(9)(ii)(B).

Implied Waiver of the Right To Consent

Comments: Three commenters requested that the Secretary include regulations allowing an educational agency or institution to assume an implied waiver of the right to consent to the disclosure of education records to respond to a lawsuit filed by a parent or student against the agency or institution.

Discussion: While FERPA does not directly address this issue, the Department interprets FERPA to allow an educational agency or institution to infer the parent's or student's implied waiver of the right to consent to the disclosure of information from the student's education records if the parent or student has sued the institution. The Secretary believes this interpretation is sound because an educational agency or institution must be able to defend itself if a parent or student has initiated legal action against the agency or institution. This interpretation, however, does not place a requirement on educational agencies or institutions, and thus it is not included in the regulations.

Changes: None.

Disclosure of Information from Disciplinary Records (Section 99.36)

Comment: One commenter asked if an educational agency or institution may include information regarding disciplinary actions taken against a student other than those for conduct that posed a significant risk to the health or safety of the student or others in a student's education records.

Discussion: Neither FERPA nor the regulations prevent an educational agency or institution from maintaining any type of education records that an agency or institution has deemed necessary or appropriate to maintain. The new statutory provision, upon which the new regulatory provision is based, merely clarifies that nothing in FERPA prevents schools from maintaining, and disclosing under certain circumstances, specific information regarding disciplinary action taken against students.

Changes: None.

Health or Safety Emergency Exception

Comments: One commenter suggested that the new provision regarding disciplinary records be placed in its own section of the regulations, stating that Congress did not include this provision under the health or safety emergency exception to FERPA's prior written consent provision.

Discussion: The new provision governs disclosure of information about a student's behavior that poses significant risk to that student or other individuals. This new provision is closely related to, and logically follows, the existing health or safety exception to the prior written consent provision. The placement of the new provision in the same subpart with the previous health or safety emergency exception does not collapse the two provisions.

Changes: None.

Obligation To Disclose Information

Comments: A couple of commenters asked whether the FERPA provision permitting the disclosure of information concerning disciplinary action taken against a student for behavior that posed a significant risk to that student or other individuals creates a legal obligation to disclose this information, which would make educational agencies and institutions liable if this information were not disclosed.

Discussion: These regulations do not require the disclosure of any information from education records, except to the extent that the regulations afford parents and eligible students the right to access education records. Accordingly, the regulations do not create a legal obligation to disclose information from a student's disciplinary records under FERPA. Rather, the regulations give individual schools the discretion to determine the circumstances under which it is appropriate to disclose information.

Changes: None.

Behavior That Poses a Significant Risk

Comments: Some commenters suggested that the Department should clarify what behavior would constitute "behavior that posed a significant risk" and pointed out that a particular behavior at one institution may be deemed acceptable, and at another be considered putting the individual or others at "significant risk."

Discussion: The Secretary believes that defining a single standard of what constitutes behavior that posed a significant risk would restrict educational agencies and institutions from determining what is appropriate based on specific circumstances found at individual schools.

Change: None.

Transfer of Student Education Records

Comments: Three commenters suggested permitting nonconsensual disclosure of information concerning disciplinary action taken against a student for behavior that posed a significant risk to that student or other individuals if the student has transferred to another school.

Discussion: FERPA has always permitted, under § 99.31(a)(2), nonconsensual disclosure of this information (and other education records) in situations where students are seeking or intending to enroll in another educational agency or institution. If a student has been enrolled in the new institution for a period of time, the Secretary interprets § 99.31(a)(2) to permit educational agencies and

institutions to send corrected education records, or additional education records, to the new institution (if it has already sent education records under this exception) as part of an original disclosure.

Change: None.

Students With Disabilities

Comment: One commenter asked if the new provision permitting nonconsensual disclosure of information concerning disciplinary action applies to students with disabilities.

Discussion: FERPA applies to all education records equally, and does not distinguish between the records of students with disabilities and the records of other students. Moreover, the Secretary believes that individual educational agencies and institutions are in the best position to determine what information should be released in a particular situation. However, if a complaint is filed, the Department, through the Family Policy Compliance Office, would investigate the complaint and make a final determination whether FERPA had been violated.

Changes: None.

Disclosure of Information Concerning Juvenile Justice System (Section 99.38)

Comment: None.

Discussion: The Secretary believes that each school, working in conjunction with State and local authorities, can best determine whether a release of personally identifiable information from an education record "concerns the juvenile justice system's ability to effectively serve a student prior to adjudication." Thus, the regulations give schools flexibility in determining whether an education record of a juvenile may be released without the prior written consent of the parent.

Executive Order 12866

Assessment of Costs and Benefits

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the preamble to the NPRM published on

March 14, 1996. This discussion appeared under the heading *Paperwork Reduction Act of 1995* (61 FR 10666).

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes*.

Paperwork Reduction Act of 1995

Sections 99.7 and 99.32 contain information collection requirements and have been approved by OMB under control number 1880-0508. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Privacy, Parents, Records, Reporting and recordkeeping requirements, Students.

Dated: September 18, 1996.

Richard W. Riley,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Part 99 of Title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.1 is amended by removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and by revising paragraph (a) to read as follows:

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if—

- (1) The educational institution provides educational services or instruction, or both, to students; or
- (2) The educational agency provides administrative control of or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.

§ 99.2 [Amended]

3. Section 99.2 is amended by removing the number "438" and adding, in its place, the number "444".

4. Section 99.3 is amended by removing in the definition of "Act" the number "438" and adding, in its place, the number "444" and by revising the definitions of "Disclosure" and "Record" to read as follows:

§ 99.3 What definitions apply to these regulations?

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

§ 99.6 [Removed and reserved]

5. Section 99.6 is removed and reserved.

6. Section 99.7 is revised to read as follows:

§ 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to—

- (i) Inspect and review the student's education records;
- (ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- (iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and
- (iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.

(3) The notice must include all of the following:

- (i) The procedure for exercising the right to inspect and review education records.
- (ii) The procedure for requesting amendment of records under § 99.20.
- (iii) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

(Approved by the Office of Management and Budget under control number 1880-0508) (Authority: 20 U.S.C. 1232g (e) and (f)).

7. Section 99.10 is amended by adding ", or SEA or its component" following the word "institution" in paragraphs (c) and (e) and by revising paragraphs (a), (b), and (d), and the authority citation to read as follows:

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to—

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall—

- (1) Provide the parent or eligible student with a copy of the records requested; or
- (2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

§ 99.12 [Amended]

8. Section 99.12 is amended by removing in paragraph (a) the commas after "inspect" and after "review" and by adding after the word "inspect" the word "and" and by revising the authority citation to read as follows:

(Authority: 20 U.S.C. 1232g(a)(1) (A), (B), (C), and (D))

§ 99.20 [Amended]

9. Section 99.20 is amended by removing in paragraph (a) the words "or other rights".

§ 99.21 [Amended]

10. Section 99.21 is amended by removing in paragraphs (a), (b)(1), introductory text, and (b)(2) the words "or other".

11. Section 99.31 is amended by redesignating paragraph (a)(6)(iii) as paragraph (a)(6)(iv), by adding a new paragraph (a)(6)(iii) and by revising paragraphs (a)(5)(i) and (a)(9) and the authority citation to read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically—

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

(6) * * *

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with—

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii) If the educational agency or institution initiates legal action against a parent or student and has complied with paragraph (a)(9)(ii) of this section, it may disclose the student's education records that are relevant to the action to the court without a court order or subpoena.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (c)(2), (b)(4)(B), and (f)).

12. Section 99.32 is amended by removing the word "or" following paragraph (d)(3), replacing the period at

the end of paragraph (d)(4) with a semicolon and adding the word "or" after the semicolon, adding a new paragraph (d)(5), and revising the authority citation to read as follows:

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(d) * * *

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880-0508) (Authority: 20 U.S.C. 1232g(b)(1) and (b)(4)(A))

13. Section 99.33 is amended by revising paragraphs (c) and (d) and by adding a new paragraph (e) to read as follows:

§ 99.33 What limitations apply to the redisclosure of information?

(c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), or to disclosures to a parent or student under § 99.31(a)(12).

(d) Except for disclosures under § 99.31(a)(9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of § 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

§ 99.34 [Amended]

14. Section 99.34(a)(1)(ii) is amended by removing the word "policy" and adding, in its place, the words "annual notification".

15. Section 99.36 is amended by revising paragraph (b), adding paragraph (c) and revising the authority citation to read as follows:

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(b) Nothing in this Act or this part shall prevent an educational agency or institution from—

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))

16. A new § 99.38 is added to subpart D to read as follows:

§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

§ 99.63 [Amended]

17. Section 99.63 is amended by removing the word "person" and adding, in its place, the words "parent or eligible student".

Appendix

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Model Notification of Rights Under FERPA for Elementary and Secondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the District receives a request for access.

Parents or eligible students should submit to the school principal (or appropriate school official) a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

(2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading.

Parents or eligible students may ask Alpha School District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. (Note: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.)

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-4605 (Note: In addition, a school may want to include its directory information public

notice, as required by § 99.37 of the regulations, with its annual notification of rights under FERPA.]

Model Notification of Rights Under FERPA for Postsecondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the University receives a request for access.

Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. The University official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

(2) The right to request the amendment of the student's education records that the student believes are inaccurate or misleading.

Students may ask the University to amend a record that they believe is inaccurate or misleading. They should write the University official responsible for the record, clearly

identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the University decides not to amend the record as requested by the student, the University will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the University discloses education records without consent to officials of another school, upon request, in which a student seeks or intends to enroll. [Note: FERPA requires an institution to make a reasonable attempt to notify the student of the records request unless the institution states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by State University to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC, 20202-4605

[Note: In addition, an institution may want to include its directory information public notice, as required by § 99.37 of the regulations, with its annual notification of rights under FERPA.]

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federal register

Part IV

The President

Proclamation 6956—National Family Week, 1996

Presidential Documents

Title 3—

The President

Proclamation 6956 of November 19, 1996

National Family Week, 1996

By the President of the United States of America

A Proclamation

Our families are among the great blessings we acknowledge each year at Thanksgiving.

The influence of the family is profound. Families provide essential nurturing and unconditional love; share their values, wisdom, and religious convictions; and give their members the hope and self-confidence they need to succeed. They form the foundation from which our Nation draws its strength and upon which we build our national character.

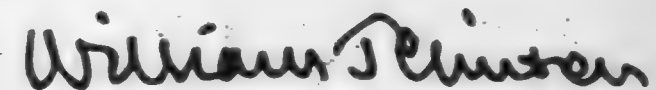
If our country is to succeed in the 21st century and beyond, we must commit ourselves now to ensuring the health and well-being of the American family. Parents, educators, business, religious, and community leaders must work together to strengthen our Nation's families. Government policies at the Federal, State, and local levels must support families with compassion and a willingness to give all Americans the tools they need to make the most of their own lives.

We must create economic opportunity so that hardworking parents can provide for their children and succeed both at work and at home. We must give our families safe neighborhoods in which to grow, free from guns and gangs, drugs and violence. We must reinforce parents' efforts to set a good example by helping to protect their children from the corrosive influences of alcohol and tobacco and to limit their exposure to explicit sexuality and violence in the entertainment media.

In doing so, we will reaffirm the vital lessons of love, responsibility, and compassion that so many of us have been fortunate to learn in our own families, and ensure that those lessons are passed on to the generations to come.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 24 through November 30, 1996, as National Family Week. I call upon all Americans to celebrate our Nation's families with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.



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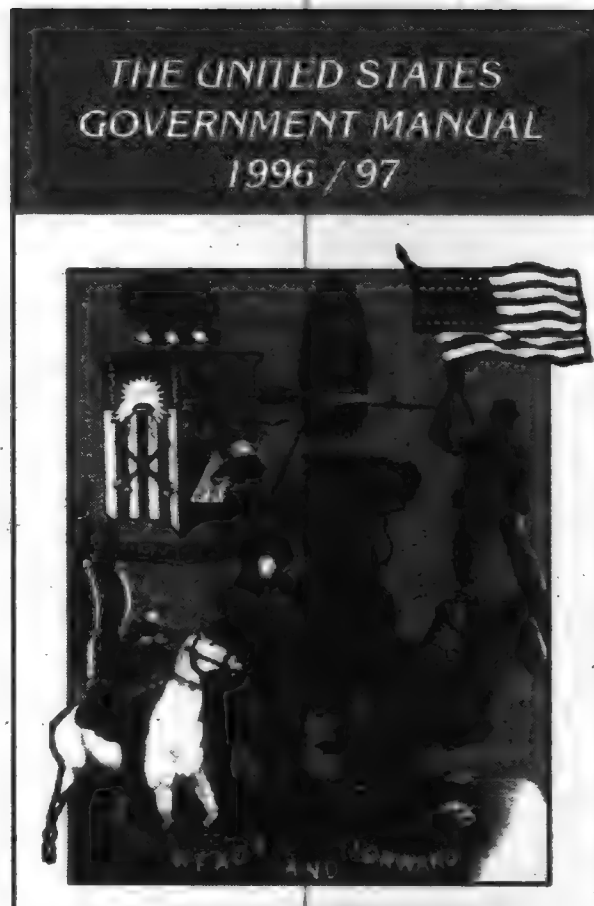
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Additional information, including a list of public laws,
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Free Electronic Bulletin Board service for Public Law
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documents on public inspection is available on 202-275-
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The President

Presidential Determination No. 97-5 of November 20, 1996

Findings with Respect to the Trade Agreement With Turkmenistan

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I have determined that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by Turkmenistan. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and Turkmenistan.

You are authorized and directed to publish this memorandum in the Federal Register.

William Clinton

THE WHITE HOUSE,
Washington, November 20, 1996.

[FR Doc. 96-30064
Filed 11-21-96; 8:45 am]
Billing code 3190-01-P

Rules and Regulations

Federal Register

Vol. 61, No. 227

Friday, November 22, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

8 CFR Part 3

28 CFR Part 0

(EOIR No. 116F; AG Order No. 2002-06)

RIN-1125-AA17

Executive Office for Immigration Review; Board of Immigration Appeals; Board Members

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule expands the Board of Immigration Appeals (Board) to fifteen permanent members, including fourteen Board Members and a Chairman. This expansion is necessary because of the Board's increasing caseload. In order to maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members.

EFFECTIVE DATE: This final rule is effective November 22, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305-0470.

SUPPLEMENTARY INFORMATION: This final rule provides for an expansion of the Board of Immigration Appeals to a fifteen-member permanent Board. This expansion is necessary because of the Board's increasing caseload. To maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members. This change will allow the Board to sit in five permanent member panels of three. In addition, this change will further enhance effective, efficient adjudication while providing for an *en banc* review in appropriate cases. This rule amends 8

CFR part 3 and 28 CFR part 0 to reflect the new fifteen member Board.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency procedure and practice.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12886

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12886, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

For the reasons set forth in the preamble, part 3 of title 8 of the Code of Federal Regulations and part 0 of title 28 of the Code of Federal Regulations are amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 506, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002.

Subpart A—Board of Immigration Appeals

§ 3.1 [Amended]

2. In § 3.1, paragraph (a)(1) is amended by removing the word "eleven" in the second sentence and adding in its place the word "fourteen."

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

3. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 506, 510, 515-519.

Subpart U—Executive Office for Immigration Review

§ 0.116 [Amended]

4. Section 0.116 is amended by removing the word "eleven" in the first sentence and adding in its place the word "fourteen."

Dated: November 14, 1996.

Janet Reno,

Attorney General.

(FR Doc. 96-29699 Filed 11-21-96; 8:45 am)
BILLING CODE 4410-16-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Interim final rule with request for comments and Interpretive Ruling and Policy Statement 96-2 (IRPS 96-2).

SUMMARY: The purpose of this interim Interpretive Ruling and Policy Statement is to permit federal credit unions to restructure their fields of membership consistent with the recent Court of Appeals decision ("the Decision") and District Court order ("the Order") limiting federal credit unions' ability to serve eligible credit union members and new select groups. NCUA recognizes that this interim policy will not provide complete relief to all multiple group federal credit unions, since any interim policy must meet the requirements set forth in the Decision and the Order. Similarly, this interim policy does not assist

individuals who wish to obtain, but do not currently have, access to federal credit unions as a result of the Decision. This interim policy is intended to provide limited and temporary relief until the legal issues with respect to the Decision are finally resolved. NCUA is also issuing a final amendment to update its rules entitled "Organization and Operations of Federal Credit Unions."

DATES: The interim rule is effective November 14, 1996. Comments must be received on or before February 1, 1997. **ADDRESSES:** Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518-6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759, or telephone (512) 795-0999; Stephen E. Austin, Director of Supervision, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia, or telephone (703) 518-6360; Lynn K. McLaughlin, Program Officer, at the above address and telephone number; Michael J. McKenna, Acting Associate General Counsel, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION: In 1982, safety and soundness concerns prompted the NCUA Board to revise chartering policy consistent with the Federal Credit Union Act to permit the combination of multiple groups with unlike common bonds. Such combinations could be accomplished through the chartering process, amendment of the charter, or by way of merger to form a single credit union. Another primary reason for the policy change was to provide small groups of people who did not have the resources to charter their own credit unions access to credit union service.

In *First National Bank and Trust Co., et al. v. NCUA*, the U.S. Court of Appeals for the District of Columbia Circuit invalidated certain select group additions to the field of membership of a North Carolina credit union ("the Decision"). In the context of that case, the Court ruled that groups with unlike common bonds could not be joined to form a single credit union. Furthermore, in the consolidated cases of *First*

National Bank and Trust Co., et al. v. NCUA and the *American Bankers Association v. NCUA, et al.*, the District Judge issued a nationwide injunction ordering that federal credit unions are immediately barred from adding select groups without the same common bond to their fields of membership ("the Order"). The District Court further ordered that federal credit unions are prohibited from adding any new members to select groups which were added pursuant to the multiple group policy. The Order adversely impacts approximately 158,000 select groups in 3,586 multiple group federal credit unions. NCUA has analyzed the impact of the Order and has determined that it has created and will continue to create disruption in the operations of credit unions. Equally important, a significant number of persons in small groups will be denied access to credit union services. This is particularly burdensome and harmful to persons in low to moderate income communities.

The Court of Appeals, in its Decision, recognized that NCUA may identify and approve interpretations that provide broader common bonds than NCUA's current "single employer" policy. This interim policy, therefore, affords some relief to the federal credit unions affected by the Order by allowing them to restructure their existing fields of membership within the limits of the Federal Credit Union Act as construed in the Decision. NCUA will continue to pursue all available legal means to seek reversal of the Decision and Order. The interim policy is not intended to exhaust NCUA's authority to interpret the common bond provisions. NCUA will continue to review possible chartering and field of membership policy changes in an effort to permit federal credit unions to exercise to the fullest extent possible their ability to serve those who want or need credit union service.

This interim policy takes effect immediately upon adoption by the NCUA Board and is effective until further notice. To the degree this policy is inconsistent with IRPS 94-1, as amended by IRPS 96-1, those policies are superseded and this policy statement is controlling. More specifically, the select group policies and those procedures related to the select group policies, such as the Streamlined Expansion Procedure, are superseded. To the extent any action taken pursuant to this interim policy is more restrictive than any future revision of this interim rule requires, then the more restrictive provisions adopted by the credit unions can be modified. To the extent any action taken pursuant to

this interim rule is less restrictive than any future revision of this interim rule requires, then the less restrictive provisions adopted by credit unions will not be unilaterally revoked by NCUA.

The NCUA Board has adopted three basic substantive changes to current chartering and field of membership policy as set forth in IRPS 94-1 as amended by IRPS 96-1. These changes include adding a fourth definition of occupational common bond, streamlining the documentation requirements for a community charter, and adding a subset to the community charter option.

Occupational Common Bond

IRPS 94-1, and previous policy statements by NCUA since 1982, allowed the combination of unlike common bond groups. Federal credit unions that utilized the multiple group policy and now have select groups within their fields of membership must now designate a core common bond. This designation of a core common bond is extremely important and must be completed by March 1, 1997. New field of membership expansions will not be permitted unless a core common bond has been designated. Those groups that are not within the core common bond cannot be served, except that members of record as of October 25, 1996, can still receive service from the credit union. New members can only be added from the core common bond.

Consistent with the Decision in *First National Bank and Trust Company, et al. v. NCUA*, the NCUA Board is adding a fourth definition of occupational common bond. Under previous policy, an occupational common bond was based on:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity;
- Employment in a corporation or other legal entity with an ownership interest in or by another legal entity; and
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company).

Pursuant to this interim policy, an occupational common bond incorporates any charter based on employment in a trade, industry, or profession. This type of common bond can include employment at any number of corporations or other legal entities, that while not under common ownership, share a common bond by

virtue of producing similar products or providing similar services. While there is some latitude in defining trade, industry, or profession, the groups must have a close nexus. NCUA will evaluate such factors as the nature, size and diversity of the trade, industry, or profession and the geographic limits associated with the proposed charter. For example, all manufacturing enterprises in Seattle, Washington, would not qualify since manufacturing, in and of itself, is overly broad and would include manufacturing of all types of products. However, all computer software manufacturers in Seattle would qualify, since it relates to a specific type of manufactured product. This type of common bond charter can be similar to, but distinguishable from, a common bond based on a single corporation. For example, all Navy personnel would qualify as a single corporation (employer), but all teachers would not. The latter would be a profession and subject to certain limitations as discussed below. NCUA will interpret the industry standard in a manner consistent with the Act and Congressional purpose.

Further examples of this type of occupational common bond include all textile workers, all coal miners, or the medical profession. Federal credit unions with this type of occupational common bond can only provide credit union service to those qualifying groups within the credit union's operational area. For example, a credit union located in California may serve the oil industry, but such groups must be within the operational area of the credit union's service facilities.

As defined in IRPS 94-1, operational area is that area which, as determined by NCUA, in its sole discretion, may reasonably be served by the service facilities that will be accessible to the groups in the field of membership. The operational area will vary depending on the location of the credit union. For example, the operational area for a credit union in an urban area may be smaller than the operational area for a credit union in a sparsely populated rural district.

An existing credit union that wishes to serve a trade, industry, or profession must first designate its occupational common bond. This requirement does not apply to a new charter. This could be the original core common bond group or another group within its field of membership. For example, a credit union that serves primarily teachers, but whose original core common bond was municipal employees, could designate teachers or "education" as its occupational common bond. It would

then be able to add new members from that occupational group. However, the designation must come from an existing group within its current field of membership. For example, a credit union that serves primarily teachers, could not be redesignated as a credit union serving the auto industry if the auto industry is not already included in the field of membership.

To designate its common bond, the credit union must submit a request to the appropriate regional director. If the request is approved, the credit union may immediately begin serving all groups within its previously existing field of membership meeting this occupational common bond definition. Credit unions that have groups within their fields of membership that do not meet this new definition, cannot add new members from those groups. For these groups, credit unions can only serve members of record as of October 25, 1996.

To add new groups from within the new occupational common bond, the credit union must apply and obtain written approval of the regional director. The application letter must demonstrate that the group is within the common bond, the group has provided a written request for service, the group presently does not have service available, and the group is within the operational area of one of the credit union's service facilities. If the group to be added was previously served by another credit union but has lost service as a result of the court decisions, the credit union wishing to add the group must consult with the other credit union prior to submitting its application to NCUA.

Community Chartering Policy

NCUA's community chartering policy is not affected by the ongoing litigation. However, the NCUA Board is making two changes to the community chartering policy that are consistent with the Federal Credit Union Act in order to provide all federal credit unions with further options in restructuring their fields of membership.

First, the documentation requirements for a community charter have been streamlined. A credit union that wants to serve anyone who lives, works, worships, or goes to school in a community area must still meet the long-standing community criteria. For example, the community must have clearly defined geographic boundaries that are recognized as a distinct neighborhood, community, or rural district. However, the documentation required to demonstrate that the proposed service area is a well-defined

community has been streamlined. This will greatly facilitate the expeditious processing of community charters.

The "well defined neighborhood, community or rural district" requirement will automatically be met if the area to be served is in a single political jurisdiction or portion thereof, and if the population of the requested political jurisdiction does not exceed 1,000,000. If the area to be served is not contained within a single political jurisdiction or if the population of the area exceeds 1,000,000, then more detailed documentation is necessary to support that the proposed area is a well-defined community. Generally, the political subdivision will most often coincide with a "county", or its political equivalent, and any portion thereof.

Except as noted below, a credit union seeking a community charter must contact all the credit unions with a service facility in the proposed service area. The applicant credit union should provide the comments of any overlapped credit unions in the area, and the regional director will conduct a standard overlap analysis. An overlap analysis may result in denial of the charter, change in the community boundaries, or use of exclusionary clauses. Documentation reflecting support for the charter application is still required, except as noted below.

Second, while NCUA traditionally has interpreted the field of membership authority for "groups within a well-defined neighborhood, community, or rural district" to encompass all groups within that community, a subset of a community charter credit union (called "group community") is now authorized. This type of community charter is available to those wishing to serve specific occupational, associational, and community groups within a well-defined neighborhood, community, or rural district. The requirements for a group community parallel those required of a community charter. However, if a multiple group credit union is converting to a group community, then a business plan, overlap analysis, and evidence of community support is not required.

Upon converting to a group community charter, the credit union will immediately recover the ability to add new members from all groups that were previously served by the credit union (i.e., at the time of the Order) and that are located within the community. New members from existing groups outside the community cannot be served by the group community. To add new groups from within the community, the credit union must receive prior approval by submitting an application to the

regional director documenting that the group is within the community, the group has provided a written request for service, and whether the group presently has credit union service available.

If the credit union wishes to add a group that was previously served by another credit union, but has lost service as a result of the court decisions concerning common bond, the federal credit union wishing to add the group must consult with the other credit union and provide the results of that consultation in its application to NCUA. A determination as to whether that group can be added will be made based on a review of any safety and soundness concerns and the needs of the group.

Associational Common Bonds

No amendments to the associational common bond requirements are included in this interim policy. After review of the associational common bond requirements in IRPS 94-1 as amended by IRPS 96-1, the Board determined that the policy allows for many types of associations to qualify as eligible groups. However, any associational credit union with multiple groups must designate a core common bond.

Emergency Mergers

NCUA is issuing clarifying amendments to the provisions concerning emergency mergers and purchase and assumptions consistent with the Order and Decision. Further, NCUA is removing the 12 month insolvency limitation since it is not required by the Federal Credit Union Act.

Regional Action

This policy is not self-executing. Credit Unions must receive the approval of NCUA before restructuring their fields of membership to serve either specified groups within a single common bond of "trade, industry, or profession" or specified groups within a "well-defined community." Once approval is granted by NCUA, a federal credit union can serve new members from all of its previously approved groups that fall within the newly defined field of membership.

Effective Date; Interim Rule; Comment Period

Although this amendment is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comments. Comments may be submitted on or before February 1, 1997.

Federal credit unions are suffering irreparable injury due to the injunction issued in the consolidated cases of *First National Bank and Trust Co., et al.* and *the American Bankers Association v. NCUA, et al.* Since 1982, federal credit unions have been permitted to diversify their membership base through the addition of select groups. This ability has strengthened federal credit unions and reduced losses to the NCUSIF and extended credit union service to millions of persons who would not otherwise be eligible to join a credit union.

The inability to add new members from existing select groups effectively begins the process of divesting those groups from the credit union. This has an immediate effect of cutting off service to millions of potential members and adversely affecting credit unions. This adverse effect on credit unions poses potential safety and soundness concerns with respect to the National Credit Union Share Insurance Fund.

Therefore, the Board finds it is necessary and appropriate to act expeditiously in this matter in order to allow credit unions to partially restructure their fields of membership. If this rule is not effective immediately, credit unions and their members will continue to be adversely impacted. Accordingly, the Board for good cause finds that (i) pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and (ii) pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice or publication. Further, NCUA has determined that this is not a major rule under 5 U.S.C. Chapter 8, and shall be effective immediately.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). This interim rule will not have a significant economic impact on a substantial number of small credit unions and therefore a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). 60 FR 44978 (August 29, 1995).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This interim regulation makes no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 14, 1996.
Becky Baker,
Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(f), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1801, et seq., 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practice and procedure concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94-1 Chartering and Field of Membership Policy (IRPS 94-1) as amended by IRPS 96-1 and IRPS 96-2. Copies may be obtained by contacting NCUA at the address found in § 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133-0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 94-1) does not and the following amendments will not appear in the Code of Federal Regulations.

3. In IRPS 94-1, Chapter 1, Section II.A is revised to read as follows:

II.A.—Occupational Common Bonds

II.A.1—General

A federal credit union may include in a single occupational common bond, any and all persons who share that common bond. NCUA permits a person's membership eligibility in an occupational common bond to be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an occupational common bond of employees of the entity;
- Employment in a corporation or other legal entity with an ownership interest in or by another legal entity makes that person part of occupational common bond of employees of the two legal entities;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of an occupational common bond of employees of the two entities; or
- Employment based on a trade, industry, or profession.

An occupational common bond based on a trade, industry, or profession must include a geographic limitation. This limitation does not apply to any other occupational common bonds. However, a proposed or existing federal credit union may limit its field of membership to a specific geographic area. So that NCUA may monitor any potential field of membership overlaps, each group to be served (e.g., employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter.

The corporate or other legal entity (i.e., the employer) may also be included in the common bond—e.g., "ABC Corporation and its subsidiaries." The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

Some examples of single occupational common bonds are:

- Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania. (common bond—same employer);
- Employees of the Scott Manufacturing Company. (common bond—same employer without geographic limitation);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic limitation);
- Employees of the federal government. (common bond—single sponsor);
- Employees of Johnson Soap Company and its subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic limitation);
- Employees of the Department of Defense—civilian and U.S. Army. (common bond—same employer without geographic limitation);
- Employees of those contractors who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic limitation);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from Boston Medical Center. (single corporation); or
- Employees of JKL, Incorporated and STU, Incorporated working for the XYZ Joint Venture Company in Los Gatos, California. (common bond—same employer—ongoing dependent relationship).

Some examples of insufficiently defined single occupational groups are:

- Employees of manufacturing firms in Seattle, Washington. (no defined sponsor or industry);
- Persons employed or working in Chicago, Illinois. (no occupational common bond); or
- Employees of all colleges and universities in the State of Texas. (not a single occupational common bond; although this may qualify as an occupational common bond based on trade).

II.A.2—Trade, Industry, or Profession

A common bond based on employment in a trade, industry, or profession can include employment at any number of corporations or other legal entities that—while not under common ownership—have a common bond by virtue of producing similar products or providing similar services. Because this type of common bond is the most expansive and has overlap implications, a geographic limitation is required. In general, a geographic limitation corresponds to the credit union's operational area. Also, each employee group to be served must be separately listed in Section 5 of the credit union charter.

While proposed or existing credit unions have some latitude in defining a trade, industry, or profession occupational common bond, it can not be defined so broadly as to include groups in fields which are not closely related. For example, all textile workers or all government employees in a limited geographic area (including federal, state, and local) may qualify under this category. However, employees of all manufacturing companies would not. The common bond relationship must be one that demonstrates a commonality of interests within a specific trade, industry, or profession. More than one federal credit union may serve the same trade, industry, or profession.

Some examples of trade, industry, or profession common bonds are:

- Employees and teachers who work for universities and colleges in Austin, Texas. (same profession; acceptable if within the credit union's operational area);
- All persons working in the educational system in Atlanta, Georgia. (same trade, acceptable if within the credit union's operational area);
- Employees of the federal, state, and municipal governments in Fairfax County, Virginia. (same industry; acceptable with a geographic limitation, i.e., within the credit union's operational area);
- Employees of the coal mining industry in Erie County, Pennsylvania. (same industry; acceptable if within the credit union's operational area); or
- Persons working as Certified Public Accountants in Los Angeles, California. (same profession; acceptable if within the credit union's operational area).

Some examples of insufficiently defined trade, industry, or profession common bonds are:

- Employees and teachers who work for public schools. (same trade, but no geographic limitation); or

- Employed persons in Maryland. (no common bond—no specified trade).

II.A.3—Common Bond Amendments

II.A.3.a—Designation of Common Bond

The chartering and field of membership policies effective prior to the implementation of this interim policy statement allowed for the combination of multiple select groups that did not share the same common endeavor, purpose or interest to form a single credit union. These policies have been suspended. Accordingly, it is now necessary for those federal credit unions that were chartered, or expanded their field of membership pursuant to the multiple select group policies, to designate a core field of membership, i.e., a common bond. Credit unions must designate a core common bond by March 1, 1997. If a credit union fails to designate its core common bond, NCUA will designate the original core group as its common bond.

The core common bond can be defined as the employee group that constituted the field of membership, i.e., its core group, at the time of charter. The core common bond can also be defined as any group in the credit union's field of membership, including a common bond of trade, industry, or profession. If a group other than the one that constituted the core common bond at the time of charter is designated as the core common bond, then the newly designated core common bond must receive NCUA's concurrence. To change the core common bond the credit union must submit a written request to NCUA for approval. The designation of a core common bond does not apply to community charters.

The designation of a core common bond is critical for the following reasons:

- New members can be accepted only from the designated core common bond;
- Future field of membership expansions will be based on the designated core common bond;
- Only members of record, as of October 25, 1996, of select groups that do not have the same designated core common bond can continue to be served; and
- Once a core common bond has been designated, it can not be changed. However, in those cases where there is a valid safety and soundness concern or a different common bond group is acquired as a result of an emergency merger, the credit union may request a new designation.

II.A.3.b—Documentation Requirements

A charter applicant or existing occupational federal credit union that submits a request to amend its charter to add new groups must provide documentation to establish that the occupational common bond requirement has been met.

All amendments to an occupational common bond credit union's field of membership, except the designation of the original core common bond, must be approved by the regional director. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;

• The group to be added has provided a written request for service to the credit union;

• The group presently does not have credit union service available (if credit union service is available, the region must conduct an overlap analysis), other than through a community credit union; and

• The occupational common bond is based on a trade, industry, or profession only if the group is within the operational area of one of the credit union's service facilities.

If the credit union wishes to add a group that was previously served by another credit union, but has lost service as a result of the court decisions concerning common bond, the federal credit union wishing to add the group must consult with the other credit union and provide the results of that consultation in its application to NCUA. A determination as to whether that group can be added will be made based on a review of any safety and soundness concerns and the needs of the group.

4. In IRPS 94-1, Chapter 1, Section II.C is revised to read as follows:

II.C—Community Charters

II.C.1—General

A community credit union is permitted to serve persons who live in, worship in, go to school in, or work in a "well-defined neighborhood, community or rural district." A subset of a community charter is a group community, which permits a credit union to serve specific occupational, associational, and community groups within that same well defined area. Although there are differences in documentation requirements for a group community charter, the definition of a "well defined neighborhood, community or rural district" is the same.

II.C.2—General Community Charter Criteria

NCUA policy is to limit a community to a single, geographically well-defined area where residents have common interests or interact. NCUA recognizes four types of affinity on which a community common bond can be based—persons who live in, worship in, go to school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership. More than one community credit union may serve the same community area.

Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups, NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined; and
- The charter applicant must establish that the area is recognized as a well defined "neighborhood, community, or rural district."

Some examples of community charter definitions are:

- Persons who live, work, worship, or go to school in, and businesses located in the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west.

- Persons who live or work in Green County, Maine.

- Persons who live, worship, go to school in, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois.

Some examples of insufficiently defined community charter definitions are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C. (Not a recognized neighborhood, community, or rural district).
- Persons who live or work in the industrial section of New York, New York. (No clearly defined boundaries).

II.C.3—Documentation Requirements for a Community Charter

For a community charter, any political jurisdiction or portion thereof, excluding state boundaries, automatically qualifies as a well-defined community, if the population of the requested political jurisdiction does not exceed 1,000,000. If the area to be served is not contained within a single political jurisdiction, or if the population of the area to be served exceeds 1,000,000, the credit union should provide to NCUA for approval, if available, the following documentation to support that it is a well-defined community:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the areas to be served;
- Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.); and
- History of area.

Except for a group community, the following information must be provided to support a need for a community credit union:

- A list of credit unions presently in area and evidence that these credit unions were contacted regarding the community charter. If available, provide the opinion of the overlapped credit unions; and
- Written documentation reflecting support for the charter application, field of membership expansion, or conversion to a community credit union. This may be in the form of letters, surveys, studies, pledges, or a petition. Other types of evidence may also be acceptable.

II.C.4—Business Plan

Business plans are required of all credit unions expanding their community boundaries or converting to a community charter (except for a credit union converting to a group community). The business plan for a community federal credit union should comply with the requirements of Chapter 1, Section IV.A.4.b, except that a summary of survey results is not required.

II.C.5—Community Service Area

The service area for a community federal credit union is the area defined in its charter

usually with north, south, east, and west boundaries. If the community is a recognized political jurisdiction, the service area may be defined by the applicable political jurisdiction, such as "DEF Township, Kansas" or "GHI County, Minnesota."

II.C.6—Group Community

A group community charter is available to those wishing to serve specific occupational, associational, and community groups within a well-defined neighborhood, community, or rural district.

An example of a group community common bond definition is:

- The following groups within Smithson County, Pennsylvania: Employees of HAC Corporation and Smith and Weason Firearms, who work in Smithson County, Pennsylvania; members of the Greater Smithson County Ruritan Club who qualify for membership in accordance with its bylaws in effect on November 9, 1996; members of the First Amish Church in Smithson County, Pennsylvania; members of the National Rifle Association in Smithson County, Pennsylvania, who qualify for membership in accordance with its bylaws in effect on November 9, 1996; and members of the Greystone Electric Membership Cooperative in Smithson County, Pennsylvania.

A group community charter must receive regional director approval to expand its field of membership to include new groups within that community. The regional director may approve the amendment if the request supports:

- The group is within the defined geographical area;
- The group has provided a written request for service to the credit union; and
- Whether the group presently has credit union service available from an occupational or associational credit union.

If the credit union wishes to add a group that was previously served by another credit union, but has lost service as a result of the court decisions concerning common bond, the federal credit union wishing to add the group must consult with the other credit union and provide the results of that consultation in its application to NCUA. A determination as to whether that group can be added will be made based on a review of any safety and soundness concerns and the needs of the group.

5. In IRPS 94-1, Chapter 2, Section III.B is amended by removing the words "within 12 months" and adding a new paragraph at the end of the section to read as follows:

III.B . . .

If the continuing and merging credit union do not have the same core common bond, then the continuing credit union's core common bond will be controlling for future common bond expansions. However, the continuing credit union may, at the time of the emergency merger, request a redesignation to the merging credit union's core common bond. Subsequent field of membership expansions must be based on a single designated core common bond.

However, the continuing credit union may serve new members of the merging credit union's core common bond and members of record as of October 25, 1996, of the non-core common bond groups.

6. In IRPS 94-1, Chapter 2, Section III.C is amended by adding a new paragraph at the end of the section to read as follows:

III.C . . .

If the continuing and the purchased and assumed credit unions do not have the same common bond, then the continuing credit union's core common bond will be controlling for future common bond expansions. However, the continuing credit union may, at the time of the P&A, request a redesignation to the purchased and assumed credit union's core common bond if the P&A meets the emergency merger criteria. Subsequent field of membership expansions must be based on a single designated common bond. However, the continuing credit union may serve new members of the purchased and assumed credit union's core common bond and members of record as of October 25, 1996, of the non-core common bond groups.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 950

[No. 96-80]

Revision of Financing Corporation Operations Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on Financing Corporation (FICO) operations to comply with new statutory requirements and to eliminate provisions that have been rendered obsolete by statutory changes. The interim final rule is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: The interim final rule will become effective on November 22, 1996. The Finance Board will accept comments on the interim final rule in writing on or before December 23, 1996.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Assistant Director,

Financial Management Division, Office of Policy, 202/406-2976, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/406-2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. FICO Obligations

The Federal Savings and Loan Insurance Corporation (FSLIC) Recapitalization Act of 1987 amended the Federal Home Loan Bank Act (Bank Act) by adding a new section 21 directing the establishment of FICO. See Public Law 100-86, Title III, section 302, 101 Stat. 585 (Aug. 10, 1987), codified at 12 U.S.C. 1441. On August 28, 1987, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), chartered FICO to recapitalize the former FSLIC. To raise funds for that purpose, Congress authorized FICO to issue up to \$10.825 billion in public debt. See 12 U.S.C. 1441(e)(1) (1987) (superseded). From 1987 to 1989, FICO issued \$8.17 billion in 30-year obligations, the proceeds of which were used to resolve failed savings associations. Congress terminated FICO's debt issuance authority in 1991, effectively capping FICO's borrowings at the then outstanding \$8.17 billion in obligations.¹

To assure repayment of the \$8.17 billion principal amount of the FICO obligations, section 21(g)(2) of the Bank Act requires FICO to invest in, and hold in a segregated account, certain enumerated securities that will have a principal amount payable at maturity approximately equal to the aggregate amount of principal on the FICO obligations. See 12 U.S.C. 1441(g)(2). Accordingly, the principal on FICO bonds was defeased by using Federal Home Loan Bank (FHLBank) retained earnings to purchase 30-year zero coupon United States Treasury securities that have a face value sufficient to retire the FICO bonds at maturity. These securities currently are held in a segregated account at the Federal Reserve Bank of New York.

B. FICO Expenses

Pursuant to section 21 of the Bank Act, FICO may incur two categories of expenses: (1) administrative expenses,

¹ See Pub. L. 102-233, Title I, section 104, 105 Stat. 1782 (Dec. 12, 1991), codified at 12 U.S.C. 1441(e)(2). Fifteen percent of the outstanding FICO bond principal matures in the year 2017, 57 percent matures in 2018, and the remaining 28 percent matures in 2019. See General Accounting Office, *Deposit Insurance Funds Report*, 11 n.5 (Mar. 1995).

which include general office and operating expenses, and (2) non-administrative expenses, which include the almost \$800 million in interest due each year until maturity of the last FICO obligation, issuance costs, and custodian fees. See *id.* 1441(b)(7), (f)(2), (g)(5). The FHLBanks pay FICO's administrative expenses in accordance with a statutory formula based on the percentage of FICO stock held by each FHLBank. See *id.* 1441(b)(7).

There are four statutory sources of funds to pay FICO's non-administrative expenses. Under section 21(f)(1) of the Bank Act, FICO has authority to use assessments previously assessed against insured institutions (i.e., FSLIC-insured thrifts) under the special assessment provisions that were in effect prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). See *id.* 1441(f)(1), 1441(f) (1987 superseded); Public Law 101-73, Title V, section 512(13), 103 Stat. 406 (Aug. 9, 1989). Funds from this source have been exhausted and are no longer available.

To the extent pre-FIRREA assessments are insufficient to cover FICO's non-administrative expenses, under section 21(f)(2) of the Bank Act, FICO has first priority to impose and collect assessments against each Savings Association Insurance Fund (SAIF) member that is a savings association. See 12 U.S.C. 1441(f)(2) (1996). FICO's assessment authority is subject to the approval of the Board of Directors of the Federal Deposit Insurance Corporation (FDIC), and must be made in the same manner as assessments are made by the FDIC. *Id.* To date, FICO's assessments on SAIF member savings associations have been the major or sole source of revenue to pay FICO's non-administrative expenses, i.e., FICO's interest, issuance, and custodial costs.

Effective January 1, 1997, the Deposit Insurance Funds Act of 1996 (Funds Act) amends FICO's assessment authority under section 21(f)(2) of the Bank Act. See Public Law 104-208, Title II, Subtitle G, 110 Stat. 3009 (Sept. 30, 1996). Section 2702 of the Funds Act eliminates the provision granting FICO first priority to make assessments and changes FICO's assessment base from all SAIF member savings associations to all depository institutions insured by the FDIC. See 12 U.S.C. 1441(f)(2) (1997). Beginning with the first assessment in 1997, FICO has authority, with the approval of the Board of Directors of the FDIC, to assess all insured depository institutions to cover the interest payments due on FICO obligations and FICO's issuance costs and custodian fees. *Id.* However, until the earlier of

December 31, 1999 or the date on which the last savings association ceases to exist, the assessment rate FICO imposes on an insured depository institution with respect to any BIF-assessable deposits must be 1/5 of the assessment rate FICO imposes on an insured depository institution with respect to any SAIF-assessable deposits. *Id.* 1441(f)(2)(A). For purposes of the FICO assessment, the term "BIF-assessable deposit" means a deposit that is subject to assessment for purposes of the Bank Insurance Fund (BIF) under the Federal Deposit Insurance Act (FDI Act), including a deposit that is treated as a BIF-insured deposit under section 5(d)(3) of the FDI Act, and the term "SAIF-assessable deposit" means a deposit that is subject to assessment for purposes of the SAIF under the FDI Act, including a deposit that is treated as a SAIF-insured deposit under section 5(d)(3) of the FDI Act.² Absent statutory changes or unforeseen fluctuations in the assessment base, FICO anticipates that assessments on insured depository institutions will provide sufficient funds to pay its non-administrative expenses.

However, if funds available from pre-FIRREA assessments and assessments on all insured depository institutions are insufficient to cover FICO's non-administrative expenses, section 21(f)(3) of the Bank Act authorizes FICO to use FSLIC Resolution Fund (FRF) receivership proceeds that are not required by the Resolution Funding Corporation to fund its principal fund. *Id.* 1441(f)(3). If the funds available pursuant to the three sources provided by section 21(f) of the Bank Act are insufficient to pay FICO's interest expenses, section 5(d)(2) of the FDI Act provides that the Secretary of the Treasury may order the transfer to FICO of exit fees assessed against insured depository institutions that participated in transactions by which they switched deposit insurance funds. *See id.* 1815(d)(2)(E), (F).

C. FICO Regulations

The operating authority for FICO initially appeared in part 592 of the FHLBB's regulations. When Congress abolished the FHLBB in 1989, it transferred regulatory and supervisory authority over FICO to the Finance Board. *See FIRREA*, section 401, 103 Stat. 183, *codified at* 12 U.S.C. 1437 note; *FIRREA*, Title V. The Finance

Board derives its authority over FICO from the provisions of section 21 of the Bank Act. *See* 12 U.S.C. 1441. Under sections 21 (b)(8) and (c), the FICO Directorate³ and FICO's exercise of its statutory powers are subject to such regulations, orders, and directions as the Finance Board may prescribe. *Id.* 1441(b)(8), (c). In addition, under section 21(j), the Finance Board has authority to prescribe any regulations necessary to carry out the provisions of section 21, including regulations defining terms used in section 21. *Id.* 1441(j). In September 1989, pursuant to the authority granted by section 21 of the Bank Act, the Finance Board deleted part 592 of the FHLBB's regulations and promulgated the current rules regarding FICO's operating authority at part 950 of its regulations. *See* 54 FR 38589, 38592-38598 (Sept. 19, 1989), *codified at* 12 CFR part 950.

The statutory changes made by the Funds Act require that corresponding amendments be made to the provisions of the FICO operations regulation that concern FICO's assessment authority. In addition, the changes made by the Funds Act, as well as prior statutory changes that terminated FICO's debt issuance authority, *see supra*, have rendered obsolete many of the existing provisions of part 950. Accordingly, the Finance Board is amending part 950 to comply with new statutory requirements, eliminate provisions that have been rendered obsolete, and clarify the practices and procedures of the Finance Board and FICO.

II. Analysis of the Interim Final Rule

A. Elimination of Obsolete Provisions

The Finance Board has determined that the following provisions of part 950, which relate to or concern issuance of FICO debt obligations, are no longer required and therefore should be eliminated in their entirety: § 950.4 Authority to issue obligations; § 950.6 Minority participation in public offerings; § 950.10 Capital assessments of Federal loan banks (sic); § 950.11 Establishment, maintenance and funding of reserve account; and in § 950.1, definitions of the terms "deficient bank," "excess amount," "FSLIC Resolution Fund," "Funding Corporation," "net earnings," and "remaining bank." Streamlining part 950 by repealing these provisions is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

² The FICO Directorate is the managing body of FICO. *See id.* 1441(b)(1).

B. Implementation of New Statutory Requirements

Section 950.8(a) of the interim final rule continues the current requirement that FICO determine the anticipated interest expenses on its obligations at least semiannually.

In § 950.8(b), the Finance Board has implemented the provisions of the Funds Act that authorize FICO to assess all insured depository institutions, rather than just SAIF members, to cover FICO's non-administrative expenses. *See supra* part I(B). The term "insured depository institution," which replaces the definition of "SAIF member" in § 950.1, has the same meaning as in section 3 of the FDI Act, namely, "any bank or savings association the deposits of which are insured by the FDIC."

See 12 U.S.C. 1813(c)(2). For purposes of part 950, the term "non-administrative expenses" means custodian fees, issuance costs, and interest on Financing Corporation obligations. Custodian fees include any fees or expenses FICO incurs in connection with the establishment or maintenance of, or the transfer of any security to, or maintenance of any security in, the segregated account established to safeguard the securities that defease the principal amount of the FICO obligations. *See supra* part I(A). This is the same meaning given to the term "custodian fees" in section 21(g)(5)(B) of the Bank Act. *See* 12 U.S.C. 1441(g)(5)(B). Issuance costs include fees and commissions FICO incurs in connection with the issuance or servicing of its obligations. The regulation provides an illustrative list that includes costs the Finance Board has to date determined to be issuance costs.

Section 950.8(b)(1) authorizes FICO, with the approval of the Board of Directors of the FDIC, to impose against and collect from each insured depository institution an assessment sufficient to pay its non-administrative expenses. FICO must make the assessment in the same manner as the FDIC makes assessments under section 7 of the FDI Act. *See* 12 U.S.C. 1817.

Subject to the statutory limits on assessment rates with respect to BIF- and SAIF-assessable deposits, *see supra* part I(B), § 950.8(b)(2) requires FICO to determine at least semiannually and to advise the FDIC and any collection agent of the rate(s) of the assessment it will assess against insured depository institutions in order to pay its non-administrative expenses. In determining the assessment rate(s), FICO must consider historical data regarding assessment collections and current

information concerning the SAIF and BIF deposit base and the location of insured depository institutions that is available only to the FDIC. Accordingly, the FDIC will provide such accurate, complete, and timely information as FICO may require to carry out its statutory responsibilities to pay its non-administrative expenses by setting the assessment rate(s) and imposing an assessment against all insured depository institutions.

To facilitate collection of the FICO assessment, § 950.8(b)(3)(i) requires FICO to collect assessments in accordance with section 21(f)(2) of the Act and the provisions of this regulation, and permits assessment collection through a collection agent. Currently, the FDIC collects and processes FICO's assessment pursuant to a memorandum of understanding between FICO and the FDIC. The FDIC handles administrative tasks, such as computing each institution's assessment, issuing invoices notifying institutions of the amount to be paid and the date of payment, and arranging for the collection of the assessment through the payments system. The Finance Board expects the assessment process to continue to operate in a similar fashion. Further, § 950.8(a)(3)(ii) authorizes each FHLBank to establish and maintain a demand deposit account for any insured depository institution located in the FHLBank's district regardless of whether the institution is a FHLBank member.

Sections 950.8 (c) and (d) of the interim final rule, which concern FICO's authority to receive FRF receivership proceeds and exit fees, *see supra* part I(B), restate without substantive change the provisions found currently in §§ 950.12 (b)(2) and (b)(3), respectively.

C. Clarifying Current Regulatory Requirements

The remainder of the interim final rule clarifies and reorganizes provisions that appear in the current FICO operations regulation. The following provisions of the interim final rule restate provisions of the current rule without substantive change: In § 950.1, definitions of the terms "Act," "Bank or Banks," "Directorate," "FDIC," and "Office of Finance;" § 950.2 FICO's general operating authority; § 950.3 FICO Directorate's authority to establish investment policies and procedures; § 950.4 book-entry procedure for FICO obligations; and § 950.5 FICO's authority to use the services of FHLBank or Office of Finance officers, employees, or agents to carry out its functions.

Section 950.6 of the interim final rule, which concerns FICO's budget and

expenses, is a revision of § 950.8 of the current rule. To provide increased flexibility, paragraphs (a) and (b) require FICO to submit to the FICO Directorate, and the FICO Directorate to submit in turn to the Finance Board, FICO's budget of proposed expenditures for approval annually rather than by a date certain each year. Since the Finance Board disseminates FICO's approved annual budget to the FHLBanks, the requirement that FICO transmit a copy of its budget to the FHLBanks is deleted. Paragraphs (c) and (d) make clear that FICO may not incur expenditures unless they have been approved by either the Finance Board or the FICO Directorate within limits set by the Finance Board.

Consistent with current practice, § 950.7 of the interim final rule requires the FHLBanks to pay FICO's administrative expenses. FICO determines the amount of administrative expenses each FHLBank must pay in the manner provided by section 21(b)(7)(B) of the Bank Act. *See* 12 U.S.C. 1441(b)(7)(B). The definition of the term "administrative expenses" in § 950.1 is revised to reflect more closely the format of the financial documents provided by FICO to the Finance Board and to make clear that issuance costs are not administrative expenses. *See* 12 U.S.C. 1441(b)(7)(C). Consistent with current practice, the interim final rule replaces the requirement that FICO bill each FHLBank at least semiannually with a requirement that FICO bill the FHLBanks periodically. Paragraph (c) makes clear that FICO must adjust the amount of administrative expenses the FHLBanks must pay in any calendar year, if, in the prior year, administrative expenses have been approved by the Finance Board, paid by the FHLBanks, but not actually incurred by FICO.

Section 950.9 concerns reports FICO must make to the Finance Board. To reduce the regulatory reporting burden on FICO and to provide increased flexibility, the requirement that FICO submit reports on a quarterly basis, which appears in § 950.14 of the current rule, is deleted. To ensure the current relevance and utility of the information provided in the reports FICO submits to the Finance Board, the laundry list of required information in the current rule is replaced with a requirement that FICO file reports containing such information as the Finance Board may direct.

To ensure compliance with the Bank Act and Finance Board regulations, § 950.10 of the interim final rule requires the Finance Board to examine FICO's operations at least annually.

III. Notice and Public Participation

The Finance Board finds that the notice and comment procedure required by the Administrative Procedure Act is unnecessary, impracticable, and contrary to the public interest in this instance. *See* 5 U.S.C. 553(b)(3)(B). The Funds Act directs FICO to impose an assessment on all insured depository institutions on January 1, 1997. *See* Funds Act section 2702. In order to timely impose this assessment, the FDIC, acting as FICO's collection agent, must promptly undertake a number of administrative tasks, such as computing each institution's assessment, issuing invoices that notify the institution of the amount to be paid and the date of payment, and arranging for the collection of the assessment through the payments system. This rule provides the authority for FICO to proceed with the assessment process. It would not be possible for FICO to carry out its statutory responsibilities if the rule is subject to the notice and comment process. Nevertheless, because the Finance Board believes public comments aid in effective rulemaking, it will accept written comments on the interim final rule on or before December 23, 1996.

IV. Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the interim final rule should become effective on November 22, 1996. *See* 5 U.S.C. 553(d)(3).

V. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act of 1995 are contained in this interim final rule. *See* 44 U.S.C. 3501, *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

VI. Regulatory Flexibility Act

The Finance Board is adopting the changes to part 950 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

List of Subjects in 12 CFR Part 950

Federal home loan banks, Securities.

Accordingly, the Federal Housing Finance Board hereby revises title 12, chapter IX, subchapter C, part 950 of the Code of Federal Regulations, to read as follows:

PART 950—OPERATIONS

Sec.

- 950.1 Definitions.
 950.2 General authority.
 950.3 Authority to establish investment policies and procedures.
 950.4 Book-entry procedure for Financing Corporation obligations.
 950.5 Bank and Office of Finance employees.
 950.6 Budget and expenses.
 950.7 Administrative expenses.
 950.8 Non-administrative expenses; assessments.
 950.9 Reports to the Finance Board.
 950.10 Review of books and records.

Authority: 12 U.S.C. 1441(b)(8), (c), and (j).

§ 950.1 Definitions.

For purposes of this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421, *et seq.*).

(b) *Administrative expenses*:

(1) Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

(c) *Bank or Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

(d) *BIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*), including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

(e) *Custodian fees* means any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Act, and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

(f) *Directorate* means the board established under section 21(b) of the Act to manage the Financing Corporation.

(g) *Exit fees* means the amounts paid under sections 5(d)(2) (E) and (F) of the Federal Deposit Insurance Act, and regulations promulgated thereunder (12 CFR part 312).

(h) *FDIC* means the agency established as the Federal Deposit Insurance Corporation.

(i) *Finance Board* means the agency established as the Federal Housing Finance Board.

(j) *Inured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(k) *Issuance costs* means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

(l) *Non-administrative expenses* means custodian fees, issuance costs, and interest on Financing Corporation obligations.

(m) *Obligations* means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21 (c)(3) and (e) of the Act.

(n) *Office of Finance* means the joint office of the Banks established under part 941 of this chapter.

(o) *Receivership proceeds* means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Fund established under section 11A of the Federal Deposit Insurance Act from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund established under section 21B of the Act.

(p) *SAIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act, including a deposit that is treated as a deposit insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

§ 950.2 General authority.

Subject to the limitations and interpretations in this part and such orders and directions as the Finance Board may prescribe, the Financing Corporation shall have authority to exercise all powers and authorities granted to it by the Act and by its charter and bylaws regardless of whether the powers and authorities are specifically implemented in regulation.

§ 950.3 Authority to establish investment policies and procedures.

The Directorate shall have authority to establish investment policies and procedures with respect to Financing Corporation funds provided that the investment policies and procedures are consistent with the requirements of section 21(g) of the Act. The Directorate shall promptly notify the Finance Board in writing of any changes to the investment policies and procedures.

§ 950.4 Book-entry procedure for Financing Corporation obligations.

(a) *Authority*. Any Federal Reserve Bank shall have authority to apply book-entry procedure to Financing Corporation obligations.

(b) *Procedure*. The book-entry procedure for Financing Corporation obligations shall be governed by the book-entry procedure established for Bank securities, codified at part 912 of this chapter. Wherever the term "Federal Home Loan Bank security(ies)" appears in part 912, the term shall be construed also to mean "Financing Corporation obligation(s)," if appropriate to accomplish the purposes of this section.

§ 950.5 Bank and Office of Finance employees.

The Financing Corporation shall have authority to utilize the officers, employees, or agents of any Bank or the Office of Finance in such manner as may be necessary to carry out its functions.

§ 950.6 Budget and expenses.

(a) *Directorate approval*. The Financing Corporation shall submit annually to the Directorate for approval, a budget of proposed expenditures for the next calendar year that includes administrative and non-administrative expenses.

(b) *Finance Board approval*. The Directorate shall submit annually to the Finance Board for approval, the budget of the Financing Corporation's proposed expenditures it approved pursuant to paragraph (a) of this section.

(c) *Spending limitation*. The Financing Corporation shall not exceed the amount provided for in the annual budget approved by the Finance Board pursuant to paragraph (b) of this section, or as it may be amended by the Directorate within limits set by the Finance Board.

(d) *Amended budgets*. Whenever the Financing Corporation projects or anticipates that it will incur expenditures, other than interest on Financing Corporation obligations, that exceed the amount provided for in the

annual budget approved by the Finance Board or the Directorate pursuant to paragraph (b) or (c) of this section, the Financing Corporation shall submit an amended annual budget to the Directorate for approval, and the Directorate shall submit such amended budget to the Finance Board for approval.

§ 950.7 Administrative expenses.

(a) *Payment by Banks*. The Banks shall pay all administrative expenses of the Financing Corporation approved pursuant to § 950.6.

(b) *Amount*. The Financing Corporation shall determine the amount of administrative expenses each Bank shall pay in the manner provided by section 21(b)(7)(B) of the Act. The Financing Corporation shall bill each Bank for such amount periodically.

(c) *Adjustments*. The Financing Corporation shall adjust the amount of administrative expenses the Banks are required to pay in any calendar year pursuant to paragraphs (a) and (b) of this section, by deducting any funds that remain from the amount paid by the Banks for administrative expenses in the prior calendar year.

§ 950.8 Non-administrative expenses; assessments.

(a) *Interest expenses*. The Financing Corporation shall determine anticipated interest expenses on its obligations at least semiannually.

(b) *Assessments on insured depository institutions*. (1) *Authority*. To provide sufficient funds to pay the non-administrative expenses of the Financing Corporation approved under § 950.6, the Financing Corporation shall, with the approval of the Board of Directors of the FDIC, assess against each insured depository institution an assessment in the same manner as assessments are made by the FDIC under section 7 of the Federal Deposit Insurance Act.

(2) *Assessment rate*—(i) *Determination*. The Financing Corporation at least semiannually shall determine the rate or rates of the assessment it will assess against insured depository institutions pursuant to section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(ii) *Limitation*. Until the earlier of December 31, 1999, or the date as of which the last savings association ceases to exist, the rate of the assessment imposed on an insured depository institution with respect to any BIF-assessable deposit shall be a rate equal to 1/2 of the rate of the assessment imposed on an insured

depository institution with respect to any SAIF-assessable deposit.

(iii) *Notice*. The Financing Corporation shall notify the FDIC and the collection agent, if any, of its determination under paragraph (b)(2)(i) of this section.

(3) *Collecting assessments*—(i) *Collection agent*. The Financing Corporation shall have authority to collect assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section through a collection agent of its choosing.

(ii) *Accounts*. Each Bank shall permit any insured depository institution whose principal place of business is in its district to establish and maintain at least one demand deposit account to facilitate collection of the assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(c) *Receivership proceeds*—(1) *Authority*. To the extent the amounts collected under paragraph (b) of this section are insufficient to pay the non-administrative expenses of the Financing Corporation approved under § 950.6, the Financing Corporation shall have authority to require the FDIC to transfer receivership proceeds to the Financing Corporation in accordance with section 21(f)(3) of the Act.

(2) *Procedure*. The Directorate shall request in writing that the FDIC transfer the receivership proceeds to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the non-administrative expenses of the Financing Corporation approved under § 950.6.

(d) *Exit fees*—(1) *Authority*. To the extent the amounts provided under paragraphs (b) and (c) of this section are insufficient to pay the interest due on Financing Corporation obligations, the Financing Corporation shall have authority to request that the Secretary of the Treasury order the transfer of exit fees to the Financing Corporation in accordance with section 5(d)(2)(E) of the Federal Deposit Insurance Act.

(2) *Procedure*. The Directorate shall request in writing that the Secretary of the Treasury order that exit fees be transferred to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the interest due on Financing Corporation obligations.

§ 950.9 Reports to the Finance Board.

The Financing Corporation shall file such reports as the Finance Board shall direct.

§ 950.10 Review of books and records.

The Finance Board shall examine the Financing Corporation at least annually to determine whether the Financing Corporation is performing its functions in accordance with the requirements of section 21 of the Act and this part.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 96-29746 Filed 11-21-96; 8:45 am]
 BILLING CODE 4720-01-J

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-194-AD; Amendment 39-5814; AD 96-23-08]

RIN 2120-AA64

Airworthiness Directives; de Havilland Model DHC-8-100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 and -300 series airplanes, that currently requires repetitive inspections to detect cracks of the upper drag strut trunnion fittings of the nose landing gear (NLG) and to verify tightness of the fitting attachment bolts, and replacement of fittings or fasteners, if necessary. This amendment requires the installation of a modification to terminate the repetitive inspections. This amendment is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by this AD are intended to prevent failure of the upper drag strut trunnion fittings of the NLG, which could lead to collapse of the NLG.

DATES: Effective December 27, 1996.

The incorporation by reference of de Havilland DHC-8 Alert Service Bulletin S.B. A8-53-40, Revision 'D', dated June 30, 1995; and de Havilland DHC-8 Service Bulletin S.B. 8-53-49, dated June 30, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of December 27, 1996.

The incorporation by reference of certain other publications, as listed in the regulations was approved previously by the Director of the Federal Register

as of May 27, 1993 (58 FR 25549, April 27, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 161 South Franklin Avenue, Room 202, Valley Stream, New York 11501; telephone (516) 256-7523; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93-08-03, amendment 39-8550 (58 FR 25549, April 27, 1993), which is applicable to certain de Havilland Model DHC-8-100 and -300 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on September 9, 1996 (61 FR 47459). The action proposed to supersede AD 93-08-03 to continue to require repetitive inspections to detect cracks of the upper drag strut trunnion fittings of the nose landing gear (NLG) and to verify tightness of the fitting attachment bolts, and replacement of the fittings or fasteners, if necessary. That action also proposed to require the installation of a modification to terminate the repetitive inspections. Additionally, the action also proposed revise the applicability of the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 146 de Havilland Model DHC-8-100 and -300

series airplanes of U.S. registry will be affected by this AD.

Accomplishment of the currently required inspections takes approximately 1 work hour per airplane, at an average labor rate of \$60 per hour. Based on these figures, the cost impact of the currently required inspection actions on U.S. operators is estimated to be \$8,760, or \$60 per airplane, per inspection.

The modification will take approximately 18 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$3,324 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$638,725, or \$4,405 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8550 (58 FR 25549, April 27, 1993), and by adding a new airworthiness directive (AD), amendment 39-8814, to read as follows:

96-23-09 De Havilland, Inc.: Amendment 39-8814. Docket 93-NM-194-AD. Supersedes AD 93-08-03, Amendment 39-8550.

Applicability: Model DHC-8-102, -103, -301, -311, and -314 series airplanes; having serial numbers 003 through 395 inclusive, but excluding serial numbers 011, 362, and 391; on which Modification 8/2139 (as described in de Havilland Service Bulletin S.B. 8-53-49, dated June 30, 1995) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper drag strut trunnion fittings of the nose landing gear (NLG), which could lead to collapse of the NLG, accomplish the following:

(a) Within 500 landings after May 27, 1993 (the effective date of AD 93-08-03, Amendment 39-8550), unless accomplished within the last 500 landings, conduct a visual inspection of both upper drag strut trunnion fittings of the NLG to detect cracks; and conduct an inspection of the fitting attachment bolts to verify tightness; in accordance with de Havilland DHC-8 Alert Service Bulletin S.B. A8-53-40, Revision 'A', dated June 12, 1992; or Revision 'B', dated February 24, 1993; or Revision 'D', dated June 30, 1995.

(1) If no crack is detected in the upper drag strut trunnion fittings of the NLG, and no looseness is detected in the fitting attachment bolts, repeat the inspections at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack is detected on either fitting, prior to further flight, replace both fittings

with confirmed crack-free fittings in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(3) If any fitting attachment bolt is found to be loose during the initial inspection, prior to further flight, replace the fasteners (nut, washer, and bolt) that secure the fitting, in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(4) If any fastener is found to be loose during any repetitive inspection required by this AD, prior to further flight, tighten the bolt to the value specified in the service bulletin.

(b) Within 6 months after the effective date of this AD, install Modification 8/2139 in accordance with de Havilland Service Bulletin S.B. 8-53-49, dated June 30, 1995. Installation of this modification constitutes terminating action for the inspection requirements of this AD.

(c) Installation of Modification 8/2139, in accordance with de Havilland Service Bulletin S.B. 8-53-49, dated June 30, 1995, constitutes terminating action for the inspections required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with de Havilland DHC-8 Alert Service Bulletin S.B. A8-53-40, Revision 'A', dated June 12, 1992; Revision 'B', dated February 24, 1993; Revision 'D', dated June 30, 1995; and de Havilland Service Bulletin S.B. 8-53-49, dated June 30, 1995. The incorporation by reference of de Havilland DHC-8 Alert Service Bulletin S.B. A8-53-40, Revision 'A', dated June 12, 1992; and Revision 'B', dated February 24, 1993, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 27, 1993 (58 FR 25549, April 27, 1993). The incorporation by reference of de Havilland DHC-8 Alert Service Bulletin S.B. A8-53-40, Revision 'D', dated June 30, 1995; and de Havilland Service Bulletin S.B. 8-53-49, dated June 30, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be

obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 27, 1996.

Issued in Renton, Washington, on November 5, 1996.

Darrell M. Pedersen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-28869 Filed 11-21-96; 8:45 am]

BILLING CODE 4910-15-U

14 CFR Part 39

[Docket No. 96-NM-261-AD; Amendment 39-8814; AD 96-23-51]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) T96-23-51 that was sent previously to all known U.S. owners and operators of Boeing Model 737 series airplanes by individual telegrams. This AD requires repetitive tests to verify proper operation of the rudder power control unit (PCU), and replacement of the PCU, if necessary. This amendment is prompted by tests of the main rudder PCU, conducted by the manufacturer, which demonstrated a potential failure scenario that was previously unknown. The actions specified by this AD are intended to prevent rudder motion in the opposite direction of the rudder command.

DATES: Effective November 27, 1996, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96-23-51, issued November 1, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 1996.

Comments for inclusion in the Rules Docket must be received on or before January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-261-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2873; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: As part of its Continuing Operational Safety Program, the FAA has become aware of new information related to the safety of Boeing Model 737 series airplanes. Recent tests of the main rudder power control unit (PCU), conducted at Boeing, demonstrated a potential failure scenario that was previously unknown. These tests revealed that rudder pedal input can cause deformation in the linkage leading to the primary and secondary slides of the servo valve of the main rudder PCU, if the secondary slide of the PCU jams in certain positions; this situation could result in rudder motion in the opposite direction of the rudder command.

The intent of the original design of the PCU dual servo valve, in compliance with certification requirements, is to allow either the primary or secondary slide to neutralize the effect of a jam of the other slide. If the secondary slide of the servo valve of the main rudder PCU jams and the primary slide does not neutralize the effects of the jam, under certain conditions, a rudder pedal command could result in rudder motion in the opposite direction of the rudder command and lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-27A1202, dated November 1, 1996. The alert service bulletin describes procedures for performing a test to verify proper operation of the rudder PCU, and replacement of the rudder PCU with a new unit, if necessary. The

test procedure will ensure that the servo valve does not have a latent jam.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T96-23-51 to prevent rudder motion in the opposite direction of the rudder command. The AD requires repetitive tests to verify proper operation of the rudder PCU, and replacement of the rudder PCU with a new unit, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

The AD also requires that operators submit a report of the test results to the FAA.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on November 1, 1996, to all known U.S. owners and operators of Model 737 series airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Differences Between the AD and the Relevant Service Information

Operators should note that the Boeing alert service bulletin specifies that it pertains only to airplanes that have certain serial numbers. However, this AD (as well as the previously-issued telegraphic version of it) is applicable to all Model 737 series airplanes. It is the FAA's intent that the entire fleet of Model 737's be inspected in accordance with the requirements of this AD. Where there are differences between the manufacturer's service information and the AD, it is the stipulations of the AD that prevail.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a design modification that will eliminate the need for the repetitive test requirements of this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-261-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an

emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-23-51 Boeing: Amendment 39-9818. Docket 96-NM-261-AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: The Boeing alert service bulletin that is referenced in this AD specifies that it pertains only to airplanes that have certain serial numbers. However, this AD is applicable to all Model 737 series airplanes. Where there are differences between the manufacturer's service information and the AD, it is the stipulations of the AD that prevail.

Compliance: Required as indicated, unless accomplished previously.

To prevent rudder motion in the opposite direction of the rudder command, accomplish the following:

(a) Within 10 days after the effective date of this AD, perform a test to verify proper operation of the rudder power control unit (PCU), in accordance with Boeing Alert Service Bulletin 737-27A1202, dated November 1, 1996.

(1) If the rudder PCU operates properly, repeat the test thereafter at intervals not to exceed 250 flight hours.

(2) If the rudder PCU operates improperly, prior to further flight, replace the rudder PCU with a new rudder PCU, in accordance with the alert service bulletin. Repeat the test thereafter at intervals not to exceed 250 flight hours.

(b) Within 24 hours after accomplishing any test required by paragraph (a) of this AD, submit a report of any finding(s) of discrepancies to the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2673; fax (206) 227-1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 737-27A1202, dated November 1, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 27, 1996, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96-23-51, issued on November 1, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on November 7, 1996.
Darrell M. Pedersen,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 96-29260 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 96-NM-255-AD; Amendment 39-9829; AD 96-24-03]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400 "Combi" Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing 747-400 series airplanes in the "combi" configuration. This action requires replacing the decompression panels that are located in the smoke barrier between the passenger and main deck cargo compartment, with new panels of an improved design. This amendment is prompted by reports indicating that normal pressurization cycles are causing premature tearing or opening of these decompression panels. The actions specified in this AD are intended to prevent increased airflow in the cargo compartment caused by the tearing or opening of these panels; this condition, if not corrected, could result in delayed fire detection and reduced effectiveness of the cargo compartment fire suppression system.

DATES: Effective December 9, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 9, 1996.

Comments for inclusion in the Rules Docket must be received on or before January 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-255-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227-2670; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA has received at least four reports indicating that tearing and inadvertent opening of the decompression ("blow-out") panels located in the smoke barrier between the passenger and main deck cargo compartment have occurred on Boeing Model 747-400 "combi" airplanes. One operator reported that the decompression panel on one of its airplanes tore and inadvertently opened during service. A subsequent survey indicated that three other operators had experienced similar in-service incidents. Investigation has revealed that fatigue associated with normal pressurization cycles is causing the premature tearing of the decompression panels.

Tearing and subsequent opening of these decompression panels allows additional air to flow into the cargo compartment. In the event of a fire in the cargo compartment, the additional airflow would dilute the smoke and, consequently, result in delayed detection of the fire. Additionally, the increased airflow would dilute the cargo compartment fire suppression agent below effective concentrations and, thus, degrade the capability of the system to suppress a fire.

This condition is significant specifically for airplanes that are equipped with a "90-minute fire suppression system" installed in accordance with "Option 4" of paragraph (b)(4) of AD 93-07-15, amendment 39-8547 (58 FR 21243, April 20, 1993). That AD requires various actions that are intended to minimize the hazards associated with a fire occurring in the main deck Class B cargo compartment. Paragraph (b)(4) of AD 93-07-15 requires, among other things, installing a cargo compartment fire extinguishing system in the Class B cargo compartment that

... provides an initial fire extinguishant concentration of at least 5% of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3% of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 90 minutes.

If additional air flows into the cargo compartment through a torn or open panel and dilutes the amount of

extinguishant, it would reduce the effectiveness of the 90-minute fire suppression system.

Explanation of Relevant Service Information

Boeing has issued Alert Service Bulletin 747-25A3064, dated December 21, 1995, which describes procedures for replacing the currently-installed decompression panels with new panels of an improved design. The new panels are more resistant to tearing and inadvertent opening.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent tearing and inadvertent opening of the decompression panels that are located in the smoke barrier between the passenger and main deck cargo compartment. This AD requires the replacement of certain panels with new panels having an improved design. The actions are required to be accomplished in accordance with the service bulletin described previously.

This AD is applicable only to airplanes that are equipped with a 90-minute fire suppression system, which is specified as "Option 4" in paragraph (b)(4) of AD 93-07-15.

Cost Impact

None of the Model 747-400 "Combi" airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor charge of \$60 per work hour. Required parts would cost approximately \$14,000 per airplane. Based on these figures, the cost impact of this AD would be \$14,060 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior

notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-255-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-24-03 Boeing: Amendment 39-9629. Docket 96-NM-255-AD.

Applicability: Model 747-400 "combi" airplanes, as listed in Boeing Alert Service Bulletin 747-25A3064, dated December 21, 1995; on which a 90-minute fire suppression system specified in paragraph (b)(4) of AD 93-07-15, amendment 39-8547, has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased airflow in the cargo compartment caused by the tearing or opening of the decompression panels, which could result in delayed fire detection and reduced effectiveness of the fire suppression system, accomplish the following:

(a) Within 90 days after the effective date of this AD, replace the decompression

("blow-out") panels in the smoke barrier above the cargo/passenger partition, with improved panels, in accordance with Boeing Alert Service Bulletin 747-25A3064, dated December 21, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Boeing Alert Service Bulletin 747-25A3064, dated December 21, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 9, 1996.

Issued in Renton, Washington, on November 14, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-29726 Filed 11-21-96; 8:45 am]

14 CFR Part 39

[Docket No. 96-NM-230-AD; Amendment 39-9628; AD 96-24-02]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328-100 series airplanes, that requires removal of the acoustic damping foils at the skin behind the overhead switch panel. This amendment is prompted by a report of debonding of the edges of the acoustic damping foils. The actions

specified by this AD are intended to prevent such debonding, which could result in short circuiting of parts of the overhead switch panel due to contact with loose edges of the foils, and consequent smoke and/or fire in the cockpit.

DATES: Effective December 27, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2796; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328-100 series airplanes was published in the Federal Register on August 26, 1996 (61 FR 43691). That action proposed to require removal of the acoustic damping foils at the skin behind the overhead switch panel.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 12 Dornier Model 328-100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$720, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of

the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-24-02 Dornier: Amendment 39-9628. Docket 96-NM-230-AD.

Applicability: Model 328-100 series airplanes, serial numbers 3005 through 3024 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this

AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent debonding of the edges of the acoustic damping foils, which could result in short circuiting of parts of the overhead switch panel due to contact with loose edges of the foils, and consequent smoke and/or fire in the cockpit; accomplish the following:

(a) Within 90 days after the effective date of this AD, remove the acoustic damping foils having part number 001A253A1101204 at the skin behind the overhead switch panel in accordance with Dornier Service Bulletin SB-328-25-072, dated December 16, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal shall be done in accordance with Dornier Service Bulletin SB-328-25-072, dated December 16, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1996.

Issued in Renton, Washington, on November 14, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 96-29725 Filed 11-21-96; 8:45 am] BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-80-AD; Amendment 39-9827; AD 96-24-01]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires replacement of certain rudder horn assemblies with a new assembly. For certain airplanes, the amendment also requires replacement of certain rudder control rods with a new rod. This amendment is prompted by reports of cracked rudder horns and a cracked rudder control rod, caused by impact overload. The actions specified by this AD are intended to prevent such an overload and consequent cracking of the subject parts, which could result in reduced structural integrity of the rudder horn assembly or loss of rudder control; this condition could lead to reduced controllability of the airplane.

DATES: Effective December 27, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1721; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the Federal Register on August 27,

1996 (61 FR 44004). That action proposed to require replacement of certain rudder horn assemblies with a new rudder horn assembly. For certain airplanes, that action also proposed to require replacement of certain rudder control rods with a new rudder control rod.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to this proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry will be affected by this AD. It will take approximately 7 work hours per airplane to accomplish the replacement of the rudder horn assembly, at an average labor rate of \$80 per work hour. Required parts will cost approximately \$2,856 per airplane. Based on these figures, the cost impact of the replacement of the rudder horn assembly required by this AD on U.S. operators is estimated to be \$101,490, or \$2,985 per airplane.

There currently are no Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, or 700 series airplanes on the U.S. Register that will require the replacement of the rudder control rod. The only airplanes that will require this replacement currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that inclusion of that requirement in this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register in the future.

Should any of those airplanes (having serial numbers 10102, and 10105 through 10165, inclusive) be imported and placed on the U.S. Register in the future, it will take approximately 5 work hours per airplane to accomplish the replacement of the rudder control rod, at an average labor rate of \$80 per work hour. Required parts will cost approximately \$635 per airplane. Based on these figures, the cost impact of the replacement of the rudder control rod required by this AD on U.S. operators is estimated to be \$935 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of

the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-24-01 Fokker: Amendment 39-9827. Docket 96-NM-80-AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this

AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an impact overload and consequent cracking of the subject parts, which could result in reduced structural integrity of the rudder horn assembly or loss of rudder control, and, consequently, lead to reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, as applicable, in accordance with Fokker Service Bulletin F27/27-131, Revision 1, dated June 15, 1994.

(1) For all airplanes: Replace the rudder horn assembly, having part number (P/N) 3401-042-001 or 3401-042-401, with a new rudder horn assembly, having P/N F3402-070-407, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(2) For airplanes having serial numbers 10102, and 10105 through 10165 inclusive: Replace the rudder control rod, having P/N 5233-018-xxx, with a new rudder control rod, having P/N F8507-052-403, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacements shall be done in accordance with Fokker Service Bulletin F27/27-131, Revision 1, dated June 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North

Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1996.

Issued in Renton, Washington, on November 14, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 96-29724 Filed 11-21-96; 8:45 am] BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-CE-75-AD; Amendment 39-9830; AD 96-24-04]

RIN 2120-AA64

Airworthiness Directives; Aerospace Technologies of Australia, Nomad Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Aerospace Technologies of Australia (ASTA) Nomad Models N22B, N22S, and N24A airplanes. This action requires repetitively inspecting the tailplane stabilizer center section and repairing any cracked tailplane structure. This AD also provides an optional modification as a terminating action, after an inspection in which no cracks are found. A tailplane failure on one of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent cracking in the stabilizer center section, which, if not detected and corrected, could result in tailplane failure and loss of control of the airplane.

DATES: Effective January 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from AeroSpace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-75-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Mr. Ron Atmur, Aerospace Engineer, Los

Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (310) 627-5224; facsimile (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to ASTA Nomad Models N22B, N22S, and N24A airplanes was published in the Federal Register on March 22, 1996 (61 FR 11784). The action proposed to require inspecting (using both visual and eddy current methods) the tailplane stabilizer center section for cracks, and prior to further flight, repairing any cracked tailplane stabilizer center section for these ASTA airplanes that do not have Modifications N663 and N768 incorporated in the area of the tailplane stabilizer center section. This AD also provides the option of modifying the tailplane stabilizer center section (Mod. N663 and N768) as a terminating action.

Applicable Service Information

Accomplishment of the proposed action would be in accordance with Nomad Service Bulletin ANMD-55-26, Revision 8, dated April 15, 1994.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Costs Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 15 workhours per airplane to accomplish this action, and that the average labor rate is approximately \$60 an hour. The total cost impact of this AD upon U.S. operators of the affected airplanes is estimated to be \$13,500 or \$900 per airplane. This figure only includes the cost for the initial inspection and does not include replacement costs if the tailplane stabilizer center section is found cracked, nor does it include repetitive

inspection costs. Additionally, the FAA has no way of determining how many tailplane stabilizer center sections may be cracked or how many repetitive inspections each owner/operator may incur over the life of the airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96-24-04. Aerospace Technologies of Australia (ASTA): Amendment 39-9830; Docket No. 95-CE-75-AD.

Applicability: Nomad Models N22B, N22S, and N24A airplanes (all serial numbers), certificated in any category, that have not incorporated ASTA Modification N663 and N768 in the area of the tailplane stabilizer.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent cracking in the tailplane stabilizer center section, which, if not detected and corrected, could result in tailplane failure and loss of control of the airplane, accomplish the following:

(a) Inspect the tailplane stabilizer center section and center lightening hole for cracks (using both visual and eddy current methods) in accordance with section "C. Description, (1) Part 1—Inspection," of ASTA Nomad Service Bulletin (SB) ANMD-55-26, Revision 8, dated April 15, 1994.

(b) If cracks are found during any inspection required by this AD, prior to further flight, repair the stabilizer center section in accordance with a repair scheme obtained from the manufacturer through the Manager, Los Angeles Aircraft Certification Office, at the address specified in paragraph (d).

(1) This repair scheme does not eliminate the repetitive inspection requirement.

(2) The repetitive inspection requirement of this AD may be terminated by incorporating both Modification (Mod.) N663 and N768 in accordance with the Accomplishment Instructions section of Nomad SB ANMD-55-26, Revision 8, dated April 15, 1994. These modifications may only be incorporated, prior to further flight, after any inspection, provided no cracks are found.

(3) Modifications N663 and N768 may also be incorporated as terminating action to the repetitive inspections of this AD on airplanes that have cracks repaired in the tailplane stabilizer center section provided the modifications are incorporated, prior to further flight, after an inspection where no cracks were found.

Note 2: Mod. N663 reworks the horizontal stabilizer to incorporate a strengthened main spar assembly that includes a gust stop spring box and modified mass balance arm. The trim tab hinges are moved 0.17 inches aft and springs are added to the bottom skin of the horizontal stabilizer to permit increased trim tab movement. Mod. N768 incorporates Mod. N663 and replaces the pivot brackets, attachment bolts, and spar web doubler with strengthened components.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) The inspections, modifications, and replacements required by this AD shall be done in accordance with Nomad Service Bulletin ANMD-55-26, Revision 8, dated April 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospace Technologies of Australia, Limited, ASTA Defence, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-9830) becomes effective on January 17, 1997.

Issued in Kansas City, Missouri, on November 13, 1996.

James E. Jackson,
Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 96-29723 Filed 11-21-96; 8:45 am]

BILLING CODE 4910-13-J

14 CFR Part 39

[Docket No. 95-CE-83-AD; Amendment 39-9831; AD 96-24-05]

RIN 2120-AA64

Airworthiness Directives; Aerospace Technologies of Australia Nomad Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Aerospace Technologies of Australia (ASTA) Nomad Models N22B, N22S, and N24A airplanes. This action requires inspecting the flap and aileron control rod fork ends for water accumulation and corrosion inside the internally drilled holes, and replacing the control rod fork ends if there is visible corrosion, or sealing the hole if

no corrosion is found. Reports of water entering the internal holes of the flap and aileron control rod fork ends, causing corrosion, prompted this AD action. The actions specified by this AD are intended to prevent corrosion and water accumulation in the flap and aileron control rod fork ends, which, if not detected and corrected, could cause loss of control of the flaps and aileron and possible loss of control of the airplane.

DATES: Effective January 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Aerospace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-93-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (310) 627-5224; facsimile (310) 627-5210.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to ASTA Nomad Models N22B, N22S, and N24A airplanes was published in the Federal Register on March 14, 1996 (61 FR 10478). The action proposed inspecting the flap and aileron control rod fork ends for water accumulation and corrosion inside the internally drilled holes, and replacing the control rod fork ends if there is visible corrosion or sealing the hole if no corrosion is found.

Related Service Information

Accomplishment of this action would be in accordance with ASTA Nomad Service Bulletin (SB) NMD-27-24, dated October 8, 1982.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 3 workhours per airplane to accomplish this action, and that the average labor rate is approximately \$60 an hour. In estimating the total cost impact of this AD on U.S. operators, the FAA is only using the inspection criteria (3 workhours). The FAA has no way of knowing how many airplanes have incorporated the modification. With this in mind and based on those figures above, the total cost impact of this AD upon U.S. operators of the affected airplanes is \$2,700. This figure only includes the cost for the initial inspection and does not include replacement costs of the corroded part. The FAA has no way of determining the number of corroded control rod fork ends.

Compliance Time for This AD

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is appropriate.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96-24-06 Aerospace Technologies of Australia (ATA): Amendment 39-9831; Docket No. 95-CE-93-AD.

Applicability: Nomad Models N22B, N22S, and N24A airplanes with the following serial numbers, certificated in any category.

Nomad N22B and N22S

N22B-6M, N22B-6M, N22B-7, N22B-11M, N22B-12M, N22B-15M, N22B-16M, N22B-18M, N22B-19M, N22B-20M, N22B-21M, N22B-22M, N22B-23M, N22B-25, N22B-27, N22B-31M, N22B-33, N22B-35, N22B-37, N22B-50, N22B-53, N22B-56, N22B-57, N22B-58, N22B-59, N22B-61, N22B-65M, N22B-66, N22B-67M, N22B-68, N22B-69, N22B-70, N22S-82, N22B-83, N22S-84, N22B-85M, N22S-86, N22S-87, N22B-88M, N22S-90, N22B-91M, N22S-92, N22B-93, N22B-95, N22B-97M, N22B-100M, N22B-102, N22B-103, and N22B-104

Nomad N24A

N24A-44, N24A-46, N24A-62, N24A-64, N24A-71, N24A-72, N24A-73, N24A-74, N24A-75, N24A-76, N24A-77, N24A-78, and N24A-79

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within 1 year after the effective date of this AD, unless already accomplished.

To prevent corrosion and water accumulation in the flap and aileron control rod fork ends, which, if not detected and corrected, could cause loss of control of the flaps and aileron and possible loss of control of the airplane, accomplish the following:

(a) Inspect for corrosion and water accumulation inside the internally drilled holes of the flap and aileron control rod fork ends in accordance with the Accomplishment Instructions section of Nomad Service Bulletin (SB) NMD-27-24, dated October 8, 1982.

(b) If corrosion is present, prior to further flight, replace the control rod fork ends, part number (P/N) 1/N-45-351 or P/N 1/N-45-1059, and seal the drilled holes in accordance with the Accomplishment Instructions section of Nomad SB NMD-27-24, dated October 8, 1982.

(c) If no corrosion is present, prior to further flight, seal the drilled holes to prevent future corrosion in accordance with the Accomplishment Instructions section of Nomad SB NMD-27-24, dated October 8, 1982.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) The inspection, modification, or replacement required by this AD shall be done in accordance with Nomad Service Bulletin NMD-27-24, dated October 8, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 14 CFR part 51. Copies may be obtained

from Aerospace Technologies of Australia, Limited, ASTA DEFENCE, Private Bag No. 4, Beach Road Lane 3212, Victoria, Australia. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39-9831) becomes effective on January 17, 1997.

Issued in Kansas City, Missouri, on November 13, 1996.

James E. Jackson,
Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 96-29721 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-CE-62-AD; Amendment 39-9832; AD 96-24-07]

RIN 2123-AA64

Airworthiness Directives; HOAC Austria Model DV-20 Katana Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain HOAC Austria Model DV-20 Katana airplanes. This action requires replacing the muffler with one of improved design, installing a heat shield around the exhaust system endpipe, and adjusting the airplane weight and balance. This AD results from reports of cracks in the welding joint that connects the exhaust system endpipe to the muffler on three of the affected airplanes. The actions specified by this AD are intended to prevent separation of the exhaust system endpipe from the muffler because of cracks in the welding that connects these parts, which could result in heat damage to the electrical system and engine controls.

DATES: Effective January 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from HOAC Austria Ges.m.b.H., N.A. Otto-Strabe 5, A-2700, Wiener Neustadt. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-62-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64108; or at the Office of the

Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Program Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone (32 2) 508.2692; facsimile (32 2) 230.8899; or Mr. Robert Alpaier, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply certain HOAC Austria Model DV-20 Katana airplanes was published in the Federal Register on August 22, 1996 (61 FR 43317). The action proposed to require replacing the muffler with one of improved design, installing a heat shield around the exhaust system endpipe, and adjusting the airplane weight and balance. Accomplishment of the proposed muffler replacement as specified in the notice of proposed rulemaking (NPRM) would be in accordance with the applicable maintenance manual; accomplishment of the proposed heat shield installation as specified in the NPRM would be in accordance with Drawing No. DV2-7800R01-00, as referenced in HOAC Austria Service Bulletin (SB) No. 20-7/2, dated September 8, 1994; and accomplishment of the weight and balance adjustment as specified in the NPRM would be in accordance with HOAC Austria SB No. 20-7/2, dated September 8, 1994.

The NPRM resulted from reports of cracks in the welding joint that connects the exhaust system endpipe to the muffler on three of the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections

will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that an interval of three calendar months is an appropriate compliance time to address the identified unsafe condition in a timely manner. This compliance time was deemed appropriate after considering the safety implications, the average utilization rate of the affected fleet, and the availability of the replacement parts.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately \$60 an hour. HOAC Austria will provide parts at no cost to the affected airplane owners/operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$300 or \$60 per airplane. The FAA is unaware of any affected airplane that already has the required muffler replacement and heat shield installation.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96-24-07 HOAC Austria: Amendment 39-9832; Docket No. 95-CE-62-AD.

Applicability: Model DV-20 Katana airplanes, serial numbers 20005 through 20078, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next three calendar months after the effective date of this AD, unless already accomplished.

To prevent separation of the exhaust system endpipe from the muffler because of cracks in the welding that connects these parts, which could result in heat damage to the electrical system and engine controls, accomplish the following:

(a) For any Model DV-20 Katana airplane incorporating a serial number in the range of 20005 through 20078, replace the muffler with one that incorporates a type "F" endpipe. The letter "F" is stamped on the endpipe of these type "F" parts. Accomplish this action in accordance with HOAC Austria Maintenance Manual, Doc No. 4.02.02.

(b) For any Model DV-20 Katana airplane incorporating a serial number in the range of 20005 through 20058, accomplish the following:

(1) Install a heat shield in accordance with Drawing No. DV2-7800R01-00, as referenced in HOAC Austria Service Bulletin (SB) No. 20-7/2, dated September 8, 1994.

(2) Adjust the mass (weight) and center of gravity (CG) in accordance with the instructions in HOAC Austria SB No. 20-7/2, dated September 8, 1994.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(e) The installation required by this AD shall be done in accordance with HOAC Drawing No. DV2-7800R01-00, as referenced in HOAC Austria Service Bulletin No. 20-7/2, dated September 8, 1994. The adjustment required by this AD shall be done in accordance with HOAC Austria Service Bulletin No. 20-7/2, dated September 8, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from HOAC Austria Ges.m.b.H., N.A. Otto-Strabe 5, A-2700, Wiener Neustadt. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-8632) becomes effective on January 17, 1997.

Issued in Kansas City, Missouri, on November 15, 1996.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-29862 Filed 11-21-96; 8:45 am]

BILLING CODE 4910-12-2

14 CFR Part 71

[Airspace Docket No. 96-ASW-29]

Revocation of Class D Airspace; Blytheville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule; Request for comments.

SUMMARY: This action revokes the Class D airspace at Blytheville, AR. The decommissioning of the Blytheville, Arkansas International Airport control tower removes the need for Class D airspace extending upward from the surface to, but not including, 2,800 feet Mean Sea Level (MSL) within a 4.6-mile radius of the airport. This action is intended to revoke the unnecessary Class D airspace.

EFFECTIVE DATE: 0901 UTC, December 9, 1996.

Comment Date: Comments must be received on or before January 21, 1997.
ADDRESSES: Send comments on the rule in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 96-ASW-29, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2801 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX. **FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-222-5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the revocation of Class D airspace at Blytheville, AR, and was not preceded by notice and public procedure, comments are invited on the rule. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace, providing controlled airspace for terminal instrument operations, located

at Blytheville, Arkansas International Airport, AR. The current Class D airspace was supported by a control tower, which was decommissioned following the closure of Eaker Air Force Base, subsequently renamed Blytheville, Arkansas International Airport.

Since this action merely involves the revocation of Class D airspace as a result of closing the airport control tower, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Since there will no longer be a control tower at Blytheville, Arkansas International Airport, the Class D airspace must be removed to avoid confusion on the part of the pilots flying in the vicinity of the airport, and to promote the safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary and good cause exists for making this amendment effective in less than thirty days.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and

effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace areas designated for an airport

ASW AR D Blytheville, AR [Removed]

Issued in Fort Worth, TX, on November 12, 1996.

Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.

[FR Doc. 96-29853 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-12-M

14 CFR Part 71

[Airspace Docket No. 96-AQL-11]

Modification of Class E Airspace; Miller, SD; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the title, Summary, and the rule of Miller Municipal Airport, Miller, SD Class E5 airspace published in a final rule on September 17, 1996 (61 FR 48825), Airspace Docket Number 96-AQL-11.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96-23804, Airspace Docket 96-AQL-11, published on September 17, 1996 (61 FR 48825), established Class E5 airspace at Miller Municipal Airport, Miller, SD. An error was discovered in the title, Summary and The Rule of the docket. This action corrects the title, Summary and The Rule to indicate the docket action to be a modification versus establishment. Class E airspace existed prior to accommodating the Nondirectional Beacon (NDB).

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the title of the notice of airspace designation for the Miller Municipal Airport, Miller, SD, Class E5 airspace, as published in the Federal Register on September 17, 1996 (61 FR 48825), (Federal Register document 96-23804; page 48825, column 3), is corrected as follows:

14 CFR Part 71—[Corrected]

Modification of Class E airspace; Miller, SD; Correction.

Issued in Des Plaines, Illinois on November 5, 1996.

Peter H. Salmon,
Acting Manager, Air Traffic Division.
[FR Doc. 96-29858 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-12-M

14 CFR Part 71

[Airspace Docket No. 96-AQL-16]

RIN 2120-AA66

Realignment of Jet Route J-522

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This rule extends Jet Route 522 (J-522) from Green Bay, WI, to Brainerd, MN. This action provides a published route for aircraft to transition from the en route environment to the standard terminal arrival route (STAR) serving the Minneapolis-St. Paul International Airport.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20581; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On April 18, 1996, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to extend J-522 from Green Bay, WI, to Brainerd, MN (61 FR 18622). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet Routes are published in paragraph 2004 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 extends J-522 from Green Bay, WI, to Brainerd, MN. Extending J-522 will

provide a published route for aircraft to transition from the en route environment to the STAR serving the Minneapolis-St. Paul International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations 95-AQL-16 4 and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 2004—Jet Routes

J-522 [Revised]

From Brainerd, MN; Green Bay, WI; Traverse City, MI; Au Sable, MI; Toronto, ON, Canada; INT Toronto 090° and Hancock, NY, 302° radials; Hancock, to Kingston, NY. The airspace within Canada is excluded.

Issued in Washington, DC, on November 8, 1996.

Jeff Griffith,
Program Director for Air Traffic Airspace Management.

[FR Doc. 96-29959 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-12-U

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DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 95F-0395]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration,
HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene/pentene-1 copolymers containing not less than 90 percent of polymer units derived from ethylene as components of articles intended for use in contact with food. This action is in response to a petition filed by Sasol Alpha Olefins.

DATE: Effective November 22, 1996; written objections and requests for a hearing by December 23, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3084.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 15, 1995 (60 FR 57434), FDA announced that a food additive petition (FAP 5B4482) had been filed by Sasol Alpha Olefins, P.O. Box 5486, Johannesburg 2000, Republic of South Africa. The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of ethylene/pentene-1 copolymers containing not less than 90 percent of polymer units derived from ethylene as components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed food additive use is safe, that it will achieve its intended technical effect, and therefore, that the regulations in § 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 23, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and

analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD
ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1520 is amended by adding a new paragraph (a)(3)(i)(A)(3), and in the table in paragraph (c) by revising item 3.1a and by adding a new item 3.1c to read as follows:

§ 177.1520 Olefin polymers.

- (a) * * *
- (3) * * *
- (i) * * *
- (A) * * *
- (3) Olefin basic copolymers manufactured by the catalytic copolymerization of ethylene and pentene-1 shall contain not less than 90 weight-percent of polymer units derived from ethylene.
- (c) * * *

Olefin polymers	Density	Melting point (MP) or softening point (SP) (Degrees Centigrade)	Maximum extractable fraction (expressed as percent by weight of polymer) in N-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
3.1a Olefin copolymers described in paragraph (a)(3)(i) of this section for use in articles that contact food except for articles used for packing or holding food during cooking; except olefin copolymers described in paragraph (a)(3)(i)(A)(3) of this section and listed in item 3.1c of this table and olefin copolymers described in paragraph (a)(3)(i)(A) of this section and listed in item 3.1b of this table.	0.85-1.00		5.5 pct at 50 °C	30 pct at 25 °C
3.1c Olefin copolymers described in paragraph (a)(3)(i)(A)(3) of this section for use in contact with food only under conditions of use B, C, D, E, F, G, and H described in § 178.170(c) of this chapter, Table 2; except that such copolymers when used in contact with food of the types identified in § 178.170(c), Table 1, under types III, IVA, V, VIIA, and IX, shall be used only under conditions of use D, E, F, and G described in § 178.170(c) of this chapter, Table 2.	Not less than 0.92			

Dated: November 18, 1996.
Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 96-29874 Filed 11-21-96; 9:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 250

RIN 1078-AD68

Indian Fishing—Hoopa Valley Indian Reservation

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is eliminating 25 CFR Part 250 as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations. The necessity for this rule no longer exists.

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Rankel, Chief, Branch of Fish, Wildlife

and Recreation, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 4513-MIB, Washington, DC 20240, Telephone (202) 208-4088.

SUPPLEMENTARY INFORMATION: On May 2, 1996, at 61 FR 19600, the Bureau published a proposed rule to eliminate 25 CFR Part 250, Indian Fishing—Hoopa Valley Indian Reservation. The purpose for which this rule was promulgated has been fulfilled and the rule is no longer required. Both the Hoopa Valley Tribe and the Yurok Tribe have established regulations to protect the fishery resources and fishing rights of Indians of the Hoopa Valley and Yurok Indian Reservations. With tribal fishing regulations now in place, 25 CFR Part 250 is no longer necessary. We received no comments in response to the proposed rule.

Evaluation and Certification

The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Office of Management and Budget has determined that this rule is not a

significant regulatory action under Executive Order 12866.

There will be no economic effect on each tribal government and tribal organization under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and no additional outlays will be required of tribal governments, tribal organizations, and the Federal Government.

In accordance with Executive Order 12830, the Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "taking" of private property interests, nor does it affect private property.

The Department has determined that this rule will not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection documents.

Drafting Information

The primary author of this document is Gary Rankel, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 250
Indians, Indian-fishing rights.

Under the authority of Executive Order 12866, 3 CFR; 1993, Comp., p. 636, and for the reasons stated above, Part 250 is removed from 25 CFR.

Dated: November 5, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-29506 Filed 11-21-96; 9:45 am]

BILLING CODE 4310-37-P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO-030-FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Colorado regulatory program (hereinafter referred to as the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposed revisions to and additions of statutes pertaining to definitions, development of rules no more stringent than SMCRA, requirements for permit applications, material damage resulting from subsidence caused by underground coal mining operations, imprudently issued permits, release of performance bonds, entities and operations subject to the requirements of the Colorado Surface Coal Mining Reclamation Act, authority to apply for funds for the administration and fulfillment of the requirements of an abandoned mine reclamation program, and creation of a Colorado mine subsidence protection program. The amendment revised the State program to clarify ambiguities and improve operational efficiency.

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844-1424.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173).

Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letters dated August 13 and 27, 1996, Colorado submitted a proposed amendment (administrative record No. CO-680) to its program pursuant to SMCRA (30 U.S.C. 1201 et seq.). Colorado submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the September 10, 1996, Federal Register (61 FR 47722), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO-680-2). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 10, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Colorado on August 13 and 27, 1996, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Substantive Revisions to the Colorado Revised Statutes (C.R.S.) That Are Substantively Identical to the Corresponding Provisions of SMCRA

Colorado proposed revisions to the Colorado Surface Coal Mining Reclamation Act, C.R.S., that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal SMCRA provisions (listed in parentheses).

C.R.S. 34-33-127 (section 534 of SMCRA), concerning public agencies, public utilities, and public corporations which are subject to the requirements of Colorado's Act, and

C.R.S. 34-33-129(1)(a) (section 528(1) of SMCRA), concerning the exemption from the requirements of Colorado's Act for the extraction of coal by a landowner for his own use.

Because these proposed Colorado statutes are substantively identical to the corresponding provisions of SMCRA, the Director finds that they are no less stringent than SMCRA. The Director approves these proposed statutes.

2. C.R.S. 34-33-103(1), (7), and (13.5), Definitions of "Administrator," "Division," and "Office"

Colorado revised the definitions of "Administrator" and "Division" at C.R.S. 34-33-103(1) and (7) to mean, respectively, the "head of the Office of Mined Land Reclamation in the Division of Minerals and Geology" and "Division of Minerals and Geology." Colorado added the definition of "Office" at C.R.S. 34-33-1-3 (13.5) to mean the "Office of Mined Land Reclamation." In addition, Colorado proposed editorial revisions throughout C.R.S. 34-33-104 through 126 to (1) replace the term "Division" with the term "Office" and (2) replace the terms "he" and "his" with gender neutral terms. Colorado proposed these revisions in accordance with a May 1992 reorganization of the regulatory authority, which did not result in significant changes in staffing and resources.

The Federal definition of "State regulatory authority" at section 701(26) of SMCRA means "the department or agency in each State which has primary responsibility at the State level for administering this Act."

Because the proposed Colorado definition clearly defines the agency and positions responsible at the State level for implementing the State counterpart to SMCRA, the Director finds that Colorado's proposed definitions of "Administrator," "Division," and "Office" at C.R.S. 34-33-103(1), (7), and (13.5), and related editorial revisions are consistent with and no less stringent than the definition of "State regulatory authority" at section 701(26) of SMCRA. Therefore, the Director approves the proposed definitions and other editorial revisions.

3. C.R.S. 34-33-103(14), (21), and (26), Definitions of "Operator," "Person," and "Surface Coal Mining Operations"

a. C.R.S. 34-33-103(14) and (26), Definitions of "Operator" and "Surface Coal Mining Operations"

Colorado revised, at C.R.S. 34-33-103(14) and (26), respectively, the definitions of "Operator" and "Surface coal mining operations" to include removal of coal from "coal mine waste." Colorado revised the definition of "Surface coal mining operations" to delete the exemption for the extraction of coal incidental to the extraction of other minerals. Colorado also proposed deletion of an extraneous use of the term "removal" from the definition for "Surface coal mining operations." Colorado's proposed definitions of "Operator" and "Surface coal mining

operations" are, with two exceptions, substantively identical to the counterpart Federal definitions of "Operator" and "Surface coal mining operations" at section 701(13) and (26) of SMCRA.

The first exception concerns Colorado's inclusion of the removal of coal from coal mine waste in the definitions of "Operation" and "Surface coal mining operations." The corresponding Federal definitions of "Operator" and "Surface coal mining operations" do not include the removal of coal from coal mine waste.

With respect to the first exception, the Federal regulations at 30 CFR 701.5 define "surface coal mining activities" to include recovery of coal from a deposit that is not in its original geologic location. Colorado has the same definition in its program at Rule 104(131). Colorado's proposed revisions to include recovery of coal from coal mining waste in both definitions add clarity and consistency to Colorado's program.

The second exception concerns Colorado's deletion from the definition for "Surface coal mining operations" of the exemption for the extraction of coal incidental to the extraction of other minerals. The Federal definition of "Surface coal mining operations" includes the exemption for the extraction of coal incidental to the extraction of other minerals.

With respect to the second exception, Colorado stated that because it has never received a request concerning an exemption for the extraction of coal incidental to the extraction of other minerals, nor has it investigated a mining operation where coal was being extracted but was not the primary objective, Colorado concluded that the exemption was not warranted. Colorado's deletion of this exemption does not cause its program to be less stringent than SMCRA.

Colorado's deletion of the extraneous term "removal" from the definition for "Surface coal mining operations" is nonsignificant and editorial in nature and does not cause the definition to be less stringent than the Federal definition.

Based on the above discussion, the Director finds that Colorado's proposed definitions of "Operator" and "Surface coal mining operations" at C.R.S. 34-33-103(14) and (26) are consistent with and no less stringent than the definitions of "Operator" and "Surface coal mining operations" in SMCRA at section 701(13) and (26), and the definition of "surface coal mining activities" at 30 CFR 701.5. Therefore, the Director approves the definitions.

b. C.R.S. 34-33-103(21), Definition of "Person"

Colorado proposed at C.R.S. 34-33-103(21) to revise its statutory definition of "person" to include (1) Indian Tribes conducting surface coal mining and reclamation operations outside Indian lands and (2) publicly-owned utilities or corporations.

Colorado's proposed definition of "person" is substantively identical to the Federal definition of "Person" at section 701(19) of SMCRA with the following exception. The Federal definition does not specifically address Indian Tribes conducting operations on non-Indian lands and publicly-owned utilities or corporations, but it does incorporate such entities into its definition through the use of the phrase "or other business organization." However, the Federal definition of "person" at 30 CFR 709.5 does include an "Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands."

Based on the above discussion, the Director finds that Colorado's proposed clarification of its definition of "Person" at C.R.S. 34-33-103(21) is consistent with and no less stringent than the Federal definition of "Person" at section 701(19) of SMCRA, and approves the definition.

4. C.R.S. 34-33-108, Rules No More Stringent Than SMCRA

Colorado proposed to revise C.R.S. 34-33-108(1) to require that rules and regulations promulgated pursuant to its Act shall be no more stringent than required to be as effective as SMCRA and the Federal regulations. Colorado proposed to revise C.R.S. 34-33-108(2) to (1) require automatic repeal of a State regulation within ninety, rather than sixty, days after the corresponding Federal law, rule, or regulation is repealed, deleted, or withdrawn, and (2) allow, upon request, a rulemaking hearing prior to such repeal.

Section 503 of SMCRA requires that State programs be in accordance with the requirements of SMCRA and include rules that are consistent with the regulations issued by the Secretary pursuant to SMCRA. However, the Federal regulations at 30 CFR 730.5 define "consistent with and in accordance with" to mean, with regard to SMCRA, that the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions, and, with regard to the Federal regulations, that the State laws and regulations are no less effective than the Secretary's

regulations in meeting the requirements of SMCRA.

Proposed C.R.S. 34-33-108(1), which requires that Colorado's rules and regulations shall be no more stringent than required to be as effective as SMCRA and the Federal regulations, is consistent with and no less stringent than section 503 of SMCRA and the Federal regulations at 30 CFR 701.5. Proposed C.R.S. 34-33-108(2), which has no counterpart in the Federal program, provides an additional 30 days before the automatic repeal of Colorado's rules corresponding to Federal regulations that have been repealed, deleted, or withdrawn and provides the opportunity for a person to request a rulemaking hearing regarding the automatic repeal. While the existing provision was not inconsistent with section 503 of SMCRA, both revisions provide greater opportunity for public input concerning Colorado's rulemaking procedures.

Based on the above discussion, the Director finds that proposed C.R.S. 34-33-108(1) and (2) are no less stringent than section 503 of SMCRA, and approves them.

5. C.R.S. 34-33-110(4), Requirements for Permit Applications

Colorado proposed to revise C.R.S. 34-33-110(4) by adding the requirement that a permit application be filed with any public office identified in regulations promulgated pursuant to its Act. Colorado's existing Rule 2.07.3(4)(a) requires that an applicant to file a copy of the permit application in the courthouse of the county where the mining is proposed to occur.

Section 507(e) of SMCRA requires that a permit application be filed at an appropriate public office approved by the regulatory authority where the mining is proposed to occur.

Colorado's proposed C.R.S. 34-33-110(4), in conjunction with Rule 2.07.3(4)(a), is substantively identical to the requirement at section 507(e) of SMCRA. Therefore, the Director finds that Colorado's proposed section 34-33-110(4) is consistent with and no less stringent than section 507(e) of SMCRA, and approves the proposed revision.

6. C.R.S. 34-33-115(1)(c), Application for Extension of Area Covered by an Existing Permit by Permit Revision

Colorado proposed to revise C.R.S. 34-33-115(1)(c) to require that a permittee apply for an extension of the area (other than incidental boundary changes) covered by the permit by application for either a permit revision or new permit. Colorado's existing Rule 2.08.4(1)(d) requires that a permit

revision shall be obtained "for any extensions to the area covered by a permit, except for incidental boundary revisions."

Section 511(a) of SMCRA requires that applications for extension of the area covered by the permit, except incidental boundary revisions, must be made by application for a new permit.

The procedural requirements of Colorado's Rule 2.07, including public notice and opportunity for a public hearing, are the same for permit revision and new permit applications, and Colorado stated that all informational requirements applicable to new permits would also be applicable to permit revisions when they involve an extension of area to be covered by a permit other than an incidental boundary change (finding No. 11, 61 FR 26792, 26796, May 29, 1996; administrative record No. CO-675-16).

Based on the above discussion, the Director finds that proposed C.R.S. 34-33-115(1)(c) is no less stringent than section 511(a) of SMCRA, and approves the proposed revision.

7. C.R.S. 34-33-121(2)(a), Surface Effects of Underground Mining

Colorado proposed to revise C.R.S. 34-33-121(2)(a) by adding, at paragraph (2)(a)(II), requirements for mitigation of subsidence-caused material damage to any occupied residential dwelling and related structures or any noncommercial building. The proposed mitigation could occur by means of rehabilitation, replacement, or compensation. (Existing paragraph (a)(I) requires operators to adopt measures consistent with known technology in order to prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner.)

Proposed C.R.S. 34-33-121(2)(a)(II) is, with one exception, consistent with the requirements of section 720 of SMCRA regarding mitigation of subsidence-caused material damage to occupied residential dwellings or non-commercial structures and drinking, domestic, or residential water supplies.

The exception is that proposed C.R.S. 34-33-121(2)(a)(II) does not include the requirement in section 720 of SMCRA to "promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination,

diminution, or interruption resulting from underground coal mining operations."

With respect to the exception concerning replacement of drinking, domestic, or residential water supplies, proposed C.R.S. 34-33-121(2)(a)(II) is less stringent than section 720 of SMCRA. Therefore, to be no less stringent than section 720 of SMCRA, Colorado must revise its Act to require permittees for underground coal mining operations conducted after October 24, 1992, to promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

OSM, on June 5, 1996, sent Colorado a 30 CFR Part 732 letter (administrative record No. CO-679) concerning the need to revise its program to address the requirements for repair of subsidence-caused damages at section 720 of SMCRA. By letter dated August 5, 1996 (administrative record No. CO-681), Colorado stated that it would submit further revisions to its approved program to address the requirements of section 720 of SMCRA and the Federal regulations at 30 CFR 817.121.

Because OSM has notified Colorado of its obligation to revise its approved program concerning subsidence-caused damages, and Colorado has agreed to submit a future program amendment, OSM will not at this time require an amendment specific to the replacement of drinking, domestic, or residential water supplies. In the meantime, there will be joint Federal (OSM) and State (Colorado) enforcement of any subsidence-caused damages to a "drinking, domestic, or residential water supply" as defined in the Federal regulations at 30 CFR 701.5 (60 FR 38491, July 27, 1995; administrative record No. CO-671).

Based on the above discussion, the Director, with the exception concerning Colorado's lack of a provision specific to subsidence-caused material damage to drinking, domestic, or residential water supplies, approves proposed C.R.S. 34-33-121(2)(a)(II).

8. C.R.S. 34-33-123(13) (a) and (b), Enforcement of Improvidently Issued Permits

Colorado proposed to revise C.R.S. 34-33-123(13) (a) and (b) to provide statutory authority that will allow Colorado to draft rules that are counterpart to the Federal regulations at 30 CFR 773.20 and 773.21, concerning

enforcement of improvidently issued permits. The proposed statutory provision in paragraph (a) states that when Colorado, based on criteria established in its rules, which must be no less effective than the criteria in 30 CFR 773.20, finds that it has improvidently issued a permit, it shall implement remedial measures set forth in its rule, which must be no less effective than 30 CFR 773.20.

Furthermore, proposed paragraph (b) states that when an order to show cause is issued pursuant to this section, the order shall include the reasons for the finding that the permit was improvidently issued, and shall provide opportunity for a public hearing to be held in accordance with C.R.S. 34-33-124, and pursuant to such rules and regulations Colorado may adopt. The proposed statutory provision in paragraph (b) specifies that rules adopted pursuant to this section shall be no less effective than the Federal regulations at 30 CFR 773.21.

Section 510(c) of SMCRA precludes issuance of a permit where any surface coal mining operation owned or controlled by the applicant is in violation of SMCRA until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority. Colorado's proposed provision at C.R.S. 34-33-123(13)(b) for a public hearing is no less effective than the requirement at 30 CFR 773.20(c)(2), concerning remedial measures, for the "opportunity to request administrative review of the notice under 43 CFR 4.1370 through 4.1377."

Colorado's proposed revision of C.R.S. 34-33-123(13) (a) and (b) is consistent with section 510(c) of SMCRA and contains no language that is less effective than the requirements at 30 CFR 773.20 and 773.21. Therefore, the Director finds that proposed C.R.S. 34-33(13) (a) and (b) is no less stringent than section 510(c) of SMCRA and approves the revision.

9. C.R.S. 34-33-125 (4) and (8), Release of Performance Bonds

Colorado proposed to revise C.R.S. 34-33-125 (4) and (8) to, respectively, (1) allow sixty rather than thirty days from the date of completion of the bond release inspection and evaluation for Colorado to provide written notification to the permittee of its proposed decision to release or not release all or part of the performance bond and (2) condition the provision for an informal conference concerning the bond release by stating that the conference must conclude by

the sixtieth day following the bond release and inspection evaluation.

With respect to proposed C.R.S. 34-33-125(4), section 519(b) of SMCRA requires that the regulatory authority notify the permittee in writing of its decision regarding the bond release request within sixty days from the filing of the request, or within thirty days after a public hearing on the request when one is held.

Because the SMCRA deadline is procedural, OSM can evaluate Colorado's counterpart provision under a "same as or similar to" standard in determining whether a proposed State procedure is consistent with and in accordance with SMCRA. The only difference in the procedure is an extra thirty days, which increases the amount of time for the regulatory authority to carry out its review responsibilities and does not prejudice a permittee's right to due process. For these reasons, OSM considers the extra 30 days to be reasonable and finds that Colorado's procedure itself is similar to the procedural requirements of section 519(b) of SMCRA.

With respect to proposed C.R.S. 34-33-125(8), section 519(g) of SMCRA provides that the regulatory authority may establish an informal conference as provided in section 513 to resolve written objections to a proposed bond release. Section 513(b) of SMCRA provides that, if written objections are filed and an informal conference requested, the regulatory authority shall then hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such objections or request.

Colorado's existing Rule 3.03.2(4)(c), concerning an informal conference that is held to resolve written comments or objections to a bond release, specifies that the conference must be held within 30 days from the date of the notice (of requested bond release that is published in a newspaper) and must conclude by the sixtieth day following the bond release inspection and evaluation.

Colorado's proposed C.R.S. 34-33-125(8) conditions the allowance for the informal conference on its conclusion within 60 days following the bond release and inspection evaluation, but Colorado's Rule 3.03.2(4)(c) clearly provides, within a reasonable time frame, for an informal conference concerning a decision to release or not release a performance bond.

Based on the above discussion, the Director finds that Colorado's proposed C.R.S. 34-33-125 (4) and (8) are consistent with and no less effective than sections 519 (b) and (g) of SMCRA, and approves the proposed revisions.

10. C.R.S. 34-33-129(1)(b), Deletion of the Exemption from the Requirements of Colorado's Act for Coal Extraction Affecting 2 Acres or Less

As originally codified, Colorado, at C.R.S. 34-33-129(1)(b), excluded from regulation those coal extraction operations affecting 2 acres or less. Similarly, as originally enacted, section 528(2) of SMCRA exempted from the requirements of SMCRA all coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100-34, which repealed the section 528(2) exemption and preempted any acreage-based exemptions included in State laws or regulations.

The amendment under consideration in this rulemaking removed the language of C.R.S. 34-33-129(1)(b) preempted by Public Law 100-34. The Director finds that C.R.S. 34-33-129(1)(b), as revised by this amendment, is no less stringent than section 528 of SMCRA and approves it. Removal of the acreage-based exemption from the Colorado Surface Coal Mining Reclamation Act will avoid confusion on the part of the public, which may not be aware of the Federal preemption.

11. C.R.S. 34-33-133(2), Authorization to Collect Funds for the Abandoned Mine Reclamation Plan

Colorado proposed to revise C.R.S. 34-33-133(2)(a) to provide statutory authority for the State regulatory authority to apply for, receive, and expend grant moneys to not only develop but also to administer and fulfill the requirements of the abandoned mine reclamation program.

Although there is no direct counterpart to proposed C.R.S. 34-33-133(2)(a), it is consistent with section 405(b) of SMCRA which requires development of a State Reclamation Plan and annual projects to carry out the purposes of the abandoned mined land reclamation program, and with section 705(a) of SMCRA that authorizes the Secretary to make annual grants to States in developing, administering, and enforcing State programs under SMCRA. Colorado's provision at proposed C.R.S. 34-33-133(2)(a) uses the term "fulfillment" rather than "enforcement." This term is appropriate in the context of the abandoned mined land reclamation program under Title IV of SMCRA.

For these reasons, the Director finds that proposed C.R.S. 34-33-133(2)(a) is no less stringent than sections 405(b) and 705(a) of SMCRA, and approves the proposed revision.

12. C.R.S. 34-33-133.5(1) and (2), Colorado Coal Mine Subsidence Protection Program

Colorado proposed C.R.S. 34-33-133.5(1) and (2) to provide statutory authority for Colorado to assess and expend fees collected from participants who are insured under the subsidence protection program, and expend interest earned on such fees as necessary to defray administrative costs of the program.

Although there is no direct counterpart in SMCRA, section 401(c)(1) of SMCRA provides that moneys in the abandoned mined land reclamation program may be used to establish a self-sustaining, individual State-administered program to insure private property against damages caused by land subsidence resulting from underground coal mining. The Federal regulation at 30 CFR 887.12(a) provides that an agency may use moneys granted under the abandoned mined land reclamation program to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The Federal regulation at 30 CFR 887.12(e) requires that insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives. Therefore, the subsidence insurance program is intended to be self-generating and after an initial OSM grant, no further grant money will be available. The allowance to assess fees and use them to defray administrative costs is in accordance with the Uniform Administrative Requirements for Grants to States and Local Governments, OMB, Circular A-102, attachment E, as well as sections I-420-10A, B6, and C4 of OSM's Federal Assistance Manual. The Director finds that proposed C.R.S. 34-33-133.5(1) and (2) are consistent with and no less stringent than section 401(c)(1) of SMCRA and no less effective than the Federal regulations at 30 CFR 887.12(a) and (e). The Director approves proposed C.R.S. 34-33-133.5(1) and (2).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Colorado program.

The U.S. Army Corps of Engineers responded on October 1, 1996, that it found the changes to be satisfactory (administrative record No. CO-680-3).

The U.S. Forest Service responded on October 9, 1996, that it had no comments (administrative record No. CO-680-4).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Colorado proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. CO-680-1). It did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. CO-680-1). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings the Director approves Colorado's proposed amendment as submitted on August 13 and 27, 1996.

The Director approves, as discussed in:

Finding No. 1, C.R.S. 34-33-127, entities subject to the requirements of Colorado's Act, and C.R.S. 34-33-129(1)(a), requirements of Colorado's Act for the extraction of coal by a landowner for his own use, concerning revisions that are substantively identical to the corresponding provisions of SMCRA;

Finding No. 2, C.R.S. 34-33-103 (1) and (7), concerning the definitions of "Administrator" and "Division"; Finding No. 3.a, C.R.S. 34-33-103 (14) and (26), concerning the definitions

of "Operator" and "Surface coal mining operations";

Finding No. 3.b, C.R.S. 34-33-103(21), concerning the definition of "Person";

Finding No. 4, C.R.S. 34-33-108(1), concerning rules and regulations promulgated pursuant to its Act which shall be no more stringent than required to be as effective as SMCRA and the Federal regulations, and C.R.S. 34-33-108(2) concerning automatic repeal of a State regulation within ninety days after the corresponding Federal law, rule, or regulation is repealed, deleted, or withdrawn, and allowances, upon request, for a rule-making hearing prior to such repeal;

Finding No. 5, C.R.S. 34-33-110(4), concerning requirements for permit applications;

Finding No. 6, C.R.S. 34-33-115(1)(c), concerning applications for extension of area covered by an existing permit by a permit revision;

Finding No. 7, C.R.S. 34-33-121(2)(a)(ii), concerning requirements for mitigation of subsidence-caused material damage to any occupied residential dwelling and related structures or any noncommercial building;

Finding No. 8, C.R.S. 34-33-123(13) (a) and (b), concerning enforcement of improvidently issued permits;

Finding No. 9, C.R.S. 34-33-125 (4) and (8), concerning release of performance bonds;

Finding No. 10, C.R.S. 34-33-129(1)(b), concerning the deletion of the exemption from the requirements of Colorado's Act for coal extraction affecting 2 acres or less;

Finding No. 11, C.R.S. 34-33-133(2), concerning authorization to collect funds for the abandoned mine reclamation plan; and

Finding No. 12, C.R.S. 34-33-133.5 (1) and (2), concerning Colorado's coal mine subsidence protection program.

The Federal regulations at 30 CFR Part 906, codifying decisions concerning the Colorado program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations**1. Executive Order 12866**

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 22, 1996.

Russell F. Price,
Acting Regional Director, Western Regional
Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 906—COLORADO

1. The authority citation for part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (v) to read as follows:

§ 906.15 Approval of regulatory program amendments.

(v) The following revised statutes, as submitted to OSM on August 13 and 27, 1996, are approved effective November 22, 1996:

C.R.S. 34-33-103 (1), (7), (14), (21), and (26), definitions of "Administrator," "Division," "Operator," "Person," and "Surface coal mining operations;" C.R.S. 34-33-108(1), rules and regulations promulgated pursuant to its Act which shall be no more stringent than required to be as effective as SMCRA and the Federal regulations;

C.R.S. 34-33-108(2), automatic repeal of a State regulation within ninety days after the corresponding Federal law, rule, or regulation is repealed, deleted, or withdrawn, and allowance, upon request, for a rule-making hearing prior to such repeal;

C.R.S. 34-33-110(4), requirements for permit applications;

C.R.S. 34-33-115(1)(c), applications for extension of area covered by an existing permit by a permit revision;

C.R.S. 34-33-121(2)(a)(ii), requirements for mitigation of subsidence-caused material damage to any occupied residential dwelling and related structures or any noncommercial building;

C.R.S. 34-33-123(13) (a) and (b), enforcement of improvidently issued permits;

C.R.S. 34-33-125 (4) and (8), release of performance bonds;

C.R.S. 34-33-127, entities subject to the requirements of Colorado's Act;

C.R.S. 34-33-129(1)(a), requirements of Colorado's Act for the extraction of coal by a landowner for his own use; C.R.S. 34-33-129(1)(b), deletion of the exemption from the requirements of Colorado's Act for coal extraction affecting 2 acres or less;

C.R.S. 34-33-133(2), authorization to collect funds for the abandoned mine reclamation plan; and

C.R.S. 34-33-133.5 (1) and (2), coal mine subsidence protection program.

[FR Doc. 96-29640 Filed 11-21-96; 8:45 am]

BILLING CODE 4210-26-M

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

[DoD 6010.8-R]

RIN-0720-AA26

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Five Separate Changes

AGENCY: Office of the Secretary, DoD.
ACTION: Final rule.

SUMMARY: This final rule addresses five separate changes to comply with provisions affecting CHAMPUS. These changes will update this part to include as a benefit, a screen to check for the level of lead in the blood of an infant; to eliminate the implied statement that ambulance services are covered only to, from, and between hospitals; to include other forms of prescribed contraceptives by eliminating the reference that limits prescribed contraceptives only to those taken orally; to identify three additional Gulf Conflict groups eligible for the delay in the increased deductible; and to establish lower limits on the fiscal year catastrophic cap from \$10,000 to \$7,500 for all eligibles except dependents of active duty personnel, whose limit remains at \$1,000.

EFFECTIVE DATE: This final rule is effective February 20, 1997 except for the changes in section 199.4 which are listed below:

1. Paragraph (c)(3)(xi)(A)(7) is effective December 5, 1991;
2. Paragraph (e)(3)(i)(A)(3) is effective October 29, 1992;
3. Paragraph (f)(2)(i)(C) is effective on October 1, 1991; and
4. Paragraph (f)(10) is effective on October 1, 1992.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Program Development Branch, Aurora, CO 80045-5900.

FOR FURTHER INFORMATION CONTACT: Margaret Brown, Program Development Branch, OCHAMPUS, telephone (303) 361-1181.

SUPPLEMENTARY INFORMATION: A proposed rule regarding these changes was published in the Federal Register on March 21, 1995 (60 FR 14920). Our responses to those comments received regarding the proposed rule may be found in the review of comments section of this final rule.

32 CFR 199.4 lists Basic Program benefits including exclusions and limitations. Paragraph (c) defines, in general terms, the scope of reimbursable services provided by physicians and other authorized individual professional providers; paragraph (e) extends benefits under certain circumstances, to conditions and limitations that are subject to applicable definitions, conditions, or exclusions that are set forth in this or other sections of this part; and paragraph (f) identifies the liabilities, in the form of cost-shares and deductibles, to be paid by beneficiaries or sponsors.

Well-baby care: Paragraph (c)(3)(xi), provides for certain well-baby care services for infants up to the age of two years. A paragraph (c)(3)(xi)(A)(7) is added to list blood lead test as a benefit for infants. This change is effective for services provided on or after December 5, 1991.

Ambulance service: Ambulance services are covered between points deemed to be medically necessary for the covered medical condition, therefore, the restrictive language, "to, from, and between hospitals" is removed from paragraph (d)(3)(v).

Family planning: Paragraph (e)(3) provides for a family planning benefit. Paragraph (e)(3)(i)(A)(3) of this section allows benefits for prescribed oral contraceptives. With the development of new methods of contraception, prescribed contraceptives are no longer limited to those taken orally. We have, therefore, amended that paragraph by removing the word "oral" to expand the coverage accordingly.

Financial liability-deductibles: Under paragraph (f) of this section, CHAMPUS beneficiaries and sponsors have some financial responsibility when medical care is received from civilian sources. Financial liability is imposed in order to encourage use of the Uniformed Services direct medical care system whenever facilities and services are available. Beneficiaries are responsible for payment of certain deductibles and cost-sharing amounts in connection with otherwise covered services and supplies. The cost-share and deductible

amounts are controlled by statute and subject to change by congressional action. Previous legislation had deferred a statutory increase in the deductible amount from April 1, 1991 to October 1, 1991, for dependents of active duty members who served in the Gulf Conflict. The National Defense Authorization Act for Fiscal Year 1993 contains language which prompts a revision of paragraph (f)(2)(i)(G) of this section to identify three new groups of Gulf Conflict beneficiaries, besides the dependents of active duty members, eligible for the delay in the increased deductibles, and to allow credit or reimbursement of excess amounts inadvertently paid by those groups subject to availability of appropriated funds.

Catastrophic loss: The National Defense Authorization Act for Fiscal Years 1988 and 1989 (Pub. L. 100-180) amended Title 10, United States Code and established catastrophic loss protection for CHAMPUS beneficiaries on a government fiscal year basis. The law placed fiscal year limits or catastrophic caps on beneficiary liability for cost-shares and deductibles under the CHAMPUS Basic Program. After the fiscal year cap is met by the beneficiary, the CHAMPUS-determined allowable amounts for all covered services or supplies received under the Basic Program are to be paid in full by CHAMPUS.

For dependents of active duty members, the maximum family liability is \$1,000 for deductibles and cost-shares based on allowed charges for the Basic Program services and supplies received in a fiscal year. For all other categories of beneficiary families, the previous fiscal year cap of \$10,000 under Public Law 100-180 has been reduced under the 1993 Defense Authorization Act (Pub. L. 102-484) to \$7,500. This final rule implements the law which reduces the fiscal year catastrophic loss protection cap for all categories of beneficiaries other than those of active duty dependents, effective for Basic Program services and supplies received on or after October 1, 1992.

Review of Comments

As a result of the proposed rule, the following comments were received from interested associations and agencies.

Comment: The Air Force Consultant for Pediatrics recommended that the blood lead level screening should be extended to siblings above the age of two years in cases where an infant tested positive on the initial lead level screen.

Response: The inclusion of a lead level screening in the absence of

symptoms was promulgated by statute in 10 U.S.C. chapter 55, section 1077(a)(8), and covers only infants. Other necessary laboratory services for all CHAMPUS eligibles are available through Chapter 4 of DoD 6010.8-R, to confirm or establish suspected symptoms.

Comment: One comment suggested that we reconsider removing the long-standing exclusion of aversion therapy for the treatment of alcoholism as CHAMPUS currently reimburses less intrusive therapies.

Response: We based our intent to remove the long-standing exclusion of aversion therapy on an assessment performed by the Agency for Health Care Policy and Research. The assessment concluded that chemical aversion conditioning is no less effective than other therapies for alcoholism when it is provided following the failure of less intrusive therapies. To be certain that the removal of the exclusionary language was in the best interest of our beneficiaries, we performed a literature search looking for well-controlled studies of clinically meaningful endpoints, published in the referred medical literature that would support that chemical aversion therapy was safe, effective and comparable to current therapies. Failing to find such well-controlled studies, we agree that the exclusion of chemical aversion therapy should remain.

Summary of Regulatory Modifications

The following modifications were made as a result of suggestions received during the public comment period:

(1) Paragraph (e)(3)(i)(A)(3) was amended to read: "Prescription contraceptives."

(2) Several editorial comments were received. All of these comments were adopted and incorporated into the final rule.

Regulatory Procedures: Executive Order 12866 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of \$100 million or more or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a major rule under Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The changes set forth in this final rule are minor revisions to the existing part. This rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.4 is amended by adding paragraph (c)(3)(xi)(A)(7); by revising paragraph (e)(3)(i)(A)(3) and the first sentence of both paragraphs (d)(3)(v) and (f)(2)(i)(G); and by adding paragraph (f)(10) to read as follows:

§ 199.4 Basic program benefits.

(c) * * *

(3) * * *

(xi) * * *

(A) * * *

(7) Blood lead test. (Effective date December 5, 1991.)

(d) * * *

(3) * * *

(v) Ambulance. Civilian ambulance service is covered when medically necessary in connection with otherwise covered services and supplies and a covered medical condition.

(e) * * *

(3) * * *

(i) * * *

(A) * * *

(3) Prescription contraceptives.

(f) * * *

(2) * * *

(i) * * *

(G) Notwithstanding the dates specified in paragraphs (f)(2)(i)(A) and (f)(B)(2)(i) of this section in the case of dependents of active duty members of rank E-5 or above with Persian Gulf Conflict service, dependents of service members who were killed in the Gulf, or who died subsequent to Gulf service, and of members who retired prior to October 1, 1991, after having served in the Gulf War, the deductible shall be the amount specified in paragraph (f)(2)(i)(A) of this section for care

rendered prior to October 1, 1991, and the amount specified in paragraph (f)(2)(i)(B) of this section for care rendered on or after October 1, 1991.

(10) Catastrophic loss protection for basic program benefits. Fiscal year limits, or catastrophic caps, on the amounts beneficiaries are required to pay are established as follows:

(i) Dependents of active duty members. The maximum family liability is \$1,000 for deductibles and cost-shares based on allowable charges for Basic Program services and supplies received in a fiscal year.

(ii) All other beneficiaries. For all other categories of beneficiary families (including those eligible under CHAMPVA) the fiscal year cap is \$10,000.

(iii) Payment after cap is met. After a family has paid the maximum cost-share and deductible amounts (dependents of active duty members \$1,000 and all others \$10,000), for a fiscal year, CHAMPUS will pay allowable amounts for remaining covered services through the end of that fiscal year.

Note to paragraph (f)(10): Under the Defense Authorization Act for Fiscal Year 1993, the cap for beneficiaries other than dependents of active duty members was reduced from \$10,000 to \$7,500 on October 1, 1992. The cap remains at \$1,000 for dependents of active duty members.

Dated: November 14, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-29571 Filed 11-21-96; 8:45 am]

BILLING CODE 9999-04-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7863]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have

applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 8464, Rockville, MD 20849, (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part

10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 28, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
North Dakota: Griggs County, unincorporated areas	380685	October 2, 1996	

State and location	Community No.	Effective date of eligibility	Current effective map date
Montana: Fort Peck Indian Reservation, Roosevelt County ¹	300187	October 7, 1996	
Missouri: Holden, city of, Johnson County	290714	October 14, 1996	April 9, 1976
Kansas: Hamilton County, unincorporated areas	200123	October 16, 1996	
Nebraska: Sprague, village of, Lancaster County	310495	October 18, 1996	November 1, 1984
Kansas: Seward County, unincorporated areas	200606	October 22, 1996	September 13, 1977
Illinois:			
Franklin County, unincorporated areas	170899	October 25, 1996	August 29, 1980
Orangeville, village of, Stephenson County	170541	do	August 16, 1974
Kentucky: Trimble County, unincorporated areas	210300	do	January 14, 1977
REINSTATEMENTS			
Florida: White Springs, town of, Hamilton County	120102	November 5, 1975 Emerg June 4, 1987 Reg June 4, 1987 Susp October 1, 1996 Rein	June 4, 1987
Nebraska: Steele City, village of, Jefferson County	310121	June 4, 1975 Emerg June 1, 1987 Reg June 1, 1987 Susp October 14, 1996 Rein	June 1, 1987
Minnesota: Cannon Falls, city of, Goodhue County	270141	April 5, 1974 Emerg January 2, 1981 Reg September 6, 1996 Susp October 16, 1996 Rein	September 6, 1996
REGULAR PROGRAM CONVERSIONS			
Region I			
Massachusetts: West Tisbury, town of, Dukes County	250074	September 29, 1996 Suspension Withdrawn	September 29, 1996
Region II			
New York:			
Elmira, town of, Chemung County	380151	do	Do.
Horseheads, town of, Chemung County	560153	do	Do.
Region V			
Ohio: Montgomery County, unincorporated areas	390775	do	Do.
Wisconsin: Platteville, city of, Grant County	550154	do	Do.
Region IV			
Florida: Sewall's Point, town of, Martin County	120164	October 16, 1996 Suspension Withdrawn	October 16, 1996
Tennessee:			
Carter County, unincorporated areas	470024	do	Do.
Elizabethton, city of, Carter County	475425	do	Do.
Jonesborough, town of, Washington County	470198	do	Do.
Watauga, city of, Carter County	470331	do	Do.
Region V			
Michigan: Arcadia, township of, Manistee County	260306	do	Do.

¹ The Fort Peck Indian Reservation has adopted Roosevelt County's Flood Hazard Boundary Map (FHBM) dated 12/4/79 for floodplain management and insurance purposes.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")
Issued: November 15, 1996.
Craig S. Wingo,
Deputy Associate Director, Mitigation Directorate,
[FR Doc. 96-29895 Filed 11-21-96; 8:45 am]
BILLING CODE 5710-05-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 42, 61 and 64

[CC Docket No. 95-61; FCC 96-424]

Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Second Report and Order (Order) released October 31, 1996 relieves nondominant interexchange carriers from filing with the Commission tariffs for interstate, domestic, interexchange services. The Order furthers the pro-competitive and deregulatory objectives of the Telecommunications Act of 1996 by ending a regulatory regime that is no longer necessary for nondominant interexchange carriers in the interstate, domestic, interexchange market and by fostering increased competition in this market.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Melissa Wakeman, Attorney, or Christopher Heimann, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1580. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202-418-0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order adopted October 29, 1996, and released October 31, 1996. The full text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc96325.wp>, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037. Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking, Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of

1934, as amended, CC Docket No. 96-61 (61 FR 14717 (April 3, 1996)) to seek comment on rules to implement section 254(g) of the 1996 Act.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, the Report and Order contains a Final Regulatory Flexibility Analysis which is set forth in the Second Report and Order. A brief description of the analysis follows.

Pursuant to Section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Second Report and Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Second Report and Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Second Report and Order as a result of the comments; (3) a description of and an estimate of the number of small entities and small incumbent LECs to which the Second Report and Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance

requirements of the Second Report and Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Second Report and Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

The rules adopted in this Second Report and Order are necessary to implement the provisions of the Telecommunications Act of 1996.

Paperwork Reduction Act

OMB Approval Number: 3060-0704.
Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61.

Respondents: Business or other for-profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	Number of respondents (approx.)	Annual hour burden per response	Total annual burden
Detariffing*	0	0	0
Certification requirement	519	0.5 hour	259.5
Tariff cancellation requirement: completely cancel tariffs	519	2 hours per page (1,252 pages) (one-time)	2,504 (one-time)
Tariff cancellation requirement: revise mixed tariffs to remove domestic services	519	2 hours per page (36,047 pages) (one-time)	72,094 (one-time)
Information disclosure requirement	519	120 hours (one-time)	62,280 (one-time)
Recordkeeping requirement	519	2 hours	1,038

* The Commission has eliminated the tariffing requirement now imposed on nondominant interexchange carriers for interstate, domestic, interexchange services.

Total Annual Burden: 138,175.5 hours, of which 136,878 will be one-time.

Frequency of Response: Annual, except for tariff cancellation requirement, which will be one-time.

Estimates Costs Per Respondent: \$435,000.

Needs and Uses: The attached item eliminates the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange telecommunications services. In order to facilitate enforcement of such carriers' statutory obligation to geographically average and integrate their rates, and to make it easier for customers to compare carriers'

service offerings, the attached Order requires affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate, domestic, interexchange services.

Synopsis of Second Report and Order I. Introduction

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted. Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56, codified at 47 U.S.C. 151 et seq. The goal of the 1996 Act is to establish "a pro-competitive, de-regulatory national policy framework" in order to

make available to all Americans advanced telecommunications and information technologies and services "by opening all telecommunications markets to competition." Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996). An integral element of this framework is the requirement in Section 10 of the Communications Act of 1934, as amended (Communications Act), that the Commission forbear from applying any provision of the Communications Act, or any of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission

makes certain specified findings with respect to such provisions or regulations. 47 U.S.C. 160(a).

2. On March 25, 1996, the Commission released a Notice of Proposed Rulemaking initiating a review of its regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the 1996 Act and the increasing competition in the interexchange market over the past decade. *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Notice of Proposed Rulemaking, 61 FR 14717 (April 3, 1996) (NPRM). In this Report and Order (Order), we consider issues raised in the NPRM relating to tariff forbearance. We also consider, but decline to act at this time on, the Commission's proposal in the NPRM to allow nondominant interexchange carriers to bundle customer premises equipment (CPE) with interstate, interexchange telecommunications services. In the NPRM, the Commission also raised issues relating to: market definition; separation requirements for nondominant treatment of local exchange carriers in their provision of certain interstate, interexchange services; and implementation of the rate averaging and rate integration requirements in new section 254(g) of the Communications Act. On August 7, 1996, the Commission issued a Report and Order implementing the rate averaging and rate integration requirements. See *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Report and Order, 61 FR 42558 (August 16, 1996) (*Geographic Rate Averaging Order*). We will address the market definition and separation requirements in an upcoming order.

3. For the reasons set forth below, we conclude that the statutory forbearance criteria in Section 10 are met for the Commission to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 for their interstate, domestic, interexchange services. We conclude that a policy of complete detariffing (i.e., not permitting nondominant interexchange carriers to file tariffs) for such services would further advance the statutory objectives of the forbearance provision, Section 10. We therefore order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange

services within nine months from the effective date of this Order. In addition, we conclude that our decision to order complete detariffing renders moot the contract tariff and reseller issues raised in the NPRM.

4. The actions we take here will further the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services. Since the early 1980's, the Commission has gradually adapted its regulatory regime for such services from one in which all interexchange carriers were subject to the full panoply of Title II regulatory requirements, including Section 203 tariff filing requirements, to one in which pricing and other regulatory requirements have been replaced by market forces. Our decision in this proceeding marks the end of the transformation of the regulatory regime governing interstate, domestic, interexchange services. After our policy of complete detariffing has been implemented, carriers in the interstate, domestic, interexchange marketplace will be subject to the same incentives and rewards that firms in other competitive markets confront. We seek ultimately to accomplish the same result in every telecommunications market, because we believe that effectively competitive markets produce maximum benefits for consumers, carriers and the nation's economy.

5. Our decision to forbear from applying the statutory requirement that compels nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services and to implement a policy of complete detariffing does not signify in any way a departure from our historic commitment to protecting consumers of interstate telecommunications services against anticompetitive practices. We reaffirm our pledge to use our complaint process to enforce vigorously our statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers. Moreover, when interstate, domestic, interexchange services are completely detariffed, consumers will be able to take advantage of remedies provided by state consumer protection laws and contract law against abusive practices.

6. We note that the California Public Utilities Commission recently adopted a complete detariffing regime for intrastate long-distance services offered in California. Public Utilities Commission of the State of California, *Rulemaking on the Commission's Own Motion to Establish a Simplified*

Registration Process for Non-Dominant Telecommunications Firms, R. 94-02-003, Interim Opinion, at Appendix A, Rule 7 (released September 20, 1996). We encourage other state regulatory commissions to seek the legislative authority necessary to enable them to adopt a complete detariffing policy when they find, as the California Commission did, that competition is sufficient to obviate the need for tariffing of intrastate long-distance services.

II. Forbearance From Tariff Filing Requirements for Nondominant Interexchange Carriers

A. Background

i. The Telecommunications Act of 1996

7. The 1996 Act provides for regulatory flexibility by requiring the Commission to forbear from applying any regulation or any provision of the Communications Act, to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain conditions are satisfied. Specifically, the 1996 Act amends the Communications Act to provide that:

[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

- (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
- (2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) Forbearance from applying such provision or regulation is consistent with the public interest.

In making the public interest determination, the 1996 Act requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. New Section 10(b) also provides that, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest."

ii. The Competitive Carrier Proceeding

8. In the *Competitive Carrier* proceeding, the Commission pursued pro-competitive and deregulatory goals similar to those underlying the 1996 Act. The Commission examined how its regulations should be adapted to reflect and promote increasing competition in interexchange telecommunications markets, and sought to reduce or eliminate its tariff filing and facilities authorization requirements for nondominant interexchange carriers. In *Competitive Carrier*, the Commission distinguished between two kinds of carriers—those with market power (dominant carriers) and those without market power (nondominant carriers).

9. In a series of orders beginning in 1982, the Commission established a permissive detariffing policy for nondominant carriers, pursuant to which such carriers were permitted, although not required, to file tariffs with the Commission. See *Second Report and Order*, 47 FR 37899 (August 27, 1982); *Fourth Report and Order*, 48 FR 52452 (November 18, 1983); *Fifth Report and Order*, 50 FR 1215 (January 10, 1985). The Commission found that "there was no evidence that it is in the public interest for us to continue receiving streamlined tariff and Section 214 filings from certain specialized common carriers to prevent them from charging unjust and unreasonable rates or making service unavailable." The Commission concluded that market forces, together with the Section 208 complaint process and the Commission's ability to reimpose tariff-filing and facilities-authorization requirements, were sufficient to protect the public interest with respect to nondominant interexchange carriers subject to forbearance. The Commission also noted that firms lacking market power could not charge unlawful rates because customers could always turn to competitors. *Sixth Report and Order*, 50 FR 1215 (January 10, 1985).

10. In 1985, in the *Sixth Report and Order*, the Commission established a mandatory detariffing policy for all carriers subject to the Commission's forbearance policy, because it concluded that policy would further its objectives of ensuring just and reasonable rates, and that it could rely instead on market forces, the complaint process, and its ability to reimpose tariff requirements, if necessary, to fulfill its mandate under the Communications Act. The Commission stated: "Throughout this rulemaking, we have determined that enforcement of Sections 201 and 202 objectives of just and reasonable rates could be effectuated for

certain carriers without the filing of tariffs and through market forces and the administration of the complaint process." Carriers subject to forbearance were required to "file supplements to cancel their tariffs on file with the Commission within six months of the effective date of [the *Sixth Report and Order*]." In order to facilitate the complaint process and its enforcement of statutory requirements that carriers charge just and reasonable rates, the Commission also ordered carriers to maintain price and service information on file in their offices that could be produced readily upon inquiry from the Commission in order to substantiate the lawfulness of the carriers' rates, terms and conditions for service.

11. The *Sixth Report and Order* subsequently was vacated and remanded by the U.S. Court of Appeals for the D.C. Circuit, on the ground that the Commission lacked the statutory authority to prohibit carriers from filing tariffs. *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186, 1192 (D.C. Cir. 1985). The court, however, did not reach the issue of whether the Commission's earlier permissive detariffing orders were valid. *Id.* at 1196. The Commission, accordingly, continued to apply its permissive detariffing policy to nondominant interexchange carriers until 1992, when the U.S. Court of Appeals for the D.C. Circuit vacated the Commission's permissive detariffing regime in *AT&T Co. v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, *MCI Telecommunications Corp. v. AT&T Co.*, 509 U.S. 913 (1993). The court, in reviewing an FCC decision disposing of a complaint filed by AT&T against MCI, vacated the Commission's *Fourth Report and Order*, thereby invalidating the Commission's permissive detariffing policy for nondominant carriers. *Id.* at 737. While stating that it did "not quarrel with the Commission's policy objectives," the court found that the Communications Act as it existed at that time did not give the Commission authority to adopt such a policy. *Id.* at 736.

12. Prior to the issuance of the U.S. Court of Appeals' decision invalidating the permissive detariffing policy, the Commission adopted a Report and Order in a rulemaking proceeding commenced in response to AT&T's complaint. See *Tariff Filing Requirements for Interstate Common Carriers*, CC Docket No. 92-13, Report and Order, 7 FCC Rcd 8072 (1992). (While adopted prior to the court's finding that the Commission's permissive detariffing policy exceeded the Commission's statutory authority,

the order was released after the court vacated the *Fourth Report and Order*). The Commission again determined that permissive detariffing was within its authority under the Communications Act. *Id.* at 8074. The U.S. Court of Appeals for the D.C. Circuit granted summary reversal of the Commission's order based on the court's earlier *AT&T v. FCC* decision. *AT&T Co. v. FCC*, Nos. 92-1628, 92-1666, 1993 WL 260776 (D.C. Cir. June 4, 1993) (per curiam), aff'd, *MCI Telecommunications Corp. v. AT&T Co.*, 114 S. Ct. 2223 (1994). In affirming the U.S. Court of Appeals' ruling, the Supreme Court found that Section 203(b)(2) of the Communications Act gives the Commission authority to modify the Communications Act's tariff filing requirement, but not to eliminate it entirely. *MCI Telecommunications Corp. v. AT&T Co.*, 114 S. Ct. 2223, 2229-31 (1994). The Commission thereafter modified the tariff filing requirements and established a one-day tariff notice period for all nondominant interexchange carriers after again concluding that traditional tariff regulation of nondominant interexchange carriers is not necessary to ensure just and reasonable rates. *Tariff Filing Requirements for Nondominant Common Carriers*, 58 FR 44457 (August 23, 1993) (*Nondominant Filing Order*), vacated on other grounds, *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995) (finding the range of rates provision in the *Nondominant Filing Order* violated Section 203(a) of the Communications Act). The Commission subsequently eliminated the range of rates provision and reinstated the other tariff filing requirements, including the one-day notice period, adopted in the *Nondominant Filing Order*. *Tariff Filing Requirements for Nondominant Common Carriers*, 60 FR 52865 (October 11, 1995) (*Nondominant Filing Order II*). In addition, under the streamlined regulatory procedures for nondominant carriers established in the *Competitive Carrier* proceeding, such carriers are not subject to price cap regulation, and their tariff filings are presumed to be lawful and do not require cost support data. See *First Report and Order*, 45 FR 76148 (November 18, 1980). Nondominant carriers also are subject to streamlined Section 214 procedures for the construction, extension or operation of new transmission facilities, as well as for the proposed reduction or discontinuance of service.

13. Against this background, Congress enacted Section 401 of the 1996 Act, adding Section 10 to the

Communications Act. As discussed below, we find that this section provides the Commission with the forbearance authority that the courts had previously concluded was lacking. The Commission now has express authority to eliminate unnecessary regulation and to carry out the pro-competitive, deregulatory objectives that it pursued in the *Competitive Carrier* proceeding for more than a decade.

B. Analysis of Statutory Requirements

i. Introduction

14. In the *NPRM*, the Commission tentatively concluded that it could make the determinations necessary to forbear from applying the provisions of Section 203 to nondominant carriers with respect to their interstate, domestic, interexchange services. Specifically, the Commission tentatively found that enforcement of the Section 203 tariff filing requirements with respect to nondominant interexchange carriers: (1) is not necessary to ensure that such carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; and (2) is not necessary for the protection of consumers. The Commission also tentatively found that forbearing from applying Section 203 to nondominant interexchange carriers is consistent with the public interest. The Commission therefore tentatively concluded that it must forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers with respect to their interstate, domestic, interexchange services. The Commission also tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for such services (that is, that it should adopt a policy of complete detariffing), because it found that allowing nondominant interexchange carriers to file tariffs on a voluntary basis would not be in the public interest, and that complete detariffing would promote competition in the interstate, domestic, interexchange market, deter price coordination, and better protect consumers.

15. In this section, we consider whether the complete detariffing policy proposed in the *NPRM* satisfies each of the statutory forbearance criteria. We note that our analysis under the first two criteria does not differentiate between our proposal in the *NPRM* to adopt a complete detariffing policy and other detariffing options, such as detariffing on a permissive basis (that is, allowing, but not requiring, nondominant interexchange carriers to

file tariffs with respect to their interstate, domestic, interexchange services). Based on the language of the first two statutory criteria, the analysis of all detariffing proposals under the first two forbearance criteria would be the same, because in each case the relevant inquiries are whether tariff filings are necessary to ensure that nondominant interexchange carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory, and whether tariff filings are necessary to protect consumers. However, the third statutory forbearance criterion, which requires an analysis of whether the proposed forbearance is consistent with the public interest, necessitates an analysis specific to the type of forbearance at issue. Accordingly, in addressing the third criterion, we consider whether adoption of a complete, or permissive, detariffing policy is consistent with the public interest.

ii. Statutory Criteria for Forbearance

a. Are Tariff Filing Requirements Necessary To Ensure that the Charges, Practices, Classifications or Regulations for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Are Just and Reasonable, and Are Not Unjustly or Unreasonably Discriminatory?

(1) Background

16. As noted above, the 1996 Act requires the Commission to forbear from applying Section 203 tariff filing requirements to interstate, domestic, interexchange services offered by nondominant interexchange carriers if the Commission determines that the three statutory forbearance criteria are satisfied. With respect to the first criterion, the Commission in the *NPRM* tentatively concluded that tariff filing requirements are not necessary to ensure that nondominant interexchange carriers' charges, practices, classifications or regulations for interstate, domestic, interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory. The Commission also tentatively concluded that the Communications Act's objectives of just, reasonable, and not unjustly or unreasonably discriminatory rates could be achieved effectively through other means, specifically through market forces and the administration of the complaint process. The Commission therefore tentatively concluded that elimination of tariff filing requirements for nondominant interexchange carriers for their interstate, domestic,

interexchange offerings would satisfy the first statutory prerequisite for forbearance.

(2) Comments

17. Many commenters concur with the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange service offerings is unnecessary to ensure that charges, practices, and classifications for such services are just and reasonable, and are not unjustly or unreasonably discriminatory. These parties claim that nondominant carriers cannot rationally impose prices or terms that are unjust, unreasonable, or unjustly or unreasonably discriminatory, because any attempt to do so would result in a loss of market share. Several of these parties add that the Section 208 complaint process is adequate to remedy any illegal carrier conduct that does occur. Thus, they conclude that market forces and the administration of the complaint process will prevent nondominant interexchange carriers from behaving anticompetitively in violation of Sections 201(b) and 202(a) of the Communications Act.

18. Other commenters, however, argue that market forces are currently inadequate to ensure that the charges, practices, classifications or regulations of nondominant interexchange carriers are just and reasonable, and are not unjustly or unreasonably discriminatory, because the market for interstate, domestic, interexchange services is not yet fully competitive. In addition, the Tennessee Attorney General and ACTA argue that AT&T is able profitably to charge higher rates than its competitors, demonstrating that existing competition alone does not constrain AT&T's prices, and therefore is not sufficient to regulate the marketplace.

19. Several commenters, including a number of state commissions, argue that in the absence of tariffs, the Section 208 complaint process would not be adequate to ensure that the charges, practices, and classifications of nondominant interexchange carriers are just and reasonable, and not unjustly or unreasonably discriminatory.

These commenters insist that tariffs provide information necessary to enforce Sections 201 and 202 and to investigate fraudulent practices. In addition, they argue that tariffs ensure accurate information in the event of a dispute. They conclude that, without tariffs, consumers and other interested parties will lack adequate information to bring a complaint. TRA adds that the

complaint process is too limited because it focuses only on legal issues, while the tariff review process allows policy analysis as well.

20. TRA argues that eliminating tariff filing requirements in a market that is less than perfectly competitive will enable carriers to discriminate against resellers, many of which are small and mid-sized businesses. TRA claims that the resale market will not survive detariffing, and that such a result is contrary to the objectives of the Communications Act and Commission policy, which recognizes that a vibrant resale market provides residential and small business customers with access to lower rates, puts downward pressure on prices, and helps prevent discriminatory pricing by increasing the number of parties offering similar services.

(3) Discussion

21. We adopt the tentative conclusion in the *NPRM* that tariffs are not necessary to ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We conclude, consistent with the *AT&T Reclassification Order*, that the high churn rate among consumers of interstate, domestic, interexchange services indicates that consumers find the services provided by interexchange carriers to be close substitutes, and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions. In addition, as we found in the *AT&T Reclassification Order*, residential and small business customers are highly demand-elastic, and will switch carriers in order to obtain price reductions and desired features. Because of the high elasticity of demand for interstate, domestic, interexchange services, we find it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Section 201 or 202 of the Communications Act, because any attempt to do so would cause their customers to switch to different carriers. Thus, we believe that market forces will generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. Moreover, if nondominant interexchange carriers service offerings violate Section 201 or

Section 202 of the Communications Act, we have other, more effective means of remedying such conduct. Specifically, we can address any illegal carrier conduct through the exercise of our authority to investigate and adjudicate complaints under Section 208.

22. We also reject the unsupported suggestion that current levels of competition are inadequate to constrain AT&T's prices. In the *AT&T Reclassification Order*, we found that AT&T cannot unilaterally exercise market power in the interstate, domestic, interexchange market. We based this finding on, *inter alia*, AT&T's declining market share, the supply elasticity in this market, the fact that both residential and business customers are highly demand-elastic, and an analysis of AT&T's cost, structure, size, and resources. The Tennessee Attorney General and ACTA offer no new evidence that would lead us to alter our conclusion that AT&T lacks market power in this market.

23. We also are not persuaded that tariffs are necessary to constrain the prices and practices of nondominant interexchange carriers with respect to interstate, domestic, interexchange services. As discussed below, we find that evidence of tacit price coordination in the market for interstate, domestic, interexchange services is inconclusive. Moreover, we find that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services may facilitate, rather than deter, price coordination, because under a tariffing regime, all rate and service information is collected in one, central location. Therefore, we believe that complete detariffing, along with additional, competitive, facilities-based entry into the interstate, domestic, interexchange market, will help deter attempts to increase rates for interstate, domestic, interexchange services through tacit price coordination. We therefore conclude that complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers will further the Communications Act's objective that carriers' rates, practices, classifications, and regulations be just, reasonable and not unjustly or unreasonably discriminatory.

24. In the *NPRM*, the Commission acknowledged that the Commission initially relaxed its regulation of nondominant carriers in the *Competitive Carrier* proceeding in part because it concluded that the availability of service from a nationwide dominant carrier subject to full Title II regulation would further constrain nondominant carriers. We therefore

sought comment on whether the absence of a nationwide dominant carrier should affect our determination to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. No commenter addressed this issue, and we conclude that the absence of a dominant interexchange carrier in today's competitive interstate, domestic, interexchange market should not alter our analysis, because nondominant interexchange carriers cannot successfully price their services anticompetitively in this market. In addition, the Commission has previously found that market forces effectively discipline nondominant carriers even in the absence of a dominant carrier. See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 59 FR 18493 (April 19, 1994).

25. We also reject the claim that, without tariffs, consumers and other parties will lack sufficient information to challenge the lawfulness of nondominant interexchange carriers' rates, terms and conditions for domestic service, in particular on the ground that such carriers' rates, practices, and classifications are unjustly or unreasonably discriminatory. In the absence of tariffs, customers will still receive rate information in the same manner they always have, through the billing process. In addition, carriers likely will be obligated to notify their customers of any changes in their rates, terms and conditions for service as part of their contractual relationship. Moreover, tariffs may not be the best vehicle for disclosure of rate and service information for nondominant interexchange carriers to residential and small business customers, because such end-users rarely, if ever, consult these tariff filings, and few of them are able to understand tariff filings even if they do examine them. We further believe that nondominant interexchange carriers will generally provide customers rate and service information that currently is contained in tariffs, in an accessible format in order to market their services and to retain customers. Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might not provide complete information concerning all of their interstate, domestic, interexchange service offerings to all consumers, and that some consumers may not be able to determine the particular rate plans that are most appropriate for them, based on their individual calling patterns. (For

example, nondominant interexchange carriers might engage in targeted advertising concerning particular discounts and rate plans that might be the least costly, and most appropriate, plan for some, but not all, consumers.) Accordingly, and in light of considerations regarding the enforcement of the 1996 Act's geographic rate averaging and rate integration requirements, we will require carriers to provide rate and service information to the public, as we discuss below. In addition, as the Commission did in the *Sixth Report and Order*, we will require nondominant interexchange carriers to maintain price and service information and to make such information available on a timely basis to the Commission upon request. We therefore conclude that, in the absence of tariffs for nondominant carriers' interstate, domestic, interexchange services, consumers and other parties will have access to sufficient information about such services for purposes of bringing complaints. On June 12, 1996, the Office of Management and Budget approved the Commission's proposal in the *NPRM* to require nondominant interexchange carriers to maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request. *Notice of Office of Management and Budget Action*, OMB No. 3060-0704 (June 12, 1996). In reviewing the proposed information collection requirements in the *NPRM*, including the proposal to eliminate tariff filing requirements by nondominant interexchange carriers for interstate, domestic, interexchange services, the Office of Management and Budget "strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information."

26. We reject TRA's claim that the complaint process is inadequate to protect consumers. TRA maintains that the Commission addresses only legal issues in a complaint proceeding; whereas in the tariff review process, the Commission can address policy issues as well. TRA is incorrect, however. Regardless of whether the inquiry is part of a complaint or a tariff review proceeding, the Commission can address all relevant legal and policy issues. In the particular context of Section 208 complaint proceedings, we will continue to examine legal, and, where appropriate, policy matters to give full effect to the requirements that

a carrier's rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, as well as the requirements of our rules and orders.

27. Contrary to TRA's assertions that the resale market will not survive in the absence of tariffs, we conclude that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will not affect such carriers' obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory. In addition, as discussed below, we will require nondominant interexchange carriers to provide rate and service information on all of their interstate, domestic, interexchange services to consumers, including resellers. Thus, resellers will be able to determine whether nondominant interexchange carriers have imposed rates, practices, classifications or regulations that unreasonably discriminate against resellers, and to bring a complaint, if necessary.

28. For the reasons discussed herein, we conclude that tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We therefore conclude that the proposal to adopt complete detariffing meets the first of the statutory forbearance criteria.

b. Are Tariff Filing Requirements for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Necessary for the Protection of Consumers?

(1) Background

29. In the *NPRM*, the Commission tentatively concluded that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services is not necessary to protect consumers, and that such tariff filing requirements could harm consumers by undermining the development of vigorous competition.

(2) Comments

30. A number of parties support the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange service offerings is not necessary to protect consumers. Several of these parties claim that nondominant interexchange

carriers cannot rationally charge prices, or impose terms and conditions that harm consumers without losing customers. In addition, many parties assert that the complaint process is adequate to remedy any illegal carrier conduct that violates the Communications Act and harms consumers.

31. Several commenters also support the Commission's tentative conclusion that tariff filing requirements actually harm consumers by impeding the development of vigorous competition and by leading to higher rates.

32. A number of state commissions and other commenters assert, however, that, without tariffs, the complaint process would not be adequate to protect consumers. They claim that the complaint process is cumbersome, expensive and time-consuming, and that without tariffs, consumers will lack sufficient information on which to base a complaint that a carrier has violated Section 201 or 202, or failed to comply with the rate averaging and rate integration requirements of Section 254(g). A number of state commissions and other parties also assert that detariffing will impede state regulatory or law enforcement functions, because state officials depend on information contained in tariffs filed with the Commission to protect consumers, to prevent fraudulent practices, and to promote state objectives and policies, such as ensuring that rates for intraLATA services are no higher than those for interLATA services. In addition, some state commissions are concerned that tariff forbearance by the Commission might preempt state tariff filing requirements because Section 10(e) of the Communications Act provides that "a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying." Several parties add that tariffs also ensure that the Commission has access to accurate information in the event of a dispute.

33. The Ad Hoc Users and BellSouth maintain, however, that, even in the absence of tariffs, carriers will make price and service information available to the public through methods such as advertising, bill inserts and brochures; and that those methods are more effective at informing consumers than tariff filings, which are not readily available to consumers and which most consumers therefore never examine.

34. Some commenters suggest that, if the Commission detariffs, the Commission should limit forbearance from tariff filing requirements to individually-negotiated service

arrangements. They urge the Commission to retain tariff filing requirements for mass market services offered to residential and small business customers because, they claim, tariffs are necessary to protect consumers of such services.

35. In addition, American Telegram argues that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of nondominant interexchange carriers. American Telegram asserts that tariffs are necessary to protect consumers with respect to terms and conditions of service, because, without tariffs, each customer would have to challenge its individual contract with the carrier in order to establish the illegality of the carrier's terms or conditions for service. American Telegram claims that, by contrast, when a tariff is challenged, any changes to the tariffed terms and conditions apply automatically to all customers of that service.

(3) Discussion

36. We adopt the tentative conclusion in the *NPRM* that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. Rather, as discussed above, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Sections 201 and 202 of the Communications Act. We therefore conclude that market forces, our administration of the Section 208 complaint process, and our ability to reimpose tariff filing requirements, if necessary, are sufficient to protect consumers.

37. We also adopt the tentative conclusion that in the interstate, domestic, interexchange market, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates. We agree with NYNEX that "forbearance will promote competition and deter price coordination, which can threaten competitive benefits." By promoting competition, detariffing will better protect consumers against the imposition of rates, terms, or conditions that violate the Communications Act.

38. We reject the argument that, for interstate, domestic, interexchange services offered by nondominant interexchange carriers, the complaint process is inadequate to protect

consumers. As an initial matter, we note that we are not simply relying on the complaint process to protect consumers. Rather, as set forth above, we believe that market forces, together with the complaint process, will adequately protect consumers. In addition, we find that our complaint process is adequate to redress any harm to consumers should a nondominant interexchange carrier establish prices, or impose terms and conditions, that violate Sections 201 or 202, or engage in other conduct that violates the Communications Act or our regulations. Moreover, we note that in the absence of tariffs, consumers will be able to pursue remedies under state consumer protection and contract laws in a manner currently precluded by the "filed-rate" doctrine.

39. While we agree with those commenters that argue that the Commission and the public may need access to information concerning carriers' rates, terms and conditions to ensure carrier compliance with the requirements of Sections 201, 202, and 254(g) of the Communications Act, we are not persuaded that tariffs filed pursuant to Section 203 are the only, or most effective, means of disseminating such information. As an initial matter, we note that the majority of complaints by consumers about the lawfulness of carriers' rates, terms, or conditions for interstate, domestic, interexchange services are based on information obtained through the billing process, rather than information obtained from carriers' tariffs. As set forth above, we believe that nondominant interexchange carriers likely will provide rate and service information currently contained in tariffs to their customers in order to establish a legal relationship with such customers or as part of the billing process. Moreover, nondominant carriers likely will publicize their rates, terms and conditions for service in order to maintain, or improve, their competitive positions in the market. We therefore conclude that the public will have access to sufficient information to bring to the Commission's attention possible violations of the Communications Act without the risk of anticompetitive effects inherent in tariff filing requirements.

40. Additionally, we find no basis for the claim that the detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers will significantly impede state regulatory or law enforcement functions. The rules we adopt in this proceeding will not interfere with, and in fact may facilitate, a state agency's ability to obtain directly from carriers price and service information regarding

interstate, domestic, interexchange services. Our action here also does not affect state tariff filing requirements for intrastate services. Section 10(e) of the Communications Act, which provides that "a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying," does not prohibit states from requiring nondominant interexchange carriers to file tariffs with respect to their intrastate, interexchange services based on our action here.

41. We reject the suggestion that tariffs are necessary to protect consumers of mass market interstate, domestic, interexchange services provided by nondominant interexchange carriers, and therefore that the Commission should limit forbearance only to individually-negotiated service arrangements. We find that the reasons supporting our conclusion that tariff filings are not necessary to protect consumers of interstate, domestic, interexchange services provided by nondominant interexchange carriers apply to all such services, and not only to those provided pursuant to individually-negotiated arrangements. Specifically, any increase in competition resulting from the elimination of tariffs will redound to the benefit of consumers of all interstate, domestic, interexchange services. For example, we believe that eliminating tariffs for mass market services will increase carriers' incentive to reduce prices for such services, and reduce their ability to engage in tacit price coordination. In addition, detariffing of mass market services will likely provide greater protection to consumers, because, as discussed below, carriers will likely be required, as a matter of contract law, to give customers advance notice before instituting changes that adversely affect customers. Carriers will also continue to provide rate information to customers as part of the billing process, and in order to market their services and to retain customers.

42. Similarly, we do not agree with American Telegram's claim that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of interstate, domestic, interexchange services provided by nondominant interexchange carriers. Just as we believe that competition is sufficient to ensure that nondominant interexchange carriers' charges for interstate, domestic, interexchange services are just and reasonable, and not unreasonably discriminatory, and to protect consumers, we believe that competitive forces will ensure that nondominant

carriers' non-price terms and conditions are reasonable. Moreover, we concur with BellSouth that even non-price tariff filings can be used to facilitate tacit coordination by carriers. In addition, we reject American Telegram's argument that tariffs concerning nondominant carriers' terms and conditions for interstate, domestic, interexchange service are necessary to protect consumers, because, without such tariffs, each customer seeking to challenge a carrier's terms or conditions would have to show that its individual contract is unlawful. Nondominant interexchange carriers are likely to use standard contracts for most services rather than individually negotiate a different contract with each customer. As a result, following a successful challenge to a carrier's standard service agreement, that carrier is likely to modify the unlawful contract with all of its customers, rather than face additional complaints or litigation in which the previous determination that the contract is unlawful would likely be given preclusive effect. As in nearly every other business that is conducted without tariffs, we find that tariffs by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. In the absence of such tariffs, consumers will not only have our complaint process, but will also be able to pursue remedies under state consumer protection and contract laws.

43. For the reasons discussed herein, we conclude that tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers. We therefore conclude that the proposal to adopt complete detariffing meets the second of the statutory forbearance criteria.

c. Is Forbearance From Applying Section 203 Tariff Filing Requirements to the Interstate, Domestic, Interexchange Services Offered By Nondominant Interexchange Carriers Consistent With the Public Interest?

(1) Background

44. The third statutory criterion requires us to determine whether forbearance from applying Section 203 tariff filing requirements to the interstate, domestic, interexchange services of nondominant interexchange carriers is consistent with the public interest. In making this determination, the statute specifically requires us to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications

services. In addition, Section 10(b) provides that, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." In the NPRM, the Commission tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services of nondominant interexchange carriers, because complete detariffing of such services will promote competition and deter price coordination in the interstate, domestic, interexchange market, and will better protect consumers.

(2) Comments

45. Several commenters, including large consumers of telecommunications services, agree with the Commission's tentative conclusion that complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange services is in the public interest. These commenters argue that allowing nondominant interexchange carriers to continue to file tariffs undermines the development of vigorous competition because: (1) Tariffs delay a carrier's ability to respond to market changes; (2) even under streamlined tariff filing procedures, the preparation, filing, and defense of tariffs imposes substantial uneconomic costs on carriers; (3) absent tariffs, a carrier could no longer refuse to accommodate a customer's request for services tailored to its specific needs on the ground that the request is beyond the scope of the carrier's tariff; (4) tariffs reduce incentives to engage in competitive price discounting, because competitors can respond to any price change before it has the desired effect of capturing market share. Several parties further argue that tariffs facilitate coordinated pricing by enabling carriers to ascertain their competitors' rates, terms, and conditions for service at one, central location. APCC argues that forbearance from tariff filing requirements would eliminate a regulatory requirement that is especially burdensome on small carriers. Some of these commenters additionally argue that complete detariffing would eliminate the possible invocation of the "filed-rate" doctrine. It is well established that, pursuant to the "filed-rate" doctrine, in a situation where a filed tariff rate, term or condition differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate, term, or condition. See *Armour*

Packing Co. v. United States, 209 U.S. 56 (1908); *American Broadcasting Cos., Inc. v. FCC*, 643 F.2d 818 (D.C. Cir. 1980). Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly filed rate becomes the applicable rate unless the revised rate is found to be unjust, unreasonable, or unlawful under the Communications Act. See *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990).

46. Interexchange carriers and other commenters contend that complete detariffing is not in the public interest, because prohibiting nondominant interexchange carriers from filing tariffs with respect to interstate, domestic, interexchange services will impede competition and increase carriers' costs. Specifically, these parties argue that complete detariffing would: (1) Significantly increase transaction costs by forcing nondominant interexchange carriers to conclude literally millions of written agreements with customers in order to establish legally enforceable contractual relationships; (2) make casual calling options more difficult, if not impossible; and (3) prevent carriers from reacting quickly to market conditions because carriers would be forced to notify each individual customer of any changes to their rates, terms, and conditions before such changes could be effective. (Casual calling refers to services that do not require a consumer to open an account or otherwise presubscribe to a service, including use of a third-party credit card, collect calling, or dial-around through the use of an access code. Several parties argue that tariffs are essential to casual calling services because callers use the services on a temporary basis without a preexisting contractual relationship, and that tariffs are the only cost-efficient way to establish a legal relationship with casual callers.) ACTA further argues that any increased transaction costs would be especially burdensome on small carriers that have fewer resources. LDDS contends that the increased transaction costs due to detariffing would discourage nondominant interexchange carriers from serving certain market segments (e.g., low-usage residential, small business, and casual callers), thereby decreasing competitive choices for these customers. In addition, several parties argue that tariffs actually promote competition by sending accurate economic signals and disseminating rate and service information to consumers and competitors. In particular, they argue that residential and small business

customers require access to such information to obtain the best rates available, and that small nondominant interexchange carriers need such information to compete with larger interexchange carriers. Several parties further argue that complete detariffing would not deter price coordination, to the extent it exists, both because rate and service information would continue to be available to competitors and because the existing streamlined tariff filing procedures prevent price signaling. A few parties suggest that, if the Commission is concerned about tacit price coordination, it could remedy the problem by requiring nondominant interexchange carriers to file tariffs on no more than one day's notice, rather than not permitting such carriers to file tariffs.

47. Interexchange carriers and several other commenters that oppose complete detariffing contend that permissive detariffing would be consistent with the public interest. They maintain that: (1) Permissive detariffing would be the most deregulatory and pro-competitive option because carriers could determine the most efficient means to establish contractual relations with their customers (e.g., carriers could file tariffs for such mass market offerings as residential and small business services, reducing transactions costs to carriers and consumers); (2) the "filed-rate" doctrine would no longer apply if the Commission adopted a permissive detariffing regime, because the tariffed rate would no longer be the only legally permissible rate; (3) price coordination would be difficult, if not impossible, with permissive detariffing because carriers would at best have fragmentary information concerning their competitors' rates, terms, and conditions; and (4) casual calling options would still be feasible with permissive detariffing.

48. Several commenters, however, argue that permissive detariffing, that is, allowing nondominant interexchange carriers to file tariffs if they wish to do so, is not in the public interest. Several of these parties argue that permissive detariffing is contrary to the public interest, because it would allow nondominant interexchange carriers to "game" the system by filing tariffs when it serves their interest to do so, for example, to take advantage of the "filed-rate" doctrine or to engage in price signaling. Contrary to the interexchange carriers' assertions, these parties claim that the "filed-rate" doctrine would continue to exist if detariffing were implemented on a permissive basis. TRA, which opposes any detariffing at all, argues that permissive detariffing

would enable carriers to discriminate against resellers.

49. Some commenters suggest that the Commission limit forbearance from tariff filing requirements to individually-negotiated service arrangements and retain tariff filing requirements for mass market services offered to residential and small business customers, because tariffs allow carriers to establish a legal relationship with customers quickly and inexpensively. In addition, several parties urge the Commission to limit the scope of forbearance only to certain nondominant interexchange carriers, or to certain types of information. For example, TRA and ACTA suggest that the Commission should forbear from applying Section 203 tariff filing requirements to those carriers with less than a certain percentage of the market and that are not affiliated with certain incumbent local exchange carriers, such as the BOCs.

50. In addition, several commenters contend that it is premature to detariff now, in light of the dynamic changes occurring in the market, such as the reclassification of AT&T in October 1995, and the opening of all telecommunications markets to increased competition following enactment of the 1996 Act. These commenters urge the Commission to defer any decision concerning forbearance from tariff filing requirements until it can evaluate the effect of these changes on the interstate, domestic, interexchange market.

51. Finally, several parties commented on how the Commission should treat the BOCs upon their entry into the interstate, domestic, interexchange services market in order to promote competition in this market. A number of BOCs and other parties argue that detariffing will only provide competitive benefits if we also detariff the BOCs once they enter the interstate, domestic, interexchange market. They argue that failure to do so, would place the BOCs, which they claim lack market power in the interstate, domestic, interexchange market, at a competitive disadvantage vis-a-vis existing interexchange carriers, which currently control the market, and would inhibit competition, thereby undermining Congress' objective in passing the 1996 Act. Others argue that, because the BOCs exercise market power in the exchange access market, the Commission should require the BOCs to file tariffs for interstate, domestic, interexchange services until the Commission has experience with the type and level of safeguards necessary to

prevent cross-subsidization and other unlawful practices.

(3) Discussion

52. We adopt the tentative conclusion in the NPRM that not allowing nondominant interexchange carriers to file tariffs for the provision of interstate, domestic, interexchange services is consistent with the public interest, with the limited exception, as discussed below, of AT&T's provision of 800 directory assistance and analog private line services. Section 10(b) specifically requires the Commission, in determining whether forbearance from enforcing a provision of the Communications Act or a regulation is in the public interest, to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. We find that a regime without nondominant interexchange carrier tariffs for interstate, domestic, interexchange services is the most pro-competitive, deregulatory system. Specifically, we find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including eliminating the possible invocation of the filed rate doctrine by nondominant interexchange carriers, and establishing market conditions that more closely resemble an unregulated environment. Moreover, we find that permitting nondominant interexchange carriers to file tariffs on a voluntary basis would undermine several of these benefits, and therefore is not in the public interest.

53. The record in this proceeding supports our tentative conclusion that not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will promote competition in the market for such services. Even under existing streamlined tariff filing procedures, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes vigorous competition in the market for such services by: (1) Removing incentives for competitive price discounting; (2) reducing or taking away carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service

arrangements specifically tailored to their needs. (These findings are consistent with the Commission's findings in the *Competitive Carrier* proceeding. *Sixth Report and Order*. The Commission recently reiterated these findings in the *Regulatory Treatment of Mobile Services Order*, 59 FR 18493 (April 19, 1994).) Moreover, we believe that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, will be more difficult if we eliminate tariffs, because price and service information about such services provided by nondominant interexchange carriers would no longer be collected and available in one central location.

54. In addition, requiring tariffs for interstate, domestic, interexchange services offered by nondominant interexchange carriers impedes competition by preventing customers from seeking out or obtaining price and service arrangements tailored to their needs. As Ad Hoc Users and others note, carriers, in some cases, have refused to accommodate customers' requests for particular service terms on the ground that the requested terms are not contained in the carriers' tariffs, and that the Commission would reject any term or condition for service that differed from the carriers' general tariffs. Eliminating tariff filings by nondominant interexchange carriers will prevent such carriers from refusing to negotiate with customers based on the Commission's tariff filing and review processes. As a result, carriers may become more responsive to customer demands, and offer a greater variety of price and service packages that meet their customers' needs.

55. Complete detariffing would also further the public interest by eliminating the ability of carriers to invoke the "filed-rate" doctrine. As noted above, courts have long held that, in a situation where a filed tariff rate, or other term or condition, differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to impose the tariffed rate, term or condition. While the Commission has held that unilateral changes that alter material terms and conditions of long-term service arrangements are reasonable only if justified by substantial cause, the filed rate doctrine provides carriers with the ability to alter or abrogate their contractual obligations in a manner that is not available in most commercial relationships. In addition, complete detariffing would further the public interest by preventing carriers from unilaterally limiting their liability for

damages. Accordingly, by permitting carriers unilaterally to change the terms of negotiated agreements, the filed rate doctrine may undermine consumers' legitimate business expectations. Absent filed tariffs, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment. Thus, eliminating the filed rate doctrine in this context would serve the public interest by preserving reasonable commercial expectations and protecting consumers.

56. Eliminating tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers will not, as some suggest, reduce such carriers' incentive or ability to offer discounts or respond quickly to market changes by forcing them to give customers advance notice of all changes to their rates, terms, and conditions for service. Our experience over the past several years indicates that interexchange carriers' competitive offerings to residential and small business customers are typically optional calling plans in which consumers must affirmatively elect to participate. In order to induce customers to participate in such plans, carriers have widely advertised the terms and availability of these calling plans. Thus, detariffing of interstate, domestic, interexchange services is likely to have little, if any, impact on nondominant interexchange carriers' incentives or ability to engage in competitive price discounting. In addition, as a matter of contract law, nondominant interexchange carriers would not necessarily be required to provide notice before instituting changes that benefit, or do not adversely affect in a material way, customers (e.g., reducing rates). For example, carriers could expressly reserve the right to make rate reductions or new discounts immediately available to existing customers. Carriers could also include in their service contracts provisions giving them flexibility to alter specific, incidental contract terms in a manner not adverse to the customer. See Restatement (Second) of Contracts § 34 (1981) (discussing the analogous practice of allowing one or both parties to a contract to select certain terms during the performance of the contract). Such carriers would, however, likely be required, as a matter of contract law, to give advance notice of those changes that adversely affect customers (e.g., rate increases). We conclude that it would not be unduly burdensome for nondominant interexchange carriers to

provide customers advance notice of the latter changes through billing inserts or other measures. Such notice would provide greater protection to consumers and is more pro-competitive than allowing carriers to increase their rates by filing tariff changes with the Commission on one day's notice.

57. We recognize that detariffing may change significant aspects of the way in which nondominant interexchange carriers conduct their business. Contrary to the suggestion of some parties, however, tariffs are not the only feasible way for carriers to establish legal relationships with their customers, nor will nondominant interexchange carriers necessarily need to negotiate contracts for service with each individual customer. As some parties note, such carriers could, for example, issue short, standard contracts that contain their basic rates, terms and conditions for service. Moreover, parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services offered by nondominant interexchange carriers should be subject to a regulatory regime that is not available to firms that compete in any other market in this country. We conclude that requiring nondominant interexchange carriers to withdraw their tariffs and conduct their business as other enterprises do will not impose undue burdens on such carriers, substantially increase their costs, or, as LDDS suggests, force such carriers to abandon segments of the market to the detriment of residential and small business customers. Moreover, we reject ACTA's argument that detariffing will disproportionately burden small, nondominant interexchange carriers. While some of the increased administrative costs that carriers may incur initially as a result of the shift to a detariffed environment are likely to be fixed (such as the cost of developing short, standard contracts), many such costs will vary based on the area or number of customers served by such carriers (e.g., advertising expenditures, the cost of promotional mailings or billing inserts). Nonetheless, we find that, on balance, the pro-competitive effects of not allowing nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services outweigh any potential increase in transactional or administrative costs resulting from the shift to a detariffed environment.

58. We are also not persuaded that complete detariffing will make casual calling impossible. We believe nondominant interexchange carriers have options other than tariffs by which

they can establish legal relationships with casual callers pursuant to which such callers would be obligated to pay for the telecommunications services they use. For example, a carrier could seek recovery under an implied-in-fact contract theory if a customer has used the carrier's services, with knowledge of the carrier's charges, but has not executed a written contract. Under this theory, the customer's acceptance of the services rendered would evidence his agreement to the contract terms proposed by the carrier. By providing billing or payment information (e.g., credit card information or a billing number) and completing use of the telecommunications service, casual callers may be deemed to have accepted a legal obligation to pay for any such services rendered. (Similarly, a casual caller who uses a carrier's access code to obtain service from the carrier may be deemed to have accepted an outstanding offer from the carrier to provide casual calling service, and therefore be obligated to pay for any services rendered.) We do not believe that these options will prove unduly burdensome for carriers. In any event, we conclude that, on balance, the competitive benefits of complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange services outweigh any potential increased costs resulting from the shift to detariffing. We further believe that the nine-month transition period established by this Order, will afford carriers sufficient time to develop efficient mechanisms to provide casual calling services in the absence of tariffs.

59. We reject the suggestion that eliminating tariff filing requirements for nondominant interexchange carriers' interstate, domestic, interexchange services would impede competition for such services by reducing information available to consumers and small nondominant interexchange carriers. As discussed above, nondominant interexchange carriers are likely to make rate and service information, currently contained in tariffs, available to the public in a more user-friendly form in order to preserve their competitive position in the market, and as part of their contractual relationship with customers. In addition, as we discuss below, we will require nondominant interexchange carriers to provide rate schedules for all of their interstate, domestic, interexchange services to consumers.

60. As noted, several parties, asserting that complete detariffing is not in the public interest, instead argue that permissive detariffing would be in the public interest. We reject their

arguments for several reasons. Contrary to the assertions of AT&T and others, we believe that a permissive detariffing regime would not necessarily eliminate possible invocation of the "filed-rate" doctrine by nondominant interexchange carriers. Section 203(c) provides that a carrier may not "charge, demand, collect, or receive a greater or less or different compensation * * * than the charges specified in the schedule then in effect." Thus, it is possible that, once a carrier files a tariff with the Commission, even if it is on a permissive basis, Section 203(c) may require the carrier to provide service at the rates, and on the terms and conditions, set forth in the tariff until or unless the carrier files a superseding tariff cancelling, or changing the rates and terms of, the tariff. Because the filed rate doctrine is a legal doctrine developed by judicial precedent, it is not entirely clear how courts would apply the filed rate doctrine if nondominant interexchange carriers were permitted to file tariffs and the filed tariff rate differed from the rate set in a non-tariffed contract. We believe that only with a complete detariffing regime, under which the carrier-customer relationship would more closely resemble the legal relationship between service providers and customers in an unregulated environment, can we definitively eliminate these possible anticompetitive practices and protect consumers.

61. Another consideration that precludes us from finding that permissive detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers is in the public interest is that, unlike complete detariffing, permissive detariffing would not eliminate the collection and availability of rate information in one centralized location. Although we recognize that nondominant interexchange carriers under a complete detariffing regime would still be able to obtain information concerning their competitors' rates and service offerings, we believe that tacit price coordination, to the extent it exists, will be more difficult. In contrast, allowing nondominant interexchange carriers to file tariffs on a voluntary basis would create the risk that carriers would file tariffs merely to send price signals and thus manipulate prices. In this respect, we are not persuaded by Frontier and CSE who argue that permissive detariffing would eliminate any risk of coordinated pricing because carriers could not be certain of their competitors' rates, terms, and conditions for service. Carriers could

use tariffs to engage in price signalling, because any nondominant carrier that opted to file a tariff would be bound by its terms until or unless the carrier cancelled or modified the tariff through a new tariff filing, and thus competing carriers would be certain of such carrier's rates, terms and conditions for service while its tariff is in effect.

62. In addition, we note that permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services imposes administrative costs on the Commission, which must maintain and organize tariff filings for public inspection. In light of our conclusion that market forces, the complaint process, and our ability to reimpose tariff filing requirements are adequate to protect consumers and ensure that nondominant interexchange carriers' rates, terms and conditions for interstate, domestic, interexchange services are just, reasonable and not unreasonably discriminatory, we believe that the public interest would be better served by the Commission devoting these resources to its enforcement duties.

63. With two limited exceptions described below, we also do not believe that there is a sound basis for concluding that forbearance is in the public interest only with respect to certain interstate, domestic, interexchange services, such as individually negotiated service arrangements offered by nondominant interexchange carriers. We find that the competitive benefits of not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services, discussed above, apply equally to all segments of the interstate, domestic, interexchange services market. Moreover, as discussed above, we reject the argument that detariffing mass market services offered to residential and small business customers will lead to substantially higher transactions costs. Similarly, we are not persuaded that the public interest benefits differ depending on the type of tariffed information that is at issue. The public interest benefit of removing carriers' ability to invoke the "filed-rate" doctrine applies equally with respect to terms and conditions as to rates. Moreover, permitting or requiring large nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would not eliminate the risk of tacit price coordination among such carriers, and would raise the possibility that such carriers' tariffed rates would become a price umbrella. Finally, we agree with AT&T that there is no basis

to differentiate among nondominant interexchange carriers, because all such carriers are unable to exercise market power in the interstate, domestic, interexchange market.

64. Nor do we believe that we should delay our decision to detariff the interstate, domestic, interexchange services of nondominant interexchange carriers. Because we find the statutory criteria for forbearance are met at this time for all interstate, domestic, interexchange services offered by nondominant interexchange carriers, we are required by the 1996 Act to forbear from applying Section 203 tariff filing requirements to these services. Should circumstances change such that the statutory forbearance criteria are no longer met, we have the authority to revisit our determination here, and to reimpose Section 203 tariff filing requirements.

65. Finally, with respect to the regulatory treatment of BOC interexchange affiliates upon their entry into the interstate, domestic, interexchange market, we find no basis to exclude such carriers from the purview of this Order if they are classified as nondominant in their provision of interstate, domestic, interexchange services. We note that we are addressing the issue of whether incumbent local exchange carriers, including the BOCs, should be classified as dominant or nondominant in their provision of interstate, domestic, interexchange services in a separate ongoing proceeding. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149, Notice of Proposed Rulemaking, 61 FR 39397 (July 29, 1996).

66. For the reasons explained herein, we find that complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers is in the public interest, and that permissive detariffing of such services is not in the public interest.

iii. Authority To Eliminate Tariff Filings

a. Background

67. In the *NPRM*, the Commission sought comment on whether it has the authority under Section 10 of the Communications Act not to permit carriers to file tariffs.

b. Comments

68. Several interexchange carriers and others argue that the plain language of

Section 10 authorizes the Commission only to refrain from requiring tariffs, but not to prohibit carriers from voluntarily complying with Section 203. AT&T contends that the Commission has used the term "forbearance" to apply only to permissive detariffing, and used the terms "cancellation" of all filed tariffs and "elimination" of future filings in adopting complete detariffing in the *Competitive Carrier* proceeding. AT&T adds that Congress used different terms in other provisions of the Communications Act to authorize the Commission to adopt complete detariffing. Specifically, AT&T argues that Congress gave the Commission authority to specify certain provisions of Title II of the Communications Act as "inapplicable" to CMRS providers. AT&T claims that by failing to use this term in Section 10, and instead using such permissive terms as "forbear from applying" or "enforcing," Congress did not intend to give the Commission authority to adopt complete detariffing.

69. Other parties, however, argue that the 1996 Act gives the Commission legal authority to prohibit carriers from filing tariffs. Ad Hoc Users argue that the Commission has used the term "forbearance" to refer to both mandatory and permissive detariffing. Ad Hoc Users further argue that federal agencies and the courts have construed similar statutory provisions as authorizing federal agencies to adopt mandatory deregulation. Specifically, Ad Hoc Users contend that: (1) The Commission adopted mandatory detariffing for CMRS based on Section 332(c)(1)(A) of the Communications Act, which gave the Commission authority to specify certain provisions of Title II of the Communications Act as "inapplicable" to CMRS providers; and (2) the Civil Aeronautics Board (CAB) mandatorily deregulated the airline industry based on an amendment to the Federal Aviation Act that gave the CAB authority to "exempt" certain domestic air carriers from the requirements of the Federal Aviation Act if it found that such exemption was "consistent with the public interest." Ad Hoc Users argue that these statutory grants of authority are substantially similar to Section 10, and that AT&T's argument (i.e., that Section 10 only allows permissive deregulation) could be made about each of those statutes.

c. Discussion

70. We conclude that the Commission has authority under Section 10 to refuse to permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. We reject the argument advanced by AT&T

and others that by using the term "forbear," Congress intended to authorize the Commission merely to "refrain from enforcing" its regulations or provisions of the Communications Act where the statutory forbearance criteria are met, and not to authorize the Commission to refuse to permit nondominant carriers to comply with such regulations or provisions voluntarily. We conclude that the plain meaning of the statute does not support their argument, and that federal agencies and the courts have construed similar statutory provisions as authorizing agencies to bar regulated entities from filing rate schedules and other tariff equivalents.

71. As noted, AT&T and others argue that the dictionary definition of the term "forbear" authorizes the Commission to detariff only on a permissive basis. We agree with Ad Hoc Users that, in this context, such reliance solely on dictionary definitions is inappropriate, and can be misleading, where the historical usage of a term endows that term with a distinct meaning. The Commission has consistently used the term "forbear," or a variation thereof, to refer to mandatory, as well as to permissive, detariffing. For example, in the *Sixth Report and Order*, the Commission stated that its mandatory detariffing proposal, if adopted, "would result in the cancellation of all *forborne* carrier tariffs currently on file with the Commission and would eliminate future federal tariff filings by carriers treated by *forbearance*." Similarly, in *Regulatory Treatment of Mobile Services*, the Commission stated that it would "forbear from requiring or permitting tariffs of interstate service offered directly by CMRS providers to their customers," based on the Commission's authority to specify any provision of Title II as "inapplicable" to any CMRS provider.

72. The courts and Congress have also used the term "forbear" to apply to circumstances involving this agency's authority to refuse to permit carriers to file tariffs. In *MCI Telecommunications Corp. v. FCC*, the U.S. Court of Appeals for the D.C. Circuit used the term "forbearance" to refer to our previous mandatory detariffing policy, noting that "[t]he Sixth Report . . . changed the permissive forbearance arrangement to a mandatory one." *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186, 1189 (D.C. Cir. 1985). In addition, in describing the Commission's previous tariff forbearance policy, the Senate Commerce, Science, and Transportation Committee applied the term "forbearance" to the entire *Competitive*

Carrier proceeding, encompassing both mandatory and permissive detariffing. See Telephone Operator Consumer Services Improvement Act of 1990, S. Rep. No. 439, 101st Cong., 2d Sess. 3 n.10 (1990) reprinted in 1990 U.S.C.A.N. 1577, 1579 (stating that "[t]he FCC has chosen to 'forbear' from regulating the rates of 'non-dominant' carriers because they do not possess market power and thus have little ability to charge unjust or unreasonable rates in violation of the Communications Act of 1934," and citing, *inter alia*, the *Sixth Report and Order*).

73. It was against this background that Congress adopted Section 10(a). Accordingly, we concur with Ad Hoc Users that the term "forbear" must be construed within its historical and regulatory context, and not in a vacuum.

74. We further note that in construing a similar statutory provision, the U.S. Court of Appeals for the D.C. Circuit rejected a virtually identical argument that Congress had only provided the CAB authority to deregulate the airline industry on a permissive basis. In an amendment to the Federal Aviation Act, Congress granted the CAB authority to "exempt" domestic air carriers from statutory requirements of the Federal Aviation Act. *National Small Shipments Traffic Conference, Inc. v. CAB*, 618 F.2d 819, 822 n.2, 823, 827 (D.C. Cir. 1980). The CAB used this authority to prohibit certain air carriers from filing tariffs and certain intercarrier agreements. In *National Small Shipments Traffic Conference, Inc.*, petitioners argued that the CAB's "authority to exempt airlines from certain requirements cannot be used to prohibit airlines from filing [intercarrier] agreements . . . if they choose to do so." *Id.* at 835. The court rejected this argument, noting that the CAB's exemption authority was "broad" and that its refusal to permit airlines to file intercarrier agreements was consistent with Congress' deregulatory purpose. *Id.*

75. Moreover, the action we take here is consistent with the Commission's order adopting complete detariffing for domestic CMRS providers. In Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Congress granted the Commission authority to declare "inapplicable to [any commercial mobile] service or person" any provision of Title II, subject to certain limitations. This grant of authority, while not identical, is similar to the Commission's authority under Section 10. In response to this grant of authority under Section 6002(b), the Commission determined that it would

"forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers."

76. In addition, we conclude that Section 203, which was "enacted to control monopoly abuse" by the carriers, does not grant to carriers a statutory right to file tariffs. As noted in the 1996 Act's legislative history, "given that the purpose of this legislation is to shift monopoly markets to competition as quickly as possible, the Committee anticipates this forbearance authority will be a useful tool in ending unnecessary regulation." Thus, it seems inconceivable that Congress intended Section 10 to be interpreted in a manner that allows continued compliance with provisions or regulations that the Commission has determined were no longer necessary in certain contexts.

iv. Summary of Findings and Conclusions

77. We therefore conclude that tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. In addition, we conclude that tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers. Moreover, we find that complete detariffing of interstate, domestic, interexchange services provided by nondominant interexchange carriers is in the public interest, and that permissive detariffing of such services is not in the public interest. Accordingly, pursuant to the requirements of Section 10, we conclude that we must forbear from applying Section 203 tariff filing requirements to the interstate, domestic, interexchange services offered by nondominant interexchange carriers and not permit nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services. We also conclude that the Commission has authority under Section 10 to refuse to permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. We therefore order that nondominant interexchange carriers cancel all tariffs for such services currently on file with the Commission, subject to the procedural details specified below, and prohibit nondominant interexchange carriers from filing tariffs for such services in the future.

C. Maintenance and Disclosure of Price and Service Information; Certifications

i. Background

78. In the *NPRM*, the Commission tentatively concluded that, if it were to adopt a complete detariffing policy, nondominant interexchange carriers would be required to maintain at their premises price and service information regarding all of their interstate, domestic, interexchange service offerings, which they could submit to the Commission upon request. In addition, the Commission tentatively concluded that it would require nondominant providers of interexchange telecommunications services to file certifications stating that they are in compliance with the geographic rate averaging and rate integration requirements of Section 254(g) in order to ensure compliance with those requirements. The Commission further tentatively concluded that it would rely on the complaint process under Section 208 to bring violations of Section 254(g) to its attention.

ii. Comments

79. Several commenters recommend that, if the Commission adopts detariffing, it should require nondominant interexchange carriers to make their rates available to the public in some other fashion, such as by posting pricing information on-line, submitting current rate information to the Commission, or making such information available to any member of the public upon request. These commenters argue that the public needs such information to determine whether a carrier is complying with the geographic rate averaging and rate integration requirements of Section 254(g) as well as with the nondiscrimination requirements of Section 202. Several of these commenters further argue that consumers, especially residential and small business customers, need information on rates, terms and conditions to compare carriers' service offerings. Several small businesses that analyze tariff information for business and residential customers argue that they need such information to conduct their businesses.

80. Other commenters, however, oppose any record-keeping requirement. They argue that imposing such a requirement would eliminate any cost savings resulting from detariffing. Several parties further insist that carriers will make rate and service information available to consumers through other means.

81. AT&T argues that, to the extent the Commission seeks to justify its decision to detariff on the ground that complete detariffing would eliminate the "filed-rate" doctrine, a requirement that carriers make rate information available on-line or through a clearinghouse would undermine this objective. AT&T insists that the "filed-rate" doctrine would continue to apply if such a requirement is imposed, because the doctrine is based on the imposition of a filing requirement and not on the manner or place of filing.

82. Several interexchange carriers and BOCs contend that the Commission's proposed certification requirement and the complaint process are appropriate mechanisms to enforce the requirements of Section 254(g). Others, however, argue that the Commission should not require certifications, but should rely instead on the complaint process and its ability to examine rates upon request. These parties argue that certifications do little to advance the Commission's enforcement objectives, and that the complaint process and the Commission's ability to examine rates upon request are the only effective means to ascertain whether carriers are in compliance with their statutory obligations.

iii. Discussion

83. We adopt the tentative conclusion in the *NPRM* that nondominant providers of interstate, domestic, interexchange telecommunications services should be required to file annual certifications signed by an officer of the company under oath that they are in compliance with their statutory geographic rate averaging and rate integration obligations. We believe that annual certifications will emphasize the importance that we place on the rate averaging and rate integration requirements of the 1996 Act and put carriers on notice that they may be subject to civil and criminal penalties for violations of these requirements, especially willful violations.

84. While we believe that carrier certifications will be an important mechanism for enforcing the 1996 Act's geographic rate averaging and rate integration requirements, we are persuaded by the arguments of many parties, including numerous state regulatory commissions and consumer groups, that publicly available information is necessary to ensure that consumers can bring complaints, if necessary, to enforce those requirements. As noted above, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates,

or impose terms and conditions, for interstate, domestic, interexchange services in ways that violate Sections 201 and 202 of the Communications Act, and that such carriers will generally provide rate and service information to consumers to preserve or improve their competitive position in the market. We recognize, however, that in competitive markets carriers would not necessarily maintain geographically averaged and integrated rates for interstate, domestic, interexchange services as required by Section 254(g). Because the public should have the ability to bring violations of the geographic rate averaging and rate integration requirements of the 1996 Act to our attention, we believe it is appropriate to require carriers to make available to the public the information that is necessary for the public to determine whether a carrier is adhering to the geographic rate averaging and rate integration requirements of Section 254(g). Accordingly, we will require nondominant interexchange carriers to make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in an easy to understand format and in a timely manner. (A nondominant interexchange carrier must make available to any member of the public such information about all of that carrier's interstate, domestic, interexchange services.) We note that, by adopting this requirement, we do not intend to require carriers to disclose more information than is currently provided in tariffs, in particular in contract tariffs.

85. The requirement that nondominant interexchange carriers make available to the public information concerning the current rates, terms and conditions for all of their interstate, domestic, interexchange services also will promote the public interest by making it easier for consumers, including resellers, to compare carriers' service offerings. While nondominant interexchange carriers will generally provide rate and service information to consumers in order to attract and retain customers, some consumers may find it difficult to determine the particular service plans that are most appropriate, and least costly, for them, based on their calling patterns, because of the wide array of calling plans offered by the scores of carriers. Businesses and consumer organizations that analyze and compare the rates and services of interexchange carriers perform a valuable function in assisting consumers to judge the specific carriers'

rates and service plans that are best suited to their individual needs. The foregoing requirement will ensure that such businesses, many of which are small businesses, continue to have access to the information they need to provide their services.

86. In order to minimize the burden on nondominant interexchange carriers of complying with this requirement, we will not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location. We reject the suggestion that we should require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line. We find that mandating such a requirement would be unduly burdensome at this time. Rather, we will require only that a carrier make such information available to the public in at least one location during regular business hours. We will also require carriers to inform the public that this information is available when responding to consumer inquiries or complaints, and to specify the manner in which the consumer may obtain the information. In addition, because we are simply requiring carriers to make information available to the public, we need not address AT&T's argument that requiring nondominant interexchange carriers to make price and service information available on-line or at a central clearinghouse is a filing requirement within the meaning of Section 203. (Although we do not require carriers to make such information available to the public at more than one location, we encourage carriers to consider ways to make such information more widely available, for example, posting such information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.)

87. Finally, we adopt the tentative conclusion in the *NPRM* that we should require nondominant interexchange carriers to maintain price and service information regarding all of their interstate, domestic, interexchange service offerings, that they can submit to the Commission upon request. We believe it is appropriate that this information should include the information that carriers provide to the public as required above, as well as documents supporting the rates, terms, and conditions of the carriers' interstate, domestic, interexchange offerings. We note that we will not require carriers to make such supporting documentation available to the public. We also find that it is appropriate to require nondominant

interexchange carriers to retain the foregoing records for a period of at least two years and six months following the date the carrier ceases to provide services on such rates, terms and conditions, in order to afford the Commission sufficient time to notify a carrier of the filing of a complaint, which generally must be commenced within two years from the time the cause of action accrues. We note that, in the event a complaint is filed against a carrier, we will require the carrier to retain documents relating to the complaint until the complaint is resolved. We will also require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. We will further require that nondominant interexchange carriers maintain the foregoing records in a manner that allows carriers to produce such records within ten business days of receipt of a Commission request. We conclude that the availability of such records will enable the Commission to meet its statutory duty of ensuring that such carriers' rates, terms, and conditions for service are just, reasonable, and not unreasonably discriminatory, and that these carriers comply with the geographic rate averaging and rate integration requirements of the 1996 Act. In addition, maintenance of such records will enable the Commission to investigate and resolve complaints.

D. Transition

i. Comments

88. Several commenters suggest that if the Commission were to adopt the complete detariffing proposal, it should also implement an appropriate transition period to afford nondominant interexchange carriers time to adapt their operations to a detariffed regime. Ad Hoc Users and API suggest that we adopt a six-month transition period. Eastern Tel, AT&T, and LDDS recommend a period of at least one year, and LCI suggests a phase-in period of 18-24 months. In addition, AT&T urges the Commission to "make clear that the terms of individual carrier/customer deals currently on file at the Commission stay on file and remain unchanged by a decision to prohibit the filing of tariffs." Ad Hoc Users and API, on the other hand, urge the Commission to prevent carriers from filing tariffs that supersede existing contracts during the transition period. API further recommends that during the transition

period, carriers should not be permitted to require that the terms of existing pricing arrangements be extended as a condition for negotiating contracts to replace existing tariffs. Finally, Eastern Tel requests the Commission to work with industry to develop a standard contract for telecommunications services, similar to the form contracts used in the real estate industry, that address such issues as the collection procedures that can be utilized.

ii. Discussion

89. We agree that we should allow nondominant interexchange carriers an appropriate transition period to adjust to detariffing. We conclude that a nine-month period is sufficient to provide for an orderly transition. We believe that this transition period will afford carriers sufficient time to adjust to detariffing. We do not believe that a more extended period is needed for nondominant interexchange carriers to adjust their operations. Nondominant interexchange carriers are not required to negotiate a new contract with each customer. Nondominant interexchange carriers may utilize various methods to establish legal relationships with customers in the absence of tariffs, including, for example, the use of short standard agreements. We therefore order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months of the effective date of this Order and not to file any such tariffs thereafter. We note that the effective date of this Order (i.e., the date the rules and requirements promulgated by this Order will become effective) will be 30 days from the date of publication of this Order in the *Federal Register*.

90. Nondominant interexchange carriers may cancel their tariffs for interstate, domestic, interexchange services at any time during the nine-month period. Pending such cancellation, the Commission will accept new tariffs and revisions to the carrier's tariffs for mass market interstate, domestic, interexchange services. We believe that it is appropriate to allow nondominant interexchange carriers to revise their tariffs for mass market interstate, domestic, interexchange services on file with the Commission during the nine-month transition period in order to respond to changes in the market. However, in order to preserve the legitimate business expectations of customers taking service pursuant to long-term service arrangements, and to limit the ability of carriers to unilaterally alter or abrogate such

arrangements by invoking the filed rate doctrine, the Commission will not accept new tariffs, or revisions to carriers' existing tariffs, for long-term service arrangements (such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements) during the transition period. We recognize that many such long-term service arrangements incorporate by reference mass market tariffs. By precluding carriers during the transition period from filing tariffs or revisions to tariffs for long-term service arrangements, we do not intend to limit carriers' ability to file tariffs and tariff revisions for mass market services.

91. Carriers that have on file with the Commission "mixed" tariff offerings that contain services subject to detariffing pursuant to this Order, may comply with this Order either by: (1) Cancelling the entire tariff and refile a new tariff for only those services subject to tariff filing requirements; or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance. A "mixed" tariff offering is a tariff that includes services for which the carrier is subject to different tariff filing requirements. One example of a "mixed" tariff offering would be a tariff that contains interstate, domestic, interexchange services for which the carrier is nondominant and therefore prior to the effectiveness of this Order was subject to a one-day tariff filing requirement, as well as international services for which the carrier is nondominant and therefore subject to a one-day tariff filing requirement. Another example would occur where a carrier is dominant for certain services and nondominant for others and includes both types of services in one tariff. As discussed below in section I.E., we determine that a carrier that has mixed tariff offerings that include interstate, domestic, interexchange services for which the carrier is nondominant, as well as international services for which the carrier is nondominant, must continue to tariff the international portions of such bundled or mixed tariff offerings. Accordingly, such a carrier must comply with this requirement. This requirement also applies to a carrier that has other types of mixed tariff offerings that are affected by this Order, such as where the carrier offers in one tariff interstate, domestic, interexchange services for which it is nondominant with other services for which the carrier is dominant.

92. We note that, while complete detariffing will change the legal

framework for long-term service arrangements, we do not intend by our actions in this Order to disturb existing contractual or other long-term arrangements. Accordingly, our detariffing policy should not be interpreted to allow parties to alter or abrogate the terms of long-term arrangements currently on file with the Commission. Because we have determined that our action here does not entitle parties to a contract-based, or other long-term, service arrangement to take a "fresh look" at such arrangements, we need not address API's suggestion that we prohibit nondominant interexchange carriers from demanding that the terms of existing pricing arrangements be extended beyond their currently applicable terms.

93. Finally, we decline to follow Eastern Tel's suggestion that the Commission work with industry during the transition period to establish a standard contract for telecommunications services. As noted above, we believe that nondominant interexchange carriers may use various methods to provide service to their customers. We find that it would be more consistent with the pro-competitive and deregulatory objectives of the 1996 Act to allow carriers and customers freely to determine the most efficient methods for providing interexchange services without tariffs.

E. Tariff Filing Requirements for the International Portion of Bundled Domestic and International Services

i. Background

94. A number of nondominant interexchange carriers currently file bundled tariffs that include both interstate, domestic, interexchange services and international services. In the *NPRM*, the Commission sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings if the Commission forbears from requiring such carriers to file tariffs for their domestic services. The Commission noted that it was reserving for another day, in a separate proceeding, the broader question of whether it should consider generally forbearing from requiring tariffs for international services provided by nondominant carriers.

ii. Comments

95. Several commenters support detariffing the international portions of bundled domestic and international

services offered by nondominant interexchange carriers. Ad Hoc Users, API and AT&T argue that different tariff filing requirements for the domestic and international portions of bundled offerings would require the artificial partition of unified service arrangements, which would impose substantial costs on both customers and carriers. Ad Hoc Users also contends that different tariff rules would lead to separate minimum revenue requirements for domestic and international services. API and the Television Networks argue that international services offered by nondominant carriers should be detariffed whether or not the international services are bundled with domestic services.

96. Other parties argue that the Commission should not detariff international portions of bundled offerings until nondominant international carriers are relieved generally of tariff filing requirements. MCI expressed concern that, if the Commission detariffed the international portion of bundled or "mixed" tariff offerings, AT&T, which was regulated as dominant in international markets when comments in this proceeding were due, would be freed of tariff regulation in connection with its "mixed" international offerings.

97. AMSC, which provides mobile telecommunications services using satellites that cover the continental United States, Hawaii, Alaska, Puerto Rico, and the U.S. Virgin Islands, as well as adjacent international waters and northern parts of South America, urges the Commission to detariff the international portions of the offerings of nondominant CMRS providers, including its own services. The Commission detariffed AMSC's domestic services two years ago when it adopted mandatory detariffing for CMRS providers. AMSC argues that there is no rationale for maintenance of a tariff filing requirement for the international services of AMSC or other CMRS providers. In addition, AMSC argues that because it offers a mobile service via satellite, it cannot determine whether a call originates in a domestic or international area and that most of its international service is provided to users in international waters.

iii. Discussion

98. In the *NPRM*, the Commission indicated that it would consider in a separate proceeding the question of whether it should generally forbear from requiring tariffs for international services provided by nondominant carriers, but it sought comment on

whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings. There is not sufficient evidence in the record to make findings that each of the statutory criteria are met to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings. We therefore believe that detariffing the international portions of bundled domestic and international service offerings would be better addressed as part of a separate proceeding in which the Commission can further examine the state of competition in the international market. Accordingly, we will require nondominant interexchange carriers to continue to file tariffs for the international portions of bundled domestic and international service offerings until we find that the statutory criteria are met for international services provided by nondominant carriers. A nondominant carrier with bundled domestic and international services may comply with this Order either by cancelling its entire tariff and refile a new tariff only for the international portions of its service offerings or by issuing revised pages that cancel the material in its tariffs which pertains to those services subject to forbearance. Because we will require nondominant interexchange carriers to continue to file tariffs for international services, we need not address MCI's concern that dominant international carriers might be freed from tariff requirements for the international portions of bundled domestic and international services.

99. Our decision here will not impose substantial administrative expenses on carriers or customers. In addition, to respond to concerns about the cost of partitioning bundled offerings, we are modifying our rules to permit nondominant interexchange carriers to cross reference detariffed interstate, domestic, interexchange service offerings in their tariffs for international services for purposes of calculating discounts and minimum revenue requirements.

100. We similarly find that there is insufficient record evidence in this proceeding to detariff the international portions of CMRS services, or to address AMSC's concerns with regard to its specific services at this time.

F. Effect of Forbearance on AT&T's Commitments

i. Background

101. In the *AT&T Reclassification* proceeding, AT&T made certain voluntary commitments that AT&T stated were intended to serve as transitional arrangements to address concerns expressed by parties about possible adverse effects of reclassifying AT&T. These commitments concerned: service to low-income and other customers; analog private line and 800 directory assistance services; service to and from the State of Alaska and other regions subject to the Commission's rate integration policy; geographic rate averaging; changes to contract tariffs that adversely affect existing customers; and dispute resolution procedures for reseller customers. In the *AT&T Reclassification Order*, the Commission accepted AT&T's commitments and ordered AT&T to comply with those commitments.

102. In the *NPRM*, the Commission sought comment on the effects of the Commission's complete detariffing proposal on certain of AT&T's commitments. Specifically, AT&T committed, for a period of three years, to limit any price increases for interstate analog private line and 800 directory assistance services to a maximum increase in any year of no more than the increase in the consumer price index. AT&T also committed, for a period of three years, to file tariff changes increasing the prices of these services on not less than five business days' notice, and to identify clearly such tariff transmittals as affecting the provisions of this commitment. In the *NPRM*, the Commission tentatively concluded that AT&T should remain subject to these commitments for the specified term of the commitments. The Commission therefore tentatively concluded that if we were to adopt detariffing, AT&T should be required to continue to file tariffs for these services for the term of its commitments.

103. In addition, AT&T voluntarily committed, for a period of three years, to offer two optional calling plans designed to mitigate the impact of future increases in basic schedule or residential rates. The first plan is targeted to low-income customers, and the second is targeted to low-volume consumers, but is generally available to all residential customers. Moreover, AT&T agreed to file on not less than five business days' notice tariffs changing the structure of these plans or significantly increasing the cost of its basic residential service.

ii. Comments

104. The Pennsylvania PUC contends that AT&T should remain subject to all of its voluntary commitments as a safeguard, because AT&T has only been classified as a nondominant interexchange carrier for a short period of time. The Florida PSC suggests that AT&T should remain subject to its three-year commitment to offer calling plans intended for low-income and low-volume consumers in order to eliminate concerns about rate increases for basic long-distance rates. In contrast, several interexchange carriers contend that AT&T should not be bound by any commitments that do not apply equally to all nondominant interstate, interexchange carriers.

105. AT&T states that it will abide by its commitments concerning unilateral changes to contract tariffs, but argues that it should not be subject to any additional burdens regarding contract tariffs that are not imposed on other nondominant carriers. AT&T did not address its other commitments in its comments in this proceeding.

iii. Discussion

106. We conclude that we should adopt the tentative conclusion in the *NPRM* that AT&T should continue to comply with its commitments relating to 800 directory assistance and analog private line services. In the *AT&T Reclassification Order*, the Commission acknowledged that there was evidence in the record that AT&T may have the ability to control prices for 800 directory assistance service and analog private line services, but also noted that these services generate *de minimis* revenues when compared to total industry revenues. The Commission stated, therefore, that the evidence regarding AT&T's ability to control prices for these specific services did not mean that AT&T has market power in the interstate, domestic, interexchange market as a whole. The Commission further stated that it believed that "AT&T's voluntary commitments will effectively restrain AT&T's exercise of any market power it may have with respect to these narrow service segments." In light of the Commission's conclusions in the *AT&T Reclassification Order*, and AT&T's statements that its commitments serve as a transitional mechanism, we find that detariffing of analog private line and 800 directory assistance services at this time is not in the public interest, and would not meet the statutory forbearance criteria. We, therefore, require AT&T to continue to file tariffs for these services in accordance with,

and for the specified term of, its commitments. AT&T will be required to cancel its tariffs for these services within nine months of the end of its three-year commitment, consistent with the requirements we have adopted for other nondominant interexchange carriers.

107. AT&T has not argued in this proceeding that it should be relieved of its commitment in the *AT&T Reclassification Order* to offer optional rate plans targeted at low-income and other residential customers. Accordingly, we require that AT&T continue to offer an optional calling plan targeted to low-income customers and a plan targeted to low-volume customers, but which is generally available to all residential customers, until the expiration of its original commitment in the fall of 1998. In addition, we will continue to monitor AT&T's compliance with its commitments to implement a consumer outreach program to notify its customers of the availability of such plans, and to offer for three years an interstate optional calling plan that will provide residential customers a postalized rate of no more than \$0.35 per minute for peak calling and \$0.21 per minute for off-peak.

108. We note that our decision to preclude nondominant interexchange carriers from filing tariffs for interstate, domestic, interexchange services would effectively eliminate AT&T's commitments to file changes to such optional plans and to file certain changes to its average residential interstate direct dial services on not less than five business days' notice. (AT&T committed to file changes to its average residential interstate direct dial services on not less than five business days' notice if those changes, (1) increase rates more than 20% for customers making more than \$2.50 in calls per month, or (2) increase average monthly charges more than \$.50 per month for customers making less than \$2.50 in calls per month, and to clearly identify such tariff transmittals as affecting the provisions of this commitment. Additionally, AT&T committed to file tariff changes to its optional calling plans on not less than five business days' notice, and only in the event of a significant change in the structure of the interexchange industry (including a reprice or restructure of access rates). AT&T also committed to identify such tariff transmittals as affecting the provisions of this commitment.) Accordingly, consistent with AT&T's intent that its commitments serve as a transitional arrangement, we require AT&T, for the period of its

commitments, to notify consumers of changes to such plans, or of changes to its average residential interstate direct dial services, under the circumstances specified in the *AT&T Reclassification Order*, on not less than five business days' notice.

109. Finally, we conclude that actions in this proceeding do not affect AT&T's other commitments. In our *Geographic Rate Averaging Order*, we found that the rules adopted in that proceeding would require AT&T to provide interexchange service at geographically averaged and integrated rates. We therefore released AT&T from its commitments relating to rate integration and geographic rate averaging. We expressly did not release AT&T from its more specific commitment to comply with the Commission's orders associated with AT&T's purchase of Alascom. We believe that detariffing would not affect these commitments. AT&T's commitment regarding dispute resolution procedures for resellers has no expiration date, and is also unaffected by detariffing. Finally, AT&T's commitments concerning changes to contract tariffs, quarterly performance reports on reseller order processing, and providing an ombudsman to resolve reseller complaints, expire by their own terms in the fall of 1996.

G. Additional Forbearance Issues

110. The Secretary of Defense raises two concerns regarding the National Security and Emergency Preparedness (NSEP) system. Specifically, two services, Telecommunications Services Priority (TSP) and Government Emergency Telecommunications Service (GETS) are now provided by nondominant interexchange carriers pursuant to tariffs. Under tariffs filed to provide TSP service, circuits with NSEP designations receive priority restoration and provisioning. The Secretary of Defense argues that TSP tariffs not only establish a price for the service, but also serve as a clear sign that a carrier understands and accepts the responsibilities imposed by the Commission's TSP rules. The Secretary of Defense also expressly acknowledges, however, that TSP service could be provided on the basis of negotiated contracts. Consequently, we find no basis in the record for excluding TSP services from the requirements of this Order. The Secretary of Defense expresses concern, however, that carriers may not be aware of the TSP rules. While we concur with the Secretary of Defense that carriers must understand their responsibilities under our TSP rules, and that carriers should

price such services, before an emergency occurs, we do not believe that tariffs are necessary to fulfill these functions. Rather, we conclude that carriers will be adequately informed of our TSP rules and regulations when contracts for TSP services are negotiated. In addition, we reaffirm our commitment to enforce the TSP rules and regulations, and expect that officials responsible for the NSEP TSP System will report any violations of these rules to us.

111. The second issue raised by the Secretary of Defense concerns GETS, which provides NSEP-authorized personnel priority call completion over the public switched network. The Secretary of Defense seeks assurance that GETS would not be deemed to constitute unreasonable discrimination in violation of Section 202(a) of the Communications Act. The Secretary of Defense states that the Office of the Manager of the National Communications System wrote to the Commission on November 29, 1993, asking for a declaratory ruling that GETS does not violate Section 202(a). The Commission later determined that the request for a declaratory ruling was moot, because "[l]awful tariffs implementing [GETS] have gone into effect." The Secretary of Defense is concerned that the permissibility of GETS is dependent on filed tariffs. We conclude, however, that our decision to forbear does not affect the nondiscrimination provisions of Section 202(a). Thus, to the extent that GETS did not constitute unreasonable discrimination under tariffs, the service will not violate Section 202(a) following detariffing.

112. APCC urges the Commission not to take any action in this proceeding that may be inconsistent with or jeopardize the Commission's ongoing inquiry into operator services. In the *NPRM* in this proceeding, the Commission indicated that it would consider operator services in another proceeding and therefore expressly stated that it was not addressing the issue of forbearance from applying Section 226 of the Communications Act, which requires operator service providers (OSP) to file informational tariffs. In the *Nondominant Filing Order*, the Commission, in order to minimize tariff filing burdens on carriers, permitted carriers that provide both operator services and other services to file one single tariff under Section 203, rather than separate tariffs under Sections 203 and 226, as long as the tariff meets the requirements of both sections. As a result, the largest nondominant interexchange carriers, or

their affiliates, have filed tariffs for interstate and international operator services pursuant to Section 203 rather than Section 226. Our decision to forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers for interstate, domestic, interexchange services does not relieve such carriers of the obligation to file informational tariffs pursuant to Section 226. Accordingly, any carrier that has included tariff information concerning interstate and international operator services in a Section 203 tariff must refile an informational tariff for such services, consistent with Section 226, upon cancelling such Section 203 tariff. Thus, our actions in this proceeding will not dictate the outcome of the Commission's inquiry into operator services.

III. Bundling of Customer Premises Equipment

113. In the *Computer II* proceeding, the Commission adopted a rule requiring all common carriers to sell or lease CPE separate and apart from such carriers' regulated communications services, and to offer CPE solely on a non-tariffed basis. (Section 64.702(e) of our rules provides: "Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.") Carriers previously had provided CPE to customers as part of a bundled package of services. The Commission required carriers to separate the provision of CPE from the provision of transmission services, because it found that carriers' continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market. The Commission acknowledged, however, that "[i]f the markets for components of [a] commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle."

114. In the *NPRM*, the Commission tentatively concluded that, in light of the development of substantial competition in the markets for CPE and interstate long-distance services, it was unlikely that nondominant interexchange carriers could engage in the type of anticompetitive conduct that

led the Commission to prohibit the bundling of CPE with the provision, *inter alia*, of interstate, interexchange services. The Commission also tentatively concluded that allowing nondominant interexchange carriers to bundle CPE with interstate, interexchange services would promote competition by allowing such carriers to create attractive service/equipment packages. The Commission therefore proposed to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services. The Commission sought comment on this proposal, and on the effect that the proposed amendment of Section 64.702(e) would have on the Commission's other policies or rules. The Commission also sought comment on: (1) Whether interexchange carriers should be required to offer separately, unbundled interstate, interexchange services on a nondiscriminatory basis if they are permitted to bundle CPE with the provision of interstate, interexchange services and (2) whether and how the anticipated entry of local exchange carriers, in particular the BOCs, into the market for interstate, interexchange services should affect the Commission's analysis.

115. A number of commenters addressing this issue support the Commission's proposal to amend Section 64.702(e) to allow nondominant interexchange carriers to bundle CPE with the provision of interstate, interexchange services, while other parties oppose such an amendment. Many commenters further argue that if the Commission permits bundling of CPE with interstate, interexchange services, it should require nondominant interexchange carriers to continue to offer unbundled interstate, interexchange services separately.

116. In its comments, AT&T strongly supported the Commission's proposal, but suggested that it did not go far enough, and urged the Commission also to eliminate restrictions on single-priced, bundled packages of enhanced and interexchange services offered by nondominant interexchange carriers. These restrictions (which are not codified in the Commission's rules) were adopted by the Commission in the *Computer II* proceeding. AT&T maintains that such restrictions are no longer justified, in light of the Commission's findings regarding the competitiveness of the interexchange market, and because the enhanced services market is even more "robust, competitive and diverse" than the CPE market. AT&T concludes that "the

rationale underlying the Commission's proposal to eliminate the bundling restrictions for CPE and interexchange services applies equally to enhanced services," and it therefore urges the Commission to institute a supplemental notice of proposed rulemaking "to eliminate the restrictions against the bundling of interexchange services and enhanced services by nondominant interexchange carriers." (In its comments, MCI assumed that the proposed amendment of Section 64.702(e) would allow bundling of transmission with enhanced services as well as CPE or "any other product or service that the carrier chooses to include in a bundle.")

117. ITAA opposes AT&T's request on the grounds that enhanced service providers ("ESPs") require access to unbundled network services at competitive prices and on nondiscriminatory terms in order to succeed. ITAA claims that there are only three nationwide facilities-based carriers, which ITAA contends collectively control the bulk of the interexchange market, from which ESPs can purchase the ubiquitous transmission services they require. ITAA maintains that AT&T's proposal would chill the growth of the enhanced services market by making ESPs vulnerable to discrimination by carriers in favor of their own enhanced services.

118. We conclude that, at this time, we should defer action on our earlier proposal to eliminate the CPE unbundling rule. We find that AT&T's request presents issues similar to those raised in the *NPRM* relating to the bundling of CPE with interstate, interexchange services by nondominant interexchange carriers. AT&T's request, however, also raises issues that have not been addressed in the record before us. Because we believe it is appropriate to consider the Commission's prohibitions against bundling CPE and enhanced services with interstate, interexchange services together, in a single, consolidated proceeding, we decline to act on the Commission's proposal in the *NPRM* to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services at this time. We intend to issue a further notice of proposed rulemaking that will address the continued applicability of the prohibitions against the bundling of both CPE and enhanced services with interstate, interexchange services by nondominant interexchange carriers.

IV. Other Issues

A. Pricing Issues

i. Background

119. In the *AT&T Reclassification Order*, the Commission found the evidence in the record regarding the existence of alleged tacit price coordination among interexchange carriers for basic residential services, or residential services generally to be inconclusive and conflicting. The Commission concluded that, if there were tacit price coordination in the interexchange market, the problem was generic to the industry and would be better addressed by removing regulatory requirements that may have facilitated such conduct. In the *NPRM*, the Commission noted that its reclassification of AT&T removed one such regulatory requirement—the longer advance notice period applicable only to AT&T. The Commission also observed that the 1996 Act would provide the best solution to the problem of tacit price coordination, to the extent that it exists currently, by allowing for competitive entry in the interstate interexchange market by the facilities-based BOCs. Moreover, the Commission tentatively concluded that complete detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers would discourage price coordination by eliminating carriers' ability to ascertain their competitors' interstate rates and service offerings from publicly-available tariffs filed with the Commission. The Commission sought comment on these issues.

ii. Comments

120. BOCs and other commenters argue that there is substantial evidence of tacit price coordination by the largest interexchange carriers, which the BOCs claim have engaged in price signaling and increased basic rates in lock-step, despite decreasing costs. Others, including a number of interexchange carriers, contend that there is no evidence of tacit price coordination, and that interexchange carriers have raised their rates for basic services because their rates were artificially kept below cost by price caps.

121. Several commenters argue that the best remedy for price coordination, to the extent it exists, is competitive entry in the interstate, domestic, interexchange market. Other commenters argue that because the BOCs have bottleneck control over access facilities, premature BOC entry may impede competition, because the BOCs will have unfair advantages over

their competitors, forcing smaller carriers from the market.

122. Some commenters suggest that the Commission's proposal to adopt complete detariffing will impede price coordination because tariffs enable carriers to ascertain their competitors' rates, terms and conditions for service at one, central location. Others argue that complete detariffing will have little effect on price coordination because carriers will be able to keep track of their competitors' rates through other methods, such as through competitors' advertising and because the current streamlined tariff filing requirements prevent price signaling.

iii. Discussion

123. We find the evidence in the record regarding tacit price collusion to be inconclusive. While data presented by Bell South and Bell Atlantic could be consistent with the existence of tacit collusion among interexchange carriers, these data are also consistent with competition among interexchange carriers. For example, the fact that increases in AT&T's basic rates have been matched almost immediately by MCI and Sprint is consistent with a theory of evolving competition in this marketplace. Between 1991 and 1995, while interexchange carriers were increasing basic rates, they were also lowering prices to higher volume customers through increases in discounts offered via discount plans. A Commission staff study of best available rates from AT&T to callers with different calling patterns shows that between 1991 and 1995, rates for customers with long-distance bills exceeding \$10.00 per month have decreased by between 15 and 28 percent. By contrast, the best prices available to customers with less than \$10.00 per month of calls have risen about 16 percent since 1991. (These prices are based on the basic rates, because no discount plans were generally available for those customers making less than \$10.00 per month in calls.) This pattern is consistent with the view that, over time, interexchange carriers began to compete more vigorously for high volume users than for low volume users. Such a market strategy would tend to result in lower prices for higher volume, more price sensitive customers, and higher prices for lower volume, less price sensitive customers.

124. Other data not discussed by BellSouth also are more suggestive of competition than collusion among interexchange carriers. For example, in 1994 nearly 30 million customers changed their presubscribed

interexchange carriers, which is indicative of competition among interexchange carriers for customers. In addition, between 1989 and 1992, advertising expenditures by all interexchange carriers increased 85 percent, to 1.6 billion dollars, which is further evidence of increased competition among interexchange carriers and not tacit collusion.

125. Based on the record in this proceeding, we find the evidence of tacit price coordination to be inconclusive and conflicting. In addition, we conclude that the detariffing rules we adopt today, together with additional competitive entry consistent with the provisions of the 1996 Act, provides the best solution to tacit price coordination to the extent it exists. Regarding the Alabama PSC's concern that the BOCs will have unfair advantages over their competitors and thereby will force small carriers from the market, we note that the 1996 Act provides safeguards to prevent the BOCs from engaging in anticompetitive conduct to the detriment of long-distance competitors, some of which are small nondominant interexchange carriers. We will address implementation of these safeguards in upcoming orders.

B. Contract Tariff Issues

126. In the AT&T Reclassification proceeding, commenters raised certain issues regarding contract tariffs. The Commission deferred consideration of those issues to this proceeding because it found that those issues applied to all interexchange carriers and were unrelated to the determination of whether AT&T possessed market power. In the NPRM, the Commission noted that those issues would largely be mooted if, as proposed in the NPRM, the Commission were to adopt a complete detariffing policy. The Commission nevertheless sought comment on those and other issues, because such issues would remain relevant if we determined not to forbear from requiring nondominant interexchange carriers to file tariffs.

127. MCI and GTE agree that the tariff-related issues raised in the NPRM would be largely moot if the Commission adopts complete detariffing. AT&T argues, however, that one of these issues, application of the "substantial cause" test would not be moot following adoption of a complete detariffing policy, because the substantial cause test is an integral part of the "just and reasonable" standard in section 201(b). AT&T argues that because the Commission is not proposing to forbear from applying

Section 201(b), the "substantial cause" test would still apply even if the Commission adopts a complete detariffing policy. No other party commented on whether these issues would remain relevant if we were to adopt a complete detariffing policy.

128. Because we are implementing complete detariffing, we conclude that the contract tariff-related issues raised in the NPRM are largely moot with respect to interstate, domestic, interexchange services offered by nondominant interexchange carriers. We reject AT&T's argument that the substantial cause test would continue to apply regardless of whether we order complete detariffing. In the RCA Americom Decisions, the Commission recognized that a dominant carrier's proposal "to modify extensively a long term service tariff may present significant issues of reasonableness under Section 201(b) that are not ordinarily raised in other tariff filings." Accordingly, the Commission held that a carrier's unilateral tariff revisions that alter material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can show "substantial cause" for the revision. While we recognize that the Commission may be called upon to examine the reasonableness of a nondominant interexchange carrier's rates, terms and conditions for interstate, domestic, interexchange services, for example, in the context of a Section 208 complaint proceeding, we find that following complete detariffing, we will no longer have to assess the reasonableness of modifications by such carriers to their tariffs for interstate, domestic, interexchange services. Thus, although the substantial cause test may continue to apply in other contexts, the test will no longer apply to unilateral tariff modifications by nondominant interexchange carriers regarding their interstate, domestic, interexchange services.

V. Final Regulatory Flexibility Analysis

129. As required by Section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comments on the proposals in the NPRM, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996).

A. Need for and Objectives of the Proposed Rules

130. In the 1996 Act, Congress sought to establish "a pro-competitive, deregulatory national policy framework" for the United States telecommunications industry. One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets. Integral to this effort to foster competition is the requirement that the Commission forbear from applying any regulation or any provision of the Communications Act if the Commission makes certain specified findings.

131. In this Order, the Commission proposes to exercise its forbearance authority under Section 10 of the Communications Act to detariff completely the interstate, domestic, interexchange services of nondominant interexchange carriers. In addition, the Commission promulgates rules in this Order that will require nondominant interexchange carriers to make available to the public information on the rates, terms, and conditions for all of their interstate, domestic, interexchange services in order to aid enforcement of Section 254(g) of the Communications Act. The objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small business entities.

132. In this Order, we also consider, but decline to act at this time on, the Commission's proposal in the NPRM to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange telecommunications services. The Commission also raised issues in the NPRM relating to: market definition; separation requirements for nondominant treatment of local exchange carriers in their provision of certain interstate, interexchange services; and implementation of the rate averaging and rate integration requirements in new section 254(g) of the Communications Act. On August 7, 1996, the Commission issued a Report and Order implementing the rate averaging and rate integration requirements.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

133. In the NPRM, the Commission performed an IRFA. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have an impact on small business entities as defined by section 601(3) of the RFA. In addition, the IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

i. Comments on the IRFA

134. No comments specifically address the Commission's initial regulatory flexibility analysis. Several parties, however, assert in their comments that the proposal to adopt complete detariffing would have an impact on small business entities. Several parties argue that tariffs send accurate economic signals and disseminate rate and service information so that nondominant interexchange carriers are able to price their services to compete with larger interexchange carriers. ACTA further argues that increased transaction costs in a detariffed environment—due to the need to establish a legal relationship with customers and notify them of any modifications—would be especially burdensome on small carriers that have fewer resources. In addition, Eastern Tel requests the Commission to work with industry, in particular small interexchange carriers, to develop a standard contract for telecommunications services, similar to the form contracts used in the real estate industry, that address such issues as the collection procedures that can be utilized. APCC, however, argues that forbearance from tariff filing requirements would eliminate a regulatory requirement that is especially burdensome on small carriers.

135. Several parties contend that complete detariffing would harm small business entities that are consumers of interstate, interexchange telecommunications services, because: (1) Small business customers require access to information contained in tariffs to obtain the best rates available; and (2) increased transaction costs would discourage nondominant interexchange carriers from serving certain market segments, including small business markets, thereby decreasing competitive choices for these small business customers.

136. TRA argues that detariffing would allow carriers to discriminate against resellers, many of which are

small and mid-sized businesses. TRA claims that, as a result, the resale market will not survive. TRA claims that a vibrant resale market provides residential and small business customers with access to lower rates.

137. In addition, several small businesses that analyze tariff information for business and residential customers argue that they need such information to conduct their businesses.

ii. Discussion

138. We disagree with those commenters that argue that complete detariffing will harm small nondominant interexchange carriers. As discussed in section II, we find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among all providers of such services (regardless of size), promote competitive market conditions, and establish market conditions that more closely resemble an unregulated environment. We further find, as APCC notes, that filing tariffs imposes costs on carriers that attempt to make new service offerings. Our decision to adopt complete detariffing, therefore, should minimize regulatory burdens on all nondominant interexchange carriers, including small entities.

139. We recognize that complete detariffing may change significant aspects of the way in which nondominant interexchange carriers conduct their business. As discussed above, however, tariffs are not the only feasible way for carriers to establish legal relationships with their customers, nor will carriers necessarily need to negotiate contracts for service with each, individual customer. See para. 57. Carriers could, for example, issue short, standard contracts that contain their basic rates, terms and conditions for service. As discussed above, nondominant interexchange carriers that provide casual calling services have options other than tariffs by which they can establish legal relationships with casual callers, and pursuant to which such callers would be obligated to pay for the telecommunications services they use. See para. 58. We believe that the nine-month transition period established by this Order, will afford nondominant interexchange carriers sufficient time to develop efficient mechanisms to provide interstate, domestic, interexchange services in a detariffed environment. Moreover, parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services should be subject

to a regulatory regime that is not available to firms that compete in any other market in this country. We thus conclude that requiring nondominant interexchange carriers to withdraw their tariffs and conduct their business as other enterprises do will not impose undue burdens on these carriers. Moreover, we disagree with ACTA's argument that detariffing will disproportionately burden small interexchange carriers. While some of the increased administrative costs that carriers may initially incur as a result of detariffing are likely to be fixed (such as the cost of developing short, standard contracts), many such costs will vary based on the area or number of customers served by such carriers (e.g., advertising expenditures, the cost of promotional mailings or billing inserts). Nonetheless, we find that, on balance, the pro-competitive effects of relieving nondominant interexchange carriers of the obligation to file tariffs for their interstate, domestic, interexchange services outweigh any potential increase in transactional or administrative costs resulting from the shift to a detariffed environment.

140. We are also unpersuaded by the argument that complete detariffing will harm small business entities that utilize telecommunications services. Requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes competition by removing incentives for competitive price discounting, imposing costs on carriers that attempt to make new offerings, and preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs. As discussed above, complete detariffing will better protect consumers, many of which are small businesses, and will promote vigorous competition. See section II.B.2.b. As a result, we believe that complete detariffing will lead to lower prices for interstate, domestic, interexchange services, thereby benefitting all consumers, including small business ones. Moreover, because we do not agree that complete detariffing will substantially increase nondominant interexchange carriers' costs, we are unpersuaded that carriers will abandon segments of the market to the detriment of small business customers, as LDDS suggests.

141. We reject the suggestion that eliminating tariff filing requirements would impede competition by reducing information available to consumers and small nondominant interexchange carriers. As discussed above, we believe that nondominant interexchange carriers will make rate and service

information, currently contained in tariffs, available to the public in a more user-friendly form in order to preserve their competitive position in the market, and as part of their contractual relationship with customers. See para. 25. Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might not provide complete information concerning all of their service offerings to all consumers, and that some consumers may not be able to determine which rate plan is most appropriate for them, based on their individual calling patterns. Accordingly, and in light of considerations regarding the enforcement of the 1996 Act's geographic rate averaging and rate integration requirements, we will require carriers to provide rate and service information to the public. See paras. 84-86. This obligation will ensure that all customers, many of which are small businesses, have access to such information.

142. Finally, as discussed above, we are not persuaded that the resale market will disappear in the absence of tariffs. See para. 27. Our decision to forgo from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not affect such carriers' obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory. In addition, as discussed above, we are requiring nondominant interexchange carriers to provide current rate and service information on their interstate, domestic, interexchange services to consumers, including resellers. See paras. 84-86. Thus, resellers will be able to determine whether nondominant interexchange carriers have imposed rates, practices, classifications or regulations that unreasonably discriminate against resellers, and to bring complaints, if necessary.

C. Description and Estimates of the Number of Small Entities to Which the Rule Will Apply

143. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business

Administration (SBA). SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees. We first discuss generally the total number of telephone companies falling within this SIC category. Then, we refine further those estimates and discuss the number of carriers falling within subcategories.

144. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. United States Department of Commerce, Bureau of the Census, 1992 *Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (1992 *Census*). This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, operator service providers, pay telephone operators, personal communications service providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities, small interexchange carriers, or resellers of interexchange services, because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order.

145. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. 1992 *Census at Firm Size 1-123*. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812. All but 26 of the 2,321 non-

radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

146. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with Telecommunications Relay Services (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Federal Communications Commission, OCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Table 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (February 1996). Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order.

147. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we

collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services. Federal Communications Commission, OCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Table 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (February 1996). Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

148. In addition, the rules adopted in this Order may affect companies that analyze information contained in tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms classified as small entities. U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 7375 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration). This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order.

149. Finally, as discussed above, some commenters contend that the rules proposed in the NPRM would increase the cost of interstate, domestic, interexchange telecommunications services to small businesses. See para. 46. We assume that most, if not all, small businesses purchase interstate, domestic, interexchange telecommunications services. As a result, our rules in this Order would affect virtually all small business entities. SBA guidelines to the SBREFA state that about 99.7 percent of all firms

are small and have fewer than 500 employees and less than \$25 million in sales or assets. There are approximately 6.3 million establishments in the SBA database. A Guide to the Regulatory Flexibility Act, U.S. Small Business Administration, Washington D.C., at 14 (May 1996). The SBA data base does include nonprofit establishments, but it does not include governmental entities. SBREFA requires us to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules. There are 85,006 governmental entities in the nation. 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that would be affected by our rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

150. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order. As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements.

151. Nondominant interexchange carriers, including small nondominant interexchange carriers, will be required to cancel all of their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months. As a result, nondominant interexchange carriers will need to establish legal relationships with their customers in an alternative way, for example, by issuing short, standard contracts that contain their basic rates, terms and conditions for service. This change in the manner of conducting their business may require the use of technical, operational, accounting, billing, and legal skills.

152. As discussed in section II.C, we are requiring nondominant interexchange carriers to make information on current rates, terms, and

conditions for all of their interstate, domestic, interexchange services available to the public in at least one location during regular business hours. We will also require carriers to inform the public that this information is available when responding to consumer inquiries or complaints and to specify the manner in which the consumer may obtain the information. We further require nondominant interexchange carriers to maintain, for a period of two years and six months, the information provided to the public, as well as documents supporting the rates, terms, and conditions for all of their interstate, domestic, interexchange offerings, that they can submit to the Commission upon request. Nondominant interexchange carriers will need to maintain the foregoing records in a manner that allows carriers to produce such records within ten business days of receipt of a Commission request. In addition, nondominant interexchange carriers will be required to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. Compliance with these requests may require the use of accounting, billing, and legal skills.

153. We further require nondominant providers of interstate, domestic, interexchange telecommunications services to file annual certifications signed by an officer of the company under oath that the company is in compliance with its statutory geographic rate averaging and rate integration obligations. Compliance with these requests may require the use of accounting and legal skills.

E. Significant Alternatives and Steps Taken To Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

154. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

155. We believe that our actions to adopt complete detariffing will facilitate the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of

which are small business entities. Absent filed tariffs, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment. As set forth in section II.B above, we reject suggestions that we should permit carriers to voluntarily file tariffs. We believe that detariffing on a permissive basis would not definitively eliminate the possible invocation of the "filed-rate" doctrine and would create the risk of price signalling. We believe that only with complete detariffing can we definitively eliminate these possible anticompetitive practices and protect consumers, some of which are small business entities.

156. As discussed above, we also reject suggestions that we should limit our decision to forbear by differentiating among interstate, domestic, interexchange services, among nondominant interexchange carriers, or among types of information contained in tariffs for such services. See paras. 41, 42, 63. We do not believe that there is a sound basis for limiting forbearance to certain interstate, domestic, interexchange services, such as individually negotiated service arrangements. We find that the competitive benefits of not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services, discussed above, apply equally to all segments of the interstate, domestic, interexchange services market. See paras. 53, 54.

Moreover, as discussed above, we reject the argument that detariffing mass market services offered to residential and small business customers will lead to substantially higher transactions costs. See para. 57. Similarly, we are not persuaded that the public interest benefits differ depending on the type of tariffed information that is at issue. The public interest benefit of removing carriers' ability to invoke the "filed-rate" doctrine applies equally with respect to terms and conditions as to rates. See para. 55. In addition, permitting or requiring large nondominant interexchange carriers to file tariffs would not eliminate the risk of tacit price coordination among such carriers, and would raise the possibility that such carriers' tariffed rates would become a price umbrella. Finally, we agree with AT&T that there is no basis to differentiate among nondominant interexchange carriers, because all such carriers are unable to exercise market power in the interstate, domestic, interexchange market.

157. In order to minimize the burden on nondominant interexchange carriers, and in particular small, nondominant interexchange carriers that may have fewer resources, we do not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location. We reject the suggestion that we should require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line, because we found that mandating such a requirement would be unduly burdensome at this time. Rather, we will require only that a carrier make such information available to the public in at least one location during regular business hours. Although we do not require carriers to make such information available to the public at more than one location, we encourage carriers to consider ways to make such information more widely available, for example, posting such information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.

158. The decision to impose disclosure requirements will also allow businesses, including small business entities, that audit and analyze information contained in tariffs to continue. Our decision not to require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line may impose an additional collection cost on these businesses. We find, however, that mandating such a requirement would be unduly burdensome on nondominant interexchange carriers, including small nondominant interexchange carriers.

F. Report to Congress

159. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

VI. Final Paperwork Reduction Analysis

160. As required by the Paperwork Reduction Act of 1995, Public Law No. 104-13, the NPRM invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained in the NPRM. The changes to our information collection requirements proposed in the NPRM included: (1) The elimination of tariff filings by

nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services; (2) the requirement that nondominant interexchange carriers maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request; (3) the requirement that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under Section 254(g) of the Communications Act; and (4) the requirement that interexchange carriers advertise the availability of discount rate plans throughout the entirety of their service areas.

161. On June 12, 1996, OMB approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act. Notice of Office of Management and Budget Action, OMB No. 3080-0704 (June 12, 1996). In approving the proposed changes, OMB "strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information," which "could be provided as part of the certification process or could be made available to the public in other ways."

162. In this Order, we adopt several of the changes to our information collection requirements proposed in the NPRM. Specifically, we have decided to: (1) Eliminate tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services; (2) require that nondominant interexchange carriers maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request; and (3) require that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under Section 254(g) of the Communications Act. See paras. 77, 83, 87. In the *Geographic Rate Averaging Order*, we found it unnecessary to adopt a requirement that interexchange carriers advertise the availability of discount rate plans and promotions throughout the entirety of their service areas. We have also decided to require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or

individuals, designated by the carrier to respond to Commission inquiries and requests for documents. See para. 83. In the *Geographic Rate Averaging Order*, we found it unnecessary to adopt a requirement that interexchange carriers advertise the availability of discount rate plans and promotions throughout the entirety of their service areas. In order to implement detariffing, we order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months of the effective date of this Order and not to file any such tariffs thereafter. See para. 89. We also order carriers that have on file with the Commission "mixed" tariff offerings that contain services subject to detariffing pursuant to this Order, to comply with this Order either by: (1) Cancelling the entire tariff and refiling a new tariff for only those services subject to the tariff filing requirements; or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance. See para. 91. In addition, we have decided to require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. See para. 87. Finally, consistent with OMB's recommendation that we consider mechanisms to make pricing information available to interested parties, we have decided, for purposes of enforcing Section 254(g), to require nondominant interexchange carriers to disclose to the public rate and service information concerning all of their interstate, domestic, interexchange offerings. See paras. 84-86. Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

VII. Ordering Clauses

163. Accordingly, it is ordered that, pursuant to Sections 1-4, 10, 201, 202, 204, 205, 215, 218, 220, 226 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 160, 201, 202, 204, 205, 215, 218, 220, 226 and 254, the *Second Report and Order* is hereby adopted. The requirements adopted in this Second Report and Order shall be effective December 23, 1996. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

164. It is further ordered that Parts 42, 61 and 64 of the Commission's Rules, 47 CFR 42, 61, and 64 are amended as set forth below.

165. It is further ordered that, AT&T shall detariff 800 Directory Assistance and Analog Private Line Services within nine months of the end of its three-year commitment period established in *Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier*, Order, 11 FCC Rod 3271, 3305-07 (1995). During this commitment period, any tariff revisions that propose to increase the price of these services shall be filed on not less than five business days' notice, shall be within the limits established in the commitment and shall clearly identify such tariff transmittals as affecting the provisions of this commitment.

166. It is further ordered that, for the period of its commitment, AT&T shall notify its customers of changes to its low volume and low income calling plans not less than five business days' prior to such a change. AT&T shall provide five business days' notice of changes to its average residential interstate direct dial services under the circumstances specified in *Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier*, Order, 11 FCC Rod 3271, 3305-07 (1995).

List of Subjects

47 CFR Part 42

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission, William F. Caton, Acting Secretary.

Rule Changes

Parts 42, 61 and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 42—PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS

1. The authority citation for part 42 continues to read as follows:

Authority: Sec. 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(i). Interprets or applies secs. 219 and 220, 48 Stat. 1077-78, 47 U.S.C. 219, 220.

2. An undesignated centered heading and §§ 42.10 and 42.11 are added to read as follows:

Specific Instructions for Carriers Offering Detariffed Interexchange Services

§ 42.10 Public availability of information concerning detariffed interexchange services.

A nondominant interexchange carrier shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its detariffed interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. When responding to an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

§ 42.11 Retention of information concerning detariffed interexchange services.

(a) A nondominant interexchange carrier shall maintain, for submission to the Commission upon request, price and service information regarding all of the carrier's detariffed interstate, domestic, interexchange service offerings. The price and service information maintained for purposes of this paragraph (a) shall include, but not be limited to, the information that such carrier makes available to the public pursuant to § 42.10, as well as documents supporting the rates, terms, and conditions of the carrier's detariffed interstate, domestic, interexchange offerings. The information maintained pursuant to this section shall be maintained in a manner that allows the carrier to produce such records within ten business days.

(b) The price and service information maintained pursuant to this section shall be retained for a period of at least two years and six months following the date the carrier ceases to provide services pursuant to such rates, terms and conditions.

(c) A nondominant interexchange carrier shall file with the Commission, and update as necessary, the name, address, and telephone number of the individual(s) designated by the carrier to respond to Commission inquiries and requests for documents about the carrier's detariffed interstate, domestic, interexchange services.

PART 61—TARIFFS

3-4. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

5. Section 61.3 is amended by revising paragraph (j) to read as follows:

§ 61.3 Definitions.

(j) *Tariff publication, or publication.* A tariff, supplement, revised page, additional page, concurrence, notice of revocation, adoption notice, or any other schedule of rates or regulations filed by common carriers.

6. Sections 61.20 through 61.23 are redesignated as §§ 61.21 through 61.24, and new section 61.20 is added immediately preceding newly designated § 61.21 to read as follows:

§ 61.20 Detariffing of interstate, domestic, interexchange services.

Except as otherwise provided by Commission order, carriers that are nondominant in the provision of interstate, domestic, interexchange services shall not file tariffs for such services.

7. Section 61.72 is amended by revising introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 61.72 Posting.

(a) Offering carriers must post (i.e., keep accessible to the public) during the carrier's regular business hours, a schedule of rates and regulations for those services subject to tariff filing requirements. This schedule must include all effective and proposed rates and regulations pertaining to the services offered to and from the community or communities served, and must be the same as that on file with the Commission. This posting requirement must be satisfied by the following methods:

(b) The posting of rates and regulations for those services pursuant to paragraph (a) of this section shall be considered timely if they are available for public inspection at the posting locations within 15 days of their filing with the Commission.

8. Section 61.74 is amended by adding new paragraph (d) to read as follows:

§ 61.74 References to other instruments.

(d) A tariff for international services offered by a carrier that is subject to

detariffing for domestic, interstate, interexchange services, may reference other documents or instruments concerning the carrier's detariffed domestic, interstate, interexchange service offerings. A tariff for international services may contain such a reference if, and only if, it is necessary to incorporate information regarding the carrier's detariffed domestic, interstate, interexchange services in order to calculate discounts and minimum revenue requirements for international services provided in combination with detariffed domestic, interstate, interexchange services. Notwithstanding any such reference to documents or instruments concerning the carrier's detariffed domestic, interstate, interexchange service offerings, a tariff for international services shall specify rates, terms and conditions for the international service.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

9. The authority citation for part 64 is revised to read as follows:

Authority: Sec. 4, 48 Stat. 1086, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 254, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, 254, unless otherwise noted.

10. New subpart S consisting of § 64.1900 is added to part 64 to read as follows:

Subpart S—Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

Sec. 64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

Subpart S—Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

§ 64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

(a) A nondominant provider of interexchange telecommunications services, which provides detariffed interstate, domestic, interexchange services, shall file with the Commission, on an annual basis, a certification that it is providing such services in compliance with its geographic rate averaging and rate integration obligations pursuant to section 254(g) of the Communications Act of 1934, as amended.

(b) The certification filed pursuant to paragraph (a) of this section shall be signed by an officer of the company, under oath.

Note: This Attachment will not appear in the Code of Federal Regulations.

Attachment—List of Parties

[CC Docket No. 96-61]

List of Commenters in CC Docket No. 96-61, Sections III, VII, VIII, IX (Tariff Forbearance, CPE Bundling, Contract Tariff, Other Issues)

Ad Hoc Coalition of Corporate Telecommunications Managers (Corporate Managers)

Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users)

America's Carriers Telecommunication Association (ACTA)
American Petroleum Institute (API)
American Public Communications Council (APCC)

American Telegram Corporation (American Telegram)

Ameritech
AMSC Subsidiary Corporation (AMSC)

AT&T Corp. (AT&T)
Association for the Study of Afro-American Life and History, Inc.

Audits Unlimited, Inc. (Audits Unlimited)
BT North America Inc. (BT North America)

Bell Atlantic Telephone Companies (Bell Atlantic)

BellSouth Corp. (BellSouth)
Business Telecom, Inc. (Business Telecom)

Cable & Wireless, Inc. (Cable & Wireless)
Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (Television Networks)

Casual Calling Coalition
Cato Institute

Citizens for a Sound Economy Foundation (CSE)

Chrysler Minority Dealers Association
Compaq Computer Corporation (Compaq)

Competitive Telecommunications Association (CompTel)

Consumer Electronics Retailers Coalition
Consumer Federation of America and Consumers Union (CFA/CU)

Eastern Tel Long Distance Service, Inc. (Eastern Tel)

Excel Telecommunications, Inc. (Excel)

Frontier Corporation (Frontier)

Fone Saver, LLC (Fone Saver)

General Communication, Inc. (GCI)

General Services Administration (GSA)

GTE Service Corp. (GTE)

Gerald Hunter (Hunter)

Independent Data Communications Manufacturers Association (IDCMA)

Information Technology Association of America (ITAA)

LCI International Telecom Corp. (LCI)

LDOS World Com (LDOS)

Louisiana Public Service Commission (Louisiana PSC)

MCI
MFS

Dr. Robert Self dba Market Dynamics (Market Dynamics)

MOSCOM Corporation (MOSCOM)

National Association of Attorneys General, Consumer Protection Committee, Telecommunications Subcommittee

(National Association of Attorneys General Telecommunications Subcommittee)

National Association of Development Organizations—Paragard—United Homeowners Association—National Hispanic Council on the Aging—Consumers First—National Association of Commissioners for Women (National Association of Development Organizations)

National Black Data Processors Association

National Bar Association

Network Analysis Center, Inc.

NYNEX Telephone Companies (NYNEX)

Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)

Pacific Teleis (PacTel)

Pennsylvania Public Utility Commission (Pennsylvania PUC)

SBC Communications Inc. (SBC)

Scheraga and Sheldon Associates (Scheraga and Sheldon)

Secretary of Defense

Sprint Corporation (Sprint)

State of Alaska (Alaska)

Telecommunications Information Services (TIS)

Telecommunications Management Information Systems Coalition

Telecommunications Research and Action Center (TRAC)

Telecommunications Resellers Association (TRA)

Tennessee Attorney General

URSUS Telecom Corp. (Urus)

United States Telephone Association (USTA)

US West, Inc. (U.S. West)

UTC

WinStar Communications, Inc. (WinStar)

XIOX Corporation (XIOX)

List of Reply Commenters in CC Docket No. 96-61, Sections III, VII, VIII, IX (Tariff Forbearance, CPE Bundling, Contract Tariff, Other Issues)

Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users)

American Petroleum Institute (API)

AT&T Corp. (AT&T)

Bell Atlantic Telephone Companies (Bell Atlantic)

BellSouth Corp. (BellSouth)

Casual Calling Coalition

Citizens Utilities Company (Citizens Utilities)

Consumer Electronics Retailers Coalition

Eastern Tel Long Distance Service, Inc. (Eastern Tel)

Frontier Corporation (Frontier)

General Services Administration (GSA)

GTE Service Corp. (GTE)

Independent Data Communications Manufacturers Association (IDCMA)

Information Technology Association of America (ITAA)

LCI International Telecom Corp. (LCI)

LDOS World Com (LDOS)

Louisiana Public Service Commission (Louisiana PSC)

MCI

MFS

New York State Department of Public Service

NYNEX Telephone Companies (NYNEX)

Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)

Pacific Teleis (PacTel)

Pennsylvania Public Utility Commission (Pennsylvania PUC)

Sprint Corporation (Sprint)

Telecommunications Management Information Systems Coalition

Telecommunications Research and Action Center (TRAC)

Telecommunications Resellers Association (TRA)

US West, Inc. (U.S. West)

WinStar Communications, Inc. (WinStar)

XIOX Corporation (XIOX)

List of Commenters in CC Docket No. 96-61, Sections IV, V, VI (Market Definition, Separation Requirements, Rate Averaging and Rate Integration)

Alabama Public Service Commission (Alabama PSC)

America's Carriers Telecommunication Association (ACTA)

American Petroleum Institute (API)

American Public Communications Council (APCC)

Ameritech

AMSC Subsidiary Corporation (AMSC)

AT&T Corp. (AT&T)

Bell Atlantic Telephone Companies (Bell Atlantic)

BellSouth Corp. (BellSouth)

Cable & Wireless, Inc. (Cable & Wireless)

Columbia Long Distance Service, Inc. (CLDS)

Competitive Telecommunications Association (CompTel)

Commonwealth of the Northern Mariana Islands

Florida Public Service Commission (Florida PSC)

Frank Collins

Frontier Corporation (Frontier)

General Communication, Inc. (GCI)

General Services Administration (GSA)

GTE Service Corp. (GTE)

Governor of Guam & the Guam Telephone Authority

Guam Public Utility Commission (Guam PUC)

Harvey William Ward (Ward)

Iowa Utilities Board

IT&E Overseas, Inc.

JAMA Corporation

John Staurakakis, Inc.

Kevin Loflin (Loflin)

Kristine Stark (Stark)

LDOS WorldCom (LDOS)

Louisiana Public Service Commission (Louisiana PSC)

MCI

MFS

Michael Sussman (Sussman)

Missouri Public Service Commission (Missouri PSC)

National Association of Regulatory Utilities Commissioners (NARUC)

NYNEX Telephone Companies (NYNEX)

Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
 Pacific Telesis Group (PacTel)
 Paul Lee (Lee)
 Peggy Orlic (Orlic)
 Pennsylvania Office of Consumer Advocate
 Pennsylvania Public Utility Commission (Pennsylvania PUC)
 Public Utilities Commission of Ohio
 Rural Telephone Coalition
 Scherer Communications Group
 SBC Communications, Inc. (SBC)
 Southern New England Telephone Company (SNET)
 Sprint Corporation (Sprint)
 State of Alaska (Alaska)
 State of Hawaii (Hawaii)
 TCA, Inc.
 TDS Telecommunications Corp.
 Telecommunications Resellers Association (TRA)
 United States Telephone Association (USTA)
 U.S. West, Inc. (U.S. West)
 Vanguard Cellular Systems, Inc.
 Washington Utilities & Transportation Commission
 Zankle Worldwide Telecom (ZWT)

List of Reply Commenters in CC Docket No. 96-61, Sections IV, V, VI (Market Definition, Separation Requirements, Rate Averaging and Rate Integration)

ALLTEL Corporate Services, Inc.
 Amartech
 AT&T Corp. (AT&T)
 Bell Atlantic Telephone Companies (Bell Atlantic)
 BellSouth Corp. (BellSouth)
 Citizens Utilities Company (Citizens Utility)
 Commonwealth of the Northern Mariana Islands
 Competitive Telecommunications Association (CompTel)
 General Communication, Inc. (GCI)
 General Services Administration (GSA)
 GTE Service Corp. (GTE)
 Governor of Guam & the Guam Telephone Authority
 Guam Public Utility Commission (Guam PUC)
 LDDS WorldCom (LDDS)
 MCI
 MFS
 Missouri Office of the Public Counsel
 New York State Department of Public Service
 NYNEX Telephone Companies (NYNEX)
 Office of the Ohio Consumers Counsel (Ohio Consumers' Counsel)
 PCI Communications, Inc.
 Rural Telephone Coalition
 SBC Communications Inc. (SBC)
 Sprint Corporation (Sprint)
 State of Alaska (Alaska)
 State of Hawaii (Hawaii)
 Telecommunications Resellers Association (TRA)
 United States Telephone Association (USTA)
 U.S. West, Inc. (U.S. West)
 Vanguard Cellular Systems, Inc.

[FR Doc. 96-29529 Filed 11-21-96; 8:45 am]
 BILLING CODE 4712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR-4, Notice No. 14]

RIN 2130-AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA, DOI).
ACTION: Final rule; Correcting amendments and partial response to petitions for reconsideration.

SUMMARY: On June 18, 1996, FRA published a final rule amending the railroad accident reporting regulations. FRA now makes technical corrections to the final rule and responds to certain concerns raised in petitions for reconsideration of the final rule, which concerns were also raised in requests to stay the effective date of the final rule. In this document FRA issues amendments to the final rule addressing those concerns. FRA's response to the other concerns raised in petitions for reconsideration of the final rule will appear in the near future in a separate document published in the Federal Register.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, SW., Washington, D.C. 20590 (telephone 202-632-3386); or Nancy L. Goldman, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, D.C. 20590 (telephone 202-632-3167).

SUPPLEMENTARY INFORMATION: On June 18, 1996, FRA published a final rule amending the railroad accident reporting regulations at 49 CFR part 225 (61 FR 30940). The final rule aims to minimize underreporting and inaccurate reporting of those injuries, illnesses, and accidents meeting reportability requirements. On August 19, 1996, and August 29, 1996, respectively, the Association of American Railroads (AAR) and the Union Pacific Railroad Company (UP) filed petitions for reconsideration of the final rule raising various concerns and requested in their petitions for reconsideration, and by purported petitions for stay not recognized by FRA regulations at 49 CFR part 211, that FRA postpone the effective date of the final rule (collectively, Petitions). The Petitions specifically allege:

- That AAR member railroads will be exposed to substantial risk should

the rule not be stayed pending FRA's decision on AAR's Petition for Reconsideration; and

- That the text of the final rule may allow employees access to records and files which the railroads may deem to be privileged, confidential, and litigation-sensitive, thus giving employee litigants advantages that could expose railroads to irreparable injury.

1. Requests To Stay the Effective Date

As stated above, AAR and UP request in their Petitions that FRA stay the effective date of the final rule, asserting that such a stay is in the public interest and that other interested parties would not be substantially harmed by such a stay since the rule does not address "any significant safety risk." AAR claims that its member railroads will be exposed to substantial risk should the rule not be stayed pending FRA's decision on AAR's Petition for Reconsideration. Section 211.31 of FRA's rules of practice states that FRA must decide to grant or deny, in whole or in part, each petition for reconsideration not later than four months after receipt by FRA's Docket Clerk (49 CFR 211.31). In this case, FRA's decision on the petitions for reconsideration is due no later than December 19, 1996. AAR and UP therefore request an immediate stay of the effective date for a reasonable period of time after issuance of FRA's decision on the Petitions for Reconsideration in order to assess FRA's decision and evaluate how FRA's decision impacts the final rule. In the alternative, AAR and UP request postponement of the effective date of the final rule from January 1, 1997, to January 1, 1998.

Discussion

After careful consideration and for the reasons set forth in this document, FRA has decided not to stay the effective date of its final rule. FRA so informed AAR and UP by letter dated October 10, 1996. Initially, FRA wishes to emphasize that its rules of practice applying to rulemakings do not authorize petitions for stay of a final rule. See 49 CFR part 211. Since procedures do not exist with respect to a stay petition, there exists no regulatory deadline by which to answer such a petition, and FRA's response to AAR's and UP's purported petitions for stay ("Petitions for Stay") did not constitute a final agency action subject to review. It should also be noted that the filing of a petition for reconsideration does not stay the effectiveness of a rule under 49 CFR 211.29. Nevertheless, FRA chose to reply to the substantive issues in AAR's and UP's "Petitions for Stay" in order to

maintain and foster the collaborative and cooperative partnership approach to resolving issues important to the industry.

FRA is also confident that railroads were given ample time to prepare to comply with the final rule, given the amount of time between its publication (June 18, 1996) and its effective date (January 1, 1997). Those subject to a Federal rule are not entitled to predicate their actions on the assumption that a petition for reconsideration will result in substantive changes to the rule. The public interest would not be served by delaying the effective date of this rule at this time, based on FRA's review of the grounds set forth in the "Petitions for Stay." Therefore, if, in responding to pending petitions for reconsideration of the final rule from AAR, UP, or others, FRA makes any additions or changes to the final rule, then FRA will allow the railroads sufficient time and latitude to comply with any revised provisions. In the meantime, the industry should plan to comply on the original effective date of January 1, 1997.

2. Section 225.25(c) Recordkeeping

Current Final Rule Language

Section 225.25(c) reads as follows:

Each railroad shall provide the employee, upon request, a copy of either the completed Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or the alternative railroad-designed record as described in paragraphs (a) and (b) of this section as well as a copy of any other form, record or report filed with FRA or held by the railroad pertaining to the employee's injury or illness.

As noted, the Petitions contend that this section would allow railroad employees access to records and files which the railroad may deem to be privileged, confidential, and/or litigation-sensitive. AAR claims that the portion of § 225.25(c) that would allow employees access to "a copy of any other form, record or report filed with FRA or held by the railroad pertaining to the employee's injury or illness," may give employee litigants advantages that could expose railroads to irreparable injury. UP states that by means of § 225.25(c), FRA was trying to "preempt [Federal Employers' Liability Act (45 U.S.C. 51 *et seq.*)] FELA case law, FELA statutory language, the Federal Rules of Civil Procedure, and the jurisdiction of the judiciary itself." Similarly, AAR states that § 225.25(c) "purports to overturn the Federal Rules of Civil Procedure and other statutory protections by requiring railroads to open their files and give privileged documents to potential and actual

plaintiff-employees" and that the section was unlawful and in violation of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) because FRA failed to give public notice of this provision and allow opportunity for comment. UP further questions how employee access to medical files would assist FRA in improving railroad safety.

AAR states that the adverse effects of the final rule are:

(1) To interfere irrevocably with full and frank disclosure between attorney and client which is critical to the functioning of the adversary system, by mandating release of attorney-client communications that had been made in the past and would have been made in the future with an expectation of confidentiality,

(2) To undermine irrevocably the protections that are accorded accident reports under 49 U.S.C. 20903 in order to avoid their use for any adversarial purpose, by mandating release of such reports, and

(3) To undermine irrevocably the railroads' rights to confidentiality of other privileged and litigation-sensitive documents, by mandating their release.

Discussion and Amended Final Rule

AAR's assertion that FRA failed to give notice and an opportunity to comment on the provision in § 225.25(c) is without merit. In the railroad accident reporting Notice of Proposed Rulemaking (NPRM), published in the Federal Register on August 19, 1994 (59 FR 42880), FRA proposed in § 225.39(b) that each railroad provide the worker whose injury or illness is reported on the Railroad Worker Injury and Illness Log, with a copy of such log within seven calendar days of completing the log. The preamble to the NPRM explained FRA's concern with the fact that the injured or ill employee did not have the opportunity to review and verify the information the railroad submitted on accident/illness reports prior to submission of such reports to FRA.

The preamble to the final rule further explained the agency's rationale for issuing these regulations. FRA believes that to the extent it concerns documents required by FRA to be maintained or submitted, the requirement in § 225.25(c) is necessary in order to provide the injured or ill employee a means by which to review and verify the reporting status of his or her injury or illness. By providing this requested information, the employee would have the opportunity to assess why, or why not, a particular event was, or was not, reported to FRA. By including the employee in this process, the overall

integrity of FRA's data base would improve. The accuracy of railroad accident and injury data is essential to improving the safety of railroad employees and the railroad industry as a whole. Further, a reliable and accurate railroad injury and accident reporting data base is critical to formulating effective rail safety policies and regulations.

In writing the final rule, however, FRA never intended to negate the well-established litigation privileges with respect to the type of documents railroad employee litigants may obtain from the railroads. The final rule better defines the types of documents to which employees may obtain access, and is a logical outgrowth of the proposed regulation.

FRA is amending § 225.25(c) to clarify that railroads are required to grant a railroad employee access only to forms or reports required to be maintained or filed under Part 225 pertaining to that employee's own work-related injury or illness. Thus, the amended final rule cannot be read to provide employees access to any other documents in the railroad's files; nor can the revised language be interpreted to deny employees access to such documents. Such access would be an issue between the employee and the railroad. The accident reports statute (49 U.S.C. 20102, 20901-20903, 21302, 21304, 21311) does not preclude disclosure of such documents; instead that statute precludes the "use" of such documents in lawsuits for damages of certain accident reports. This distinction between the public availability of accident/incident reports and their use in litigation is clearly made in § 225.7 of both the current and amended final rule.

3. Section 225.35 Access to Records and Reports

Current Final Rule Language

AAR's petition for reconsideration asserts that the following portion of § 225.35 is unlawful because FRA failed to give public notice of this provision and allow opportunity for comment and that the provision would allow FRA and "other authorized representatives" access to any document or record without regard to any claim of privilege:

Each railroad subject to this part shall have at least one location, and shall identify each location, where any representative of the Federal Railroad Administration or of a State agency participating in investigative and surveillance activities under part 212 of this chapter or any other authorized representative, has centralized access to a copy of any record and report (including relevant claims and medical records) required under this part, for examination and

photocopying in a reasonable manner during normal business hours.

Discussion

AAR's assertion that FRA failed to give notice and an opportunity to comment on this provision in § 225.35 is without merit. In the accident reporting NPRM, FRA proposed in § 225.41 that all reports, logs, plans, and records related to (a) rail equipment accidents/incidents, including collisions and derailments; (b) highway-rail grade crossing accidents/incidents; (c) deaths, injuries, and illnesses, including claims and medical records; as well as all records and reports identified in § 225.25, must be made available, upon request, to any FRA representatives, or any representative of a State participating in investigative and surveillance activities under the Federal railroad safety laws and regulations, for examination and photocopying in a reasonable manner during normal business hours. The final rule provision in § 225.35 adds "any authorized representative" to the list of persons who may obtain access to railroad documents only to distinguish "FRA inspectors" from "FRA management staff" who may sometimes accompany FRA inspectors and specialists during routine inspections.

As stated in the preamble to the NPRM and the final rule, FRA believes that § 225.35 would alleviate the problems and reluctance that FRA inspectors frequently encounter from the railroads when examining and photocopying claims department records, particularly railroad employee medical records.

Amended Final Rule

FRA grants, in part, AAR's request for reconsideration as to that portion of § 225.35 that would allow FRA and any other authorized representative access to "any record and report (including relevant claims and medical records) required" under the accident reporting regulations. FRA agrees that § 225.35 was inadvertently drafted in an overly broad manner and that it may be misinterpreted to require railroads to release all medical and claim-related records to FRA upon request without regard to any claim of privilege. FRA did not intend unlimited access to all documents contained in an employee's file or to deny railroads the opportunity to assert a privilege with respect to a particular document. There are instances, however, where FRA may deem it necessary to obtain a document in the railroad's possession or under the control of the railroad that may contain information relevant to aid its

investigation into the cause of a railroad accident or incident or an employee's injury or illness. FRA has authority under 49 U.S.C. 20107 and 20902 to request and obtain such documents.

When confronted with such a request, railroads usually cooperate and provide FRA with the requested relevant documents. In rare instances, a railroad may assert that the requested documentation is privileged and may deny access to such records. Should the railroad assert such a legal privilege with respect to particular records, failure to provide FRA access to such records will not constitute a violation of this section. However, if the railroad refuses to release information that FRA deems relevant to its investigation, then FRA may consider it necessary to issue a subpoena for the production of documents in order to carry out its duty to enforce the federal railroad safety laws. If the railroad should then fail to produce any of the requested documents in the possession or under the control of the railroad for examination and photocopying, FRA may seek enforcement of the subpoena in federal district court. See 49 U.S.C. 20107 and 20902, delegated from the Secretary of Transportation by regulations of the Office of the Secretary at 49 CFR 1.49(m), and the authority of 49 CFR 209.7(a) and 225.31(b). Of course, a railroad could raise its claim of privilege in any action to enforce a subpoena. Alternatively, should a railroad claim a legal privilege concerning such a document, the railroad could submit the document to FRA with a request for confidential treatment under 49 CFR 209.11.

Thus, § 225.35 is revised to clarify that FRA and other authorized representatives must have centralized access to records or reports required to be maintained or filed under part 225 and must have access to relevant claims and medical records and that should the railroad assert a legal privilege with respect to certain claims and medical records, failure to provide FRA access to such records would not violate this section. However, FRA may nevertheless use its subpoena power to obtain such records, and the railroad could contest that subpoena if it so chooses.

4. Technical Corrections

In the list of definitions in § 225.5, the definition for "Accountable injury or illness," which appears on page 30968, column one, of the Federal Register, issue of June 18, 1996, should read as a separate paragraph. The definition for "Day of restricted work activity" on page 30968, column two, of the Federal

Register issue of June 18, 1996, erroneously makes reference to the fact that "restricted" is defined below. Thus, the parenthetical phrase "(as defined below)" is removed from the definition.

Section 225.33(a)(10)(ii) erroneously makes reference to paragraphs "(a)(10)(i)(C)(D) (iii) and (iv)" of that section. Section 225.33(a)(10)(ii) now reads as follows: "A current organization chart satisfies paragraphs (a)(10)(i) (B), (C), and (D) of this section."

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

The amendments to the final rule have been evaluated in accordance with existing regulatory policies and procedures and are considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 28, 1979). The amendments to the final rule also have been reviewed under Executive Order 12866 and are also considered "nonsignificant" under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The technical corrections to the final rule have no economic impact. The amendments to the final rule will have no new direct or indirect economic impact on small units of government, business, or other organizations. The amendments only clarify the well-established legal privileges with respect to the types of documents to which railroad employees, FRA inspectors, and other authorized representatives may obtain access from railroads. The clarifications actually provide regulatory relief to railroads and, as such, do not require any revision to the Regulatory Impact Analysis (RIA) produced for the final rule. No revision to the RIA is necessary because the burden was calculated based on FRA's original intentions of these requirements, which are now reflected in the amendments to the final rule.

Paperwork Reduction Act

There are no new information collection requirements associated with these amendments. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

The amendments will not have any identifiable environmental impact.

Federalism Implications

The amendments to the final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 225

Railroad accident reporting rules, Railroad safety.

The Final Rule

In consideration of the foregoing, FRA amends part 225, title 49, Code of Federal Regulations to read as follows:

PART 225—[AMENDED]

1. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49(c), (g), and (m).

§ 225.5 Definitions. [Corrected]

2. In § 225.5, in the definition for "Day of restricted work activity," the

parenthetical phrase "(as defined below)" in the second and third lines of that definition is removed.

3. Section § 225.25(c) is revised to read as follows:

§ 225.25 Recordkeeping.

(c) Each railroad shall provide the employee, upon request, a copy of either the completed Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or the alternative railroad-designed record as described in paragraphs (a) and (b) of this section as well as a copy of forms or reports required to be maintained or filed under this part pertaining to that employee's own work-related injury or illness.

§ 225.33 Internal Control Plans. [Corrected]

4. In § 225.33(a)(10)(ii), the reference to "(a)(10)(i)(C)(D) (iii) and (iv)" is revised to read "(a)(10)(i) (B), (C), and (D)".

5. Section 225.35 is amended by removing the parenthetical phrase "(including relevant claims and medical records)" in the first sentence and by adding after the first sentence the following:

§ 225.35 Access to records and reports.

Each railroad subject to this part shall also provide to any representative of the Federal Railroad Administration or of a State agency participating in investigative or and surveillance activities under part 212 of this chapter or any other authorized representative access to relevant medical and claims records for examination and photocopying in a reasonable manner during normal business hours. * * *

6. Section 225.35 is amended by adding two sentences to the end of that section to read as follows:

§ 225.35 Access to records and reports.

* * * Should a railroad assert a legal privilege with respect to certain claims and medical records, failure to provide FRA access to such records would not constitute a violation of this section. FRA retains the right to issue a subpoena to obtain such records under 49 U.S.C. §§ 20107 and 20902 and §§ 209.7(a) and 225.31(b) of this title, and the railroad may contest that subpoena.

Issued in Washington, D.C., on November 13, 1996.

Jolene M. Mollitoris,

Federal Railroad Administrator.

[FR Doc. 96-29849 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-96-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rule.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 325, 381

[Docket No. 95-049A]

RIN 0583-AC05

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 110

Transportation and Storage Requirements for Potentially Hazardous Foods

AGENCIES: Food Safety and Inspection Service, USDA; Food and Drug Administration, DHHS.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) are seeking information and comments on approaches the two Agencies might take to foster food safety improvements that may be needed in the transportation and storage of potentially hazardous foods. Potentially hazardous foods, including meat, poultry, eggs and egg products, fish, seafood, and dairy products, are those that are capable of supporting the rapid multiplication of microorganisms that cause foodborne illness. This notice seeks comments and information on various issues and alternatives for ensuring the safety of potentially hazardous foods during transportation and storage.

DATES: Comments must be received before February 20, 1997.

ADDRESSES: Please send an original and two copies of written comments to: FSIS Docket Clerk, DOCKET #95-049A, Room 3806, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. All comments submitted will be available for public inspection in the Docket Clerk's Office

between 8:30 a.m. and 1:00 p.m. and 2:00 p.m. and 4:30 p.m., Monday through Friday. To review the publications and other background information cited in this document, interested persons may visit the Docket Clerk's Office during the times listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Office of the Administrator, Room 3835, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, 20250, (202) 720-7773, in regard to meat, poultry, and egg products.

Ms. Shelley Davis, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, U.S. Department of Health and Human Services, 200 C Street SW., Washington, DC 20204, (202) 205-4881, in regard to seafood, whole (shell) eggs, dairy products, and other potentially hazardous foods, other than those listed above for which Mr. Ralph Stafko should be contacted.

SUPPLEMENTARY INFORMATION: FSIS and FDA maintain regulatory programs to help ensure that foods distributed in interstate commerce are not adulterated or misbranded. FSIS's programs, which cover meat, poultry, and egg products, include continuous in-plant inspection of livestock and poultry slaughtering, and processing of products therefrom, and egg product processing activities. FDA, which is responsible for ensuring the safety of foods in most other circumstances, operates a regulatory program that includes unannounced inspection of the domestic food industry and sample analysis. FSIS conducts its inspections at meat, poultry, and egg product processing establishments. FDA inspects establishments that process other types of foods. FSIS and FDA conduct examinations of warehouses and transshipment points, including points of entry of imported foods into the United States. They also conduct Federal-State cooperative programs, and consumer education.

Both FSIS and FDA, in recent rulemakings, have adopted a new food safety regulatory strategy, the framework of which is a science-based system known as the hazard analysis and critical control points (HACCP) system. HACCP is a process control system designed to identify and prevent chemical, physical, and biological

hazards in food production. On December 18, 1995, FDA published a final rule, "Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products" (60 FR 65096), mandating the development and implementation of HACCP systems to ensure the safe and sanitary processing and importation of fishery products. FSIS promulgated a final rule, "Pathogen Reduction: HACCP Systems" for meat and poultry on July 25, 1996 (61 FR 38806) mandating implementation of HACCP systems and standard operating procedures (SOP) for sanitation, and pathogen reduction performance standards and testing for meat and poultry.

Both Agencies have come to recognize that, if they are to reduce foodborne illness to the maximum extent possible, they must broadly approach their food safety missions, addressing potential hazards that arise throughout the food production and delivery system. They and the industries they regulate must work toward preventing, minimizing, and eliminating hazards that may arise before raw products or animals enter manufacturing plants or FSIS-inspected establishments and after food products leave those businesses. There is widespread agreement among food safety experts that ensuring food safety requires taking steps to prevent hazards and to reduce the risk of foodborne illness throughout the chain of production, processing, sale, storage, and transportation.

Post-harvest (seafood) and post-processing transporters, storage operators, and retail stores, restaurants, and other food service sectors are important links in the chain of responsibility for food safety. In these areas, FSIS, FDA, and State and local governments share authority and responsibility for oversight of food products. FSIS and FDA do not have programs that address the handling of food by these industry sectors, as they do for federally inspected processing establishments. However, both Agencies have become increasingly concerned about the public health impact of diseases associated with potentially hazardous foods and about what happens to food at the stages through which it passes on the way to consumers.

This notice addresses hazards attributable to the transportation and

storage of potentially hazardous foods outside of the establishments where they are processed.

Transportation and Storage of Potentially Hazardous Foods: Current Regulatory Coverage and Guidance

Foods are susceptible to contamination from a wide variety of agents—physical, microbial, or chemical. Some foods, most notably animal food products like meat, poultry, eggs, seafood, and dairy products are particularly susceptible to microbiological hazards because their moisture, pH levels, and high protein content provide ideal environments for the growth of bacteria. For these reasons, these products must be carefully monitored to prevent their exposure to microbiological, as well as other hazards.

No matter how carefully prepared, however, most any raw food product of animal origin may potentially have some bacteria present, including pathogens, and, thus, must be handled in a manner that minimizes the opportunity for bacteria to multiply. Furthermore, like other foods, these foods may become contaminated through direct abuse such as damaged packaging, exposure to filth or harmful chemicals, or contact with a contaminated surface. Sometimes, contamination is caused by direct or indirect contact with contaminated foods—a process known as cross-contamination. For example, salad components prepared on a cutting board used previously for raw poultry could become contaminated by pathogens that were on the poultry.

Food safety protection can be improved by the control of microbiological and other hazards through the use of preventive methods such as HACCP, good sanitation and manufacturing practices, and food safety performance standards, as appropriate, throughout the food production and distribution chain. Currently, however, most Federal regulatory measures are directed at slaughtering and food processing plants. State and local authorities have also directed their regulatory oversight at certain categories of food processors, generally small firms, as well as retail stores and food service establishments.

Despite increasing concern about the risks that may be created in the transportation and storage of potentially hazardous foods, government agencies at all levels do not have comprehensive regulatory programs for those segments of the farm (or harvest)-to-table food continuum that are comparable to that for slaughtering and processing

establishments. Additional information is needed on the extent and severity of food safety problems that may be attributable to the transportation and storage of potentially hazardous food products from harvesting or production to processing plants and from processing plants to the consumer for FSIS and FDA to determine whether there is a need for additional government regulation to address risks that may be created during these stages of food distribution.

1. FSIS

All ingredients used in meat and poultry products prepared in establishments where FSIS maintains inspection ("official establishments") are subject to examination upon their arrival at the official establishment. Substances and ingredients used in the preparation of egg products at FSIS-inspected plants ("official plants") are also subject to inspection. Meat and poultry carcasses and parts that enter official establishments are inspected before they may be used in the preparation of meat or poultry food products at such establishments, regardless of whether they previously have been inspected and passed by FSIS, even if returned to the original establishment. Similarly, previously inspected egg products are subject to reinspection upon arrival at an official egg products processing plant.

The safety and wholesomeness of meat and poultry products being transported in interstate commerce, or being held in storage, are governed by various regulatory and statutory provisions. Certain regulations (9 CFR part 325 and part 381 subpart S) require meat and poultry products being transported to be "wrapped, packaged, or otherwise enclosed" so as to prevent their adulteration by air contaminants, unless the means of conveyance in which the product is transported is completely enclosed with tight-fitting doors or other covers for all openings. The means of conveyance must be reasonably free of foreign matter (such as dust, dirt, rust, or other articles or residues) and free of chemical residues, so that the products placed in it will not become adulterated. Any cleaning compound, lye, soda solution, or other chemical used in cleaning a means of conveyance must be thoroughly removed from the means of conveyance onto which meat or poultry products are loaded, being loaded, or intended to be loaded are subject to inspection at an official establishment. If a means of conveyance, upon inspection, is found to be in a condition such that meat or

poultry products placed in it could become adulterated, it is not to be used until the condition that could cause adulteration is corrected. Meat and poultry products found by an inspector to be in such a condition that they may have become adulterated are subject to inspection.

A guide for inspectors, the FSIS Sanitation Handbook, also presents details on acceptable conditions for transport vehicles and storage facilities of meat and poultry products.

FSIS monitors and enforces compliance with the adulteration and misbranding provisions of the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act (PPIA) during transportation to and among inspected establishments and allied industries, such as renderers, pet food processors, retail stores, and restaurants. Meat and poultry products are considered to be adulterated for various reasons including if they are unsound, unhealthful, unwholesome, or otherwise unfit for human food (21 U.S.C. 453(g), 601(m)). Misbranding of meat and poultry products occurs, if among other reasons, their labeling is false or misleading. (21 U.S.C. 453(h), 601(n).) Similar adulteration and misbranding provisions apply to egg products. (21 U.S.C. 1033(a), 1033(l), 1036.)

FSIS also investigates complaints received from consumers and others alleging that adulterated or misbranded meat, poultry, and egg products have been sold or distributed in commerce.

FSIS has exercised its statutory authority over meat and poultry products outside official establishments in various instances, including in its promulgation of safe-handling labels on raw meat and poultry products (9 CFR 317.2(l) and (m), and 381.125(b)). However, FSIS does not have a comprehensive regulatory program that covers the handling of meat, poultry, and egg products outside of official establishments that is comparable to its program of regulating such products during their production in official establishments. FSIS's regulatory role regarding such products has generally been a reactive one. FSIS generally responds on a case by case basis to instances of adulteration and misbranding of products outside official establishments. FSIS has not focused directly on conditions and practices that occur after meat, poultry, and egg products leave official establishments that contribute to products being exposed to pathogenic contaminants, or that contribute to the multiplication of pathogenic microbes.

FSIS-inspected product that is in distribution channels and is not at an

establishment where FSIS maintains inspection may be examined by FSIS if the product is suspected of being adulterated or misbranded. At this point, the Agency focuses on the condition of the product, not on the conditions under which the product was produced. Product found in distribution channels that is adulterated or misbranded is subject to detention. In certain circumstances, if the product is reprocessed, repackaged, or relabeled under inspection, it may be sold in commerce.

FSIS also checks product for evidence of breaking of bulk packages and repackaging or reshipment without reinspection, for evidence that the product has been processed without inspection, and for spoilage. If such evidence is found, the facility in which the product is found may be subject to a thorough inspection for sanitation, product processing, and storage conditions. For example, discovery of rodent fecal matter in a product could lead to an investigation of the storage warehouse in which the product has been held.

In carrying out its investigations, FSIS does not stop trucks or other transportation vehicles, but rather examines products at key points during distribution. At cold storage warehouses, FSIS examines specific conditions to determine the adequacy of warehouse procedures for preventing the adulteration of meat and poultry products, including the adequacy of sanitation at the warehouse and the other controls utilized to reduce hazards, such as pests, to meat and poultry products.

Post-processing transportation and storage of meat and poultry products was also a subject of concern to commenters on FSIS's February 3, 1995, Pathogen Reduction/HACCP proposal. Various commenters stated that the majority of hazards consumers face from raw meat and poultry products stem from mishandling the products after they have left the official establishments. They stated that to be effective, any regulatory controls contemplated by FSIS must include those industry segments that handle products after they leave official establishments as well as slaughter and processing establishments. Commenters further stated that FSIS should expand its inspection program to include all segments of the food production and transportation industries. Some commenters noted that, although there is not a sufficient number of FSIS (and FDA) employees to inspect businesses outside official establishment on a regular basis, there must be some

additional regulatory efforts to ensure proper controls are maintained throughout the food chain.

Other commenters stated that they believed that transportation and storage entities should not be subject to regulatory controls. They stated that warehousing and food distribution operations do not pose the same levels of risk as processing operations. Still others felt that FDA and DOT should develop voluntary guidelines for transport conveyance, not mandatory requirements.

2. FDA

FDA routinely inspects food processing plants and examines food products transported in interstate commerce. The examination and inspection aspects of FDA's program are carried out by its field force as part of its compliance program for foods. FDA covers the full range of potential food safety problems, including microbial hazards, chemical contaminants, pesticides, filth, and food additives. FDA provides similar coverage for imported foods.

FDA's requirements for the conditions under which food is to be transported and stored are contained in FDA's good manufacturing practice regulations (21 CFR Part 110). The conditions under which food is received, inspected, transported, segregated, prepared, manufactured, packaged, and stored of food must be such as to ensure that the food will not become contaminated with filth or rendered injurious to health. Storage and transportation of finished food must be under conditions that will protect food against physical, chemical, and microbial contamination, as well as against the deterioration of the food and its container (21 CFR 110.93).

FDA's final rule on seafood, which mandates the application of HACCP principles to the processing of seafood, is designed to ensure that the hazards that are presented at all stages of the food processing and distribution chain, including transportation, are identified, and appropriate control measures are put in place to address them. Thus, for example, a processor could require, as part of its HACCP plan, that a certain temperature be maintained during the transport of raw materials to its facility.

FDA is evaluating whether to require a comprehensive preventive regulatory program, similar to its seafood regulatory program, for food products other than seafood in commerce. On August 4, 1994, FDA published an advance notice of proposed rulemaking entitled "Development of Hazard Analysis Critical Control Points for the Food Industry" (59 FR 39888), which

sought public comment on whether and how FDA should develop regulations to establish requirements for a new, comprehensive, food safety assurance program for both domestically produced and imported foods. Further regulatory action by FDA on this matter is pending.

3. Department of Transportation

The Department of Transportation (DOT) has promulgated a number of regulations affecting the conditions under which edible products can be transported in commerce. For example, a carrier can not transport hazardous material required to be labeled poison in the same motor vehicle with material that is marked or known to be a foodstuff, feed, or any edible material intended for consumption by humans or animals unless packaged in specifically prescribed packages (49 CFR 173.25(c) & 177.841(e)). A rail car that has held poisonous materials in packages showing any evidence of leakage, must be thoroughly cleaned after unloading before the car is returned to service. After any poisonous materials are unloaded from a rail car, that car must be thoroughly cleaned unless that car is used exclusively in the carriage of poisonous materials (49 CFR 174.615(b)).

4. Food Code

Finally, the transportation and storage of food products is dealt with in the model Food Code, which is published by FDA. This model code contains provisions that specifically address the storage and preparation of foods at retail stores, restaurants, and institutions. It also contains recommended holding temperatures for a variety of foods. Most State and local food statutes, regulations, and ordinances are based on some edition of FDA's model food code.

Risk of Contamination and Disease From Food Transportation

1. Current Transportation Vehicles and Conditions

There are three basic types of transport: air transport; sea transport, including conventional refrigerator ships and container ships; and land transport, which consists of rail cars and trucks. Of the approximately 47 million tons of food shipped between continents each year, about 60 percent goes by sea, 35 percent by land, and 5 percent by air. Approximately 22 million tons of meat and poultry, fish, and dairy products are exported intercontinentally each year, with 40 percent of that total moving by sea transport.

Within a continent, most perishable cargoes are hauled by trucks. A lesser amount is transported by rail. Rail shipments may be by self-contained refrigerated rail cars or by flatcars carrying sea containers known as "piggyback" trailers. Over-the-road hauling involves refrigerated trucks or flatbed trailers used to haul sea containers, with most of the refrigerated freight moving in refrigerated trailers. Refrigerated trailers are a necessary method of transportation for the distribution of perishable foods from seaports and rail heads to the ultimate consumer. Thus, it is assumed that most refrigerated food cargo, whether originating overseas or within the U.S., ultimately travels by truck transport.

2. Safeguarding Food Under Conditions of Transport, e.g., the "Cold Chain"

The logistics of moving perishable, potentially hazardous products generally involves cooling after processing to achieve adequate temperatures before shipping. This means that perishable foods must be refrigerated or frozen after processing and before shipment to inhibit spoilage or growth of pathogens. During transportation and storage, the challenge is to maintain proper refrigeration temperatures and to keep the "cold chain" from breaking during steps such as palletization, staging, loading and unloading of containers, movement into storage, and time spent in storage.

For example, post-harvesting temperature control is especially important in preventing illness from consuming certain marine fish and certain raw Gulf-harvested oysters. Improper handling of some marine fish, most notably tuna, mahi mahi, and bluefish can lead to histamine (scombrototoxin) formation, resulting in illness and death. Similarly, the Interstate Shellfish Sanitation Conference has adopted post-harvesting temperature controls to reduce the proliferation of the marine bacterium *Vibrio vulnificus* in oysters harvested from the Gulf of Mexico during warm weather. To date, temperature controls from time of harvest to consumption remain the most practical means of reducing the risk of illness and death for medically compromised consumers of raw Gulf oysters.

3. Technical Analysis Group (TAG) Report on Transportation

When FSIS proposed the Pathogen Reduction/HACCP rule in February 1995 (60 FR 6774), FSIS stated its commitment to develop standards to help ensure the safe handling of meat and poultry products during

transportation and storage. FSIS stated it would: (1) Ask a group of experts to provide data on the hazards to food safety and the controls that currently exist in the industry to address such hazards; (2) develop practical standards of performance for establishments and carriers with respect to the transport of food; (3) develop a list of good manufacturing practices and various options for encouraging their use; (4) initiate, where feasible, joint rulemaking with FDA to establish appropriate standards to ensure the safety of meat and poultry products and other foods during transport; and (5) along with FDA, work with the DOT to implement the Sanitary Food Transportation Act of 1990, as revised, and determine whether additional authority is needed to carry out the shared food safety mission of FDA and FSIS. (*Id.*, at p. 6828)

In April 1995, FSIS and DOT contracted with a Transportation Technical Analysis Group (TAG) to identify the primary hazards associated with the transport of perishable foods and recommend reasonable controls that might be employed by industry to ensure food safety. The 10-member TAG was composed of representatives from academia, the transportation and food industries, and DOT. The TAG's tasks were to identify hazards associated with the transportation of perishable foods; identify practical controls to prevent, reduce, or eliminate the risks involved; and outline the cost implications and desired results of applying the controls. The TAG's analysis was intended to provide basic information FSIS could use in formulating good manufacturing practices (industry guidance) or regulations, or both, dealing with the transportation of meat, poultry, and egg products.

Tasks of the TAG for meat, poultry, and egg products included: (1) identifying and describing the steps comprising the transportation of these foods, from the live animal to the consumer; (2) identifying all hazards to these foods that can pose a risk to public health; (3) estimating the potential impact of each hazard by considering its prevalence in these foods, and the severity of the adverse effect of the hazard; (4) identifying practical controls to prevent, eliminate, or reduce each hazard to an acceptable level; (5) noting any scientifically valid procedures for verifying the effectiveness of each control; (6) identifying the desired results of applying the controls; and (7) identifying any research and development activities needed to better define the hazards or improve on the identified controls. The TAG identified hazards associated with the

transportation and storage of potentially hazardous foods, control points for addressing such hazards, and procedures needed to eliminate, minimize, or reduce the hazards.

Because its members considered trucks to be the predominant mode of transportation for potentially hazardous foods, the TAG focused its initial attention on this mode of transportation. Limitations of time and money kept the TAG from inquiring much into the state of perishable food transport by air, sea, or rail. Therefore, FSIS would appreciate having information and comments from those who are familiar with transport operations in these industries on factors that affect the safety and wholesomeness of perishable foods shipped by plane, rail, or ocean or freshwater vessel.

The TAG found that how trucks are loaded has a very direct relation to the likelihood of food contamination and abuse. A less-than-full-load (LTL) is a truck that has available space as it begins its journey, and to which additional freight may be loaded during the journey. A mixed load is a truck that is fully loaded at the time it begins its journey, but whose load consists of different types of freight. According to available information, a disproportionate number of product handling problems, resulting in claims for product losses, are associated with LTL's and mixed loads. In addition, TAG members believed that LTL product handling problems are more likely to occur among smaller carriers which are more likely to haul smaller, mixed cargoes.

LTL and mixed loads may be troublesome from the food safety standpoint for several reasons. First, such a load may consist of foods with different holding temperature requirements. The temperature of the trailer or container with the load may be suitable for one food but not for another. An extreme example of this problem would be an LTL or mixed load maintained at a refrigeration temperature but in which part of the food cargo must be kept frozen. Some freight companies have solved this problem by using partitioned trailers; each storage space between the partitions can be maintained at a different temperature, so the LTL holding temperature problem does not arise.

Another hazard to which food carried in LTL containers may be exposed is the failure to maintain the proper storage temperature throughout the transit. Because LTL or mixed load carriers tend to be loaded and unloaded more frequently during a trip, it is

technologically more difficult to consistently maintain food cargo at the correct temperature than it is for uniform food cargo carried to a single destination. Each time freight is loaded or unloaded, the opportunity exists, even under the best of handling conditions, for a temperature fluctuation that may cause food safety problems.

A further problem that can arise is potential adulteration of food cargoes by incompatible food or non-food cargoes. For example, some cargoes may release gases or odors that are absorbed by other cargoes.

The TAG identified other concerns involving the transportation of perishable foods by truck. These included the cleaning and precooling of trucks, proper packaging of foods, loading patterns and partial loading or unloading of trucks, adequacy of refrigeration units, air circulation, humidity, insulation of trucks, and the time taken to transport the food.

The TAG concluded that good controls are essential to ensuring safe transportation of perishable foods. They noted that "The focus needs to be on establishing control points that will monitor temperatures and times en route and at the loading and storage facilities. Time, temperature, and sanitation are the three elements of any control plan." (Transportation TAG Report, at p. 14)

The TAG identified six critical control points, points at which loss of control may result in an unacceptable health risk. They are: (1) inspecting the truck trailer before loading; (2) ensuring that the temperature of the product intended to be loaded is not above 40 °F; (3) proper configuration of the load; (4) maintenance of a 40 °F temperature while awaiting additional product to be loaded; (5) maintaining the temperature of the food during transit; and (6) maintaining the inside temperature of the food during unloading and movement to storage. For each of these critical control points, the TAG identified interventions that would address the hazards at each critical control point, the frequency of monitoring needed to ensure the interventions are carried out, who should monitor the critical control points, actions to be taken if deficiencies or deviations are noted, how corrective actions should be documented, and who should verify the corrective actions taken.

4. FSIS and FDA Concerns: Evidence of a Problem

FSIS and FDA are concerned about whether reliable procedures are being used by all sectors of the food

production and delivery chain to combat the invisible threats to safety and health posed by microbial pathogens. Control of microbial pathogens is difficult even in those areas where inspection and other regulatory and public health measures are applied most intensively, as in slaughterhouses, and food processing facilities.

Agencies concerned with food safety have devoted relatively few resources to the transportation and storage sectors of the food chain. There is an absence of data and information about whether adequate and appropriate food safety controls are being employed while food is being transported and stored. This lack of information does not by itself indicate the existence of a problem warranting regulatory intervention. However, FSIS and FDA need information about the transportation and storage of food if they are going to assure that the food safety risks associated with transportation and storage are properly identified and adequately addressed.

The United States annually experiences an estimated 6.5 to 33 million foodborne illness cases. These are largely associated with potentially hazardous foods that have become contaminated. In most cases of foodborne illness, post-processing temperature abuse or other mishandling contributed to the food hazard implicated in the illness. Such mishandling of potentially hazardous foods frequently occurs in food-service establishments and homes. However, food product abuse also may occur at earlier stages. In processing establishments, for example, equipment breakdowns, failure to adhere to appropriate time and temperature requirements, cross-contamination between raw and cooked product, and physical contamination by chemicals or foreign matter may render foods unsafe.

Although there is little empirical data on the extent to which conditions under which food is transported and stored contribute to safety hazards, there is anecdotal evidence. For example, a 1994 salmonellosis outbreak reported to have affected 224,000 people is believed by public health authorities to have been caused by cross-contamination of a pasteurized ice cream premix during transportation in tanker trailers that had previously hauled nonpasteurized liquid eggs.¹

¹ Thomas W. Hennesey, M.D., et al. 1996. A National Outbreak of *Salmonella enteritidis* Infections from Ice Cream. *N. Engl. J. Med.* 334:1251-1256.

FSIS, in its continuous inspection of meat and poultry establishments, has found that some food spoilage can be attributed to mishandling during transportation, based on examination by inspectors of meat and poultry products returned to official establishments ("returned product") that have been refused by a buyer or consignee. The amount of returned product may serve as an index of the amount of spoiled foods that may be in transportation channels, but the Agencies do not know how much potentially hazardous food that is spoiled is returned or otherwise handled.

Only a very small percentage of meat or poultry product that is shipped from a federally inspected establishment is returned to the establishment. FSIS staff officers estimate that perhaps one-tenth of this returned product was returned because of a problem that developed during transportation. This seems generally true for imported meat and poultry products, as well as domestically produced products. In 1994, FSIS rejected nearly 14 million pounds (0.5 percent) of imported meat and poultry products, most commonly for processing defects, contamination, unsound condition, and transportation damage. This rejection rate is roughly equivalent to the rejection rate of product produced in the United States.

Returned product must go back to the establishment where it was prepared and must be received in a designated area for reinspection. Although many plants are permitted to handle such products under their own quality-control program, inspectors routinely evaluate establishment records on returned product to ensure they are complete and accurate, and show that the establishment has sorted and otherwise taken all corrective action necessary to ensure proper disposition of the product. The inspectors also supervise condemnation of unwholesome or misbranded product.

From time to time, foreign countries to which U.S. meat and poultry exports are sent have rejected U.S. product that has become spoiled because of transportation or storage failures. Such problems have the potential to cause, or contribute to, serious trade disruptions. In 1994, Russia refused to accept shipments of United States-produced poultry alleged to be "off-condition" and unfit for food purposes. The poultry had apparently been allowed to thaw at some point between shipment from the processing plant and receipt by the importer. Similar cold storage problems involving pork shipments to the same country had occurred some years earlier.

Similarly, there have been occasional, documented instances of careless handling and transportation of meat and poultry within the U.S. These generally involve inadequate refrigeration or exposure to physical hazards.

There appears to be increasing public awareness of the possibility that food might become contaminated during shipment. From time to time, Congress has expressed concern that gaps in the regulatory coverage of food during transportation in commerce ought to be filled. For example, in 1990 Congress passed the "Sanitary Food Transportation Act" that required the Secretary of Transportation, in consultation with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency, to issue regulations with respect to the transportation of food products in motor vehicles or rail vehicles that are also used to transport nonfood products that could make food subsequently shipped in the vehicles unsafe.² (Pub. L. 101-500; 49 U.S.C. app. section 2801 et seq.) Although information on the extent of the practice was scarce, there were press accounts of trucks carrying food from the Midwest to both the East and the West Coasts and returning with garbage for Midwest landfills. It was feared that food products could become contaminated and unfit for human consumption if irresponsible vehicle operators failed to prevent contamination of food products in vehicles that had been previously used to haul waste or other non-food materials.

On May 21, 1993, DOT proposed regulations to implement the new law. The proposal addressed the safe transportation of food products during highway and rail transportation (58 FR 29698). Further action on the proposal is pending.

5. Data and Information Needed

FSIS and FDA are now attempting to develop better information on the nature and scope of food safety risks posed by transportation and storage practices. The Agencies would like, among other things, to develop reliable estimates of the number of cases of foodborne illness that are attributable to the abuse of potentially hazardous foods during transportation. Also needed are better data to determine whether current estimates of the annual number of shipments of potentially hazardous

² In July 1994, Congress passed Public Law 103-272, which revised Title 46 of the U.S. Code, including provisions for Sanitary Food Transportation (Chapter 57—Sanitary Food Transportation. (49 U.S.C. 5701 to 5714.)

foods are accurate and to determine what types and amounts of such foods are transported by truck, rail car, airplane, or ship. FSIS and FDA would also like to obtain information about what controls are currently being used to ensure the safety of potentially hazardous food during transportation, for truck, rail car, airplane, or ship transports.

Additionally, the Agencies would like to know whether there are any special concerns relating to transportation of imported products. Further, the Agencies seek information from owners or operators of cold storage facilities, warehouses, depots, and similar kinds of businesses regarding the types and volumes of potentially hazardous foods that they handle and the controls that they use to ensure the safe storage of foods.

The Agencies have addressed some of these matters in the preliminary work on which this ANPR is based, but more precise information is needed.

Information and Accountability; Failure of the Market

Most large food companies conduct rigorous quality control operations to ensure, among other things, that the foods and food ingredients they purchase match contract specifications and will be suitable for use in the manufacture of their products. Many companies already operate HACCP systems to ensure the safety of the food products that they deliver to consumers.

Such companies enforce their own criteria for foods and food ingredients delivered to them. If refrigerated or frozen foods arrive at the receiving departments of these companies in an "off" condition, if they are spoiled or damaged, or if they fail lot acceptance inspections, the companies will not accept delivery. The company that shipped the product or the transporter may be liable for the costs of the unaccepted product, or the company that insured the shipment may be called upon to satisfy a claim.

However, to the extent that firms do not take actions that provide consumers with products of the level of safety that they desire, there exists a market failure. The most significant element of this market failure is lack of information for purchasers. Purchasers of potentially hazardous food products may lack information about products other than their appearance. Signs of spoilage, such as unpleasant odor or discoloration, may not be present to warn of possible safety concerns.

When foodborne illness does occur, it may often be difficult or impossible to trace the cause back to a specific source

because some pathogens do not cause illness until several days or weeks after exposure. Thus, food safety attributes are often not apparent to consumers either before purchase or immediately after consumption of food. This information deficit also applies to wholesalers and retailers who generally rely on sensory tests—sight and smell—to determine whether a food is safe to sell or serve. Therefore, if food became contaminated because of a problem in transportation or storage, the receivers of the food might not know about it and might not be able to relate a resultant outbreak of foodborne illness to the problem.

Applicable Legal Authorities

Both the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.) give the Secretary of Agriculture authority to regulate meat and poultry products in commerce. Specifically, the FMIA and PPIA authorize the Secretary to prescribe regulations covering the storage or other handling of meat or poultry products whenever the Secretary determines that regulations are necessary to assure that meat or poultry products are not adulterated or misbranded when they are delivered to the consumer (21 U.S.C. 624, 463). The statutes further state that no person may "sell, transport, offer for sale or transportation, or receive for transportation" in commerce any meat or poultry product that is capable of use as human food and is "adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation." (21 U.S.C. 610(c), 661(c) and 454(c), 458(a)(2).) The statutes also prohibit any act with respect to such products, while they are being transported in commerce or held for sale after such transportation, "which is intended to cause or has the effect of causing such articles to be adulterated or misbranded." (21 U.S.C. 610(d), 661(c) and 454(c), 458(a)(3).) These prohibitions, and Federal regulation and inspection generally, are applicable to operations and transactions conducted in commerce and to those conducted wholly within a state in those states that have been "designated" by the Secretary. See 21 U.S.C. 454(c) and 661(c). For a list of such states, see 9 CFR 331.2, 381.221. The Egg Products Inspection Act also has provisions concerning the sale and transportation in commerce of adulterated or misbranded eggs or egg products (21 U.S.C. 1037).

The Federal Food, Drug, and Cosmetic Act (FFD&C Act), administered by FDA,

prohibits the adulteration or misbranding of food in interstate commerce (21 U.S.C. 331(b)). The FFD&C Act also prohibits the introduction or delivery for introduction into interstate commerce, and the receipt in interstate commerce, of adulterated or misbranded food (21 U.S.C. 331(a) and (c)). Section 402(a)(4) provides that a food is deemed to be adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health (21 U.S.C. 342(a)). Section 701(a) authorizes FDA to promulgate regulations for the efficient enforcement of the FFD&C Act (21 U.S.C. 371(a)).

The Public Health Service Act (PHSA) authorizes the Secretary of Health and Human Services and, by delegation, FDA, to make and enforce such regulations as "are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States * * * or from one State * * * into any other State." (42 U.S.C. 264(a).) Communicable diseases are defined by FDA as illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment (21 CFR 1240.3(b)). With respect to food as a vector (carrier), infectious agents include *Listeria monocytogenes*, *Salmonella enteritidis*, *Vibrio vulnificus*, and similar pathogens. Moreover, FDA may take such measures as may be necessary to prevent the spread of communicable diseases, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection (42 U.S.C. 264(a)).

These statutes give FDA the authority to establish regulations concerning foods in interstate commerce, including regulations governing the transportation and storage of such foods.

The Sanitary Food Transportation provision also provides authority to regulate the transportation of food (49 U.S.C. 5701 to 5714). However, FSIS and FDA regard some of the potential food safety issues associated with previous cargoes as involving more than just nonfood products regulated by DOT. It seems clear that all types of prior cargoes need to be addressed, not just nonfood products. Thus, this ANPR seeks information on the appropriate mechanism for addressing prior food

cargoes. FSIS and FDA seek comment on how DOT requirements for food transportation conveyances that also haul nonfood items, under its Sanitary Food Transportation statutory provisions, might be complemented by additional FSIS/FDA requirements.

FSIS and FDA believe existing statutory authorities are ample to support the regulatory initiative being considered to regulate the safe and sanitary transportation of potentially hazardous foods.

Alternatives Considered

Because transportation and storage are vital links in the farm (or seafood harvest)-to-table food chain, the success of a comprehensive, farm (or harvest)-to-table food protection strategy requires that effective preventive measures be taken to ensure the safe transportation and storage of food. FSIS and FDA are considering several alternatives for addressing the safety of potentially hazardous foods during transportation and storage. These alternatives include specific requirements, such as temperature standards, performance standards, recordkeeping to ensure that food safety controls are maintained, mandatory HACCP-type systems, voluntary guidelines, and combined approaches.

Regardless of the alternative, one constant is the need for personnel who understand the importance of handling food cargoes safely and who know how to do it. All persons involved in transporting and storing foods need to recognize that contaminated foods can cause illness and that microbes can spoil or poison foods. It is important that they recognize that vehicles must be adequately cleaned, and they should know how to accomplish this task. They should understand the influence of temperature on product quality and microbial growth and the importance of controlling insects and rodents. Government and industry can both play a role in ensuring that essential knowledge is provided to those who need it.

1. Temperature Performance Standards

One approach is the promulgation of a performance standard that would require that potentially hazardous foods be cooled to and maintained at or below a specific temperature during transportation and storage from the food processing plant to the retail outlet, restaurant, or other establishment serving the consumer. If this approach is adopted, all potentially hazardous foods being transported to retail or food service establishments would have to be

maintained at or below such a maximum temperature.

In its February 1995 Pathogen Reduction/HACCP proposal, FSIS proposed various requirements for chilling and cooling meat and poultry products. The proposal included specific time and temperature parameters for the rate of cooling meat and poultry carcasses in slaughtering establishments and a maximum shipping temperature of 40 °F for raw meat and poultry products leaving FSIS-inspected establishments. FSIS agreed with commenters that keeping raw products cooled after they leave the establishment and during transportation, storage, distribution, and sale to consumers is essential to prevent growth of pathogenic microorganisms on raw products.

The Agencies have considered at least two possible maximum temperatures as appropriate for this kind of performance standard. The first is 41 °F. This standard is consistent with the temperature recommended by the 1995 Food Code for cooling and holding (including during transportation) potentially hazardous food. It would provide a margin of safety to prevent the multiplication of pathogenic bacteria, which generally will not proliferate at temperatures below 50 °F.

A second temperature limit being considered is 45 °F. This temperature would provide a smaller margin of safety but would comport with the temperature established by the European Union³ for the transportation, in commerce, of raw meat products. This temperature is increasingly accepted as a standard for potentially hazardous foods during storage and transportation by other countries and appears to be an emerging standard for international trade. Comments are invited on these potential performance standards and on any other appropriate temperature standard applicable to specific commodities.

Relevant to this discussion is the 1991 Farm Bill legislation that provided for a 45 °F ambient air shipping and storage temperature requirement for shell eggs. USDA proposed, but has not promulgated, regulations to implement that requirement. FSIS is concerned that the rule as proposed could impose significant costs, especially on small business entities, but achieve no clear public gains in food safety protection. Available evidence indicates that the key factor in determining bacterial

³Agreement on International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP) (Geneva, September 1, 1970) (Annex III).

growth in shell eggs is how long eggs leaving laying farms stay warm. The effect of cool ambient air temperatures on packed and crated shell eggs during transport and distribution is difficult to ascertain, even if the ambient temperature is 45 °F (however measured). FSIS's approach to temperature requirements for shell eggs is similar to its approach to the cooling of red meat carcasses. FSIS has decided that before it can impose temperature requirements, it must have better data and information on the food safety effects of temperature controls at all phases of production and distribution.

Temperature-based performance standards might include the use of a recording thermometer or other means to ensure compliance with the standard. A temperature performance standard might be complemented by some requirement that would permit processors to determine the acceptability of a food transport vehicle for the transport of bulk foods that pose a risk of communicable disease, as discussed below. This might be based on a review of transporters' prior cargo records.

FSIS and FDA anticipate that Federal standards governing proper transportation and storage for potentially hazardous foods and other food safety practices would be, to some extent, self-enforcing. In the view of FSIS and FDA, large commercial purchasers of such foods, such as retail grocery store chains, are likely to incorporate such standards in their purchasing specifications and would enforce them through routine quality assurance and product acceptance procedures. The Agencies request comment on the extent to which such Federal standards are likely to achieve and safeguard public food safety objectives with a minimal enforcement effort.

The merits of any temperature standards, and alternative approaches for preventing temperature abuse and achieving appropriate product temperature controls during transportation and storage of all potentially hazardous foods, are topics for discussion at the joint FSIS-FDA technical conference held November 18-20, 1996, in Washington, D.C.

2. Shipper Recordkeeping

The Agencies might also consider recordkeeping requirements with respect to the conditions under which foods that pose a risk of being vectors for the spread of communicable disease are transported interstate, to help prevent contamination and cross-contamination of certain food cargoes.

Relying on the relevant statutory authorities, the Agencies may consider requiring carriers of potentially hazardous foods that are shipped in bulk (foods which directly contact a food conveyance) to provide food shippers with records that identify the last three cargoes for any conveyance being offered to the food shipper for use in transporting the food and that disclose the data of the most recent cleaning of the conveyance.

FDA and FSIS request comments on the feasibility and effectiveness of this approach for ensuring the availability of information needed to assess potential contamination from prior cargoes in a transportation vehicle.

3. Mandatory HACCP-type Systems

Another approach that could be taken would be to require that a HACCP system be established specifically with respect to the transportation and storage of potentially hazardous foods to prevent the contamination of these foods, although, as noted earlier, comments on the FDA and FSIS HACCP rulemakings were negative on requiring HACCP for transportation and storage. Such requirements could be modeled on the regulations recently adopted by FSIS and FDA that apply to establishments that process meat, poultry, and seafood.

Such HACCP-type systems would probably be relatively simple. Essentially, they would likely require that potentially hazardous foods be maintained at a particular refrigeration temperature or frozen temperature, and that the temperature be recorded using a recording thermometer. The use of a temperature performance standard would allow processors to determine the acceptability of a food transport vehicle for the transport of certain bulk foods, i.e., those that pose a risk of communicable disease, based on cargo records.

Personnel involved in the implementation of the HACCP-type systems would have to be knowledgeable about product vulnerabilities and be trained in HACCP principles, the development, reassessment, and modification of HACCP plans, and record review. If this option were pursued, the Agencies would consider the development of model HACCP plans or other guidelines that could be used by transportation and storage companies in developing their own HACCP plans.

4. Voluntary Guidelines

Another approach under consideration is to make more use of voluntary guidelines. FSIS and FDA are aware that some government agencies,

industry groups, and other organizations have published guidelines or recommended practices that address the transportation and storage of potentially hazardous foods, whether fresh or frozen. Such guidelines could serve as the basis for developing joint Government-industry guidelines for food transportation and storage.

For example, the Association of Food and Drug Officials (AFDO), a voluntary organization of State and local food regulatory officials, in its publication entitled "Guideline for the Transportation of Food," states that during transportation, potentially hazardous food should be maintained at 45 °F or below. The AFDO guideline states that frozen food should be held at an air temperature of 0 °F or below and should not exceed a product temperature of 10 °F for more than a short period of time during transportation. The use of an easily accessible temperature-recording device is recommended for measuring air temperature in the transportation vehicle. Maintaining the proper food temperature is one of AFDO's four major food transportation measures for ensuring food safety. The remaining measures cover the use of good sanitation practices, good personal hygiene of food employees, and adequate transportation equipment.

The Frozen Food Round Table, a trade organization, in its publication entitled "Frozen Food Handling and Merchandizing" presents several recommended practices for transporting and storing frozen foods. These practices include maintaining product temperature at 0 °F or colder and use of a recording device to accurately measure the air temperature inside the transportation vehicle.

In September 1995, USDA's Agricultural Marketing Service (AMS) published a revised version of its handbook "Protecting Perishable Foods During Transport by Truck." The handbook contains recommendations for loading and transporting various food commodities. In the handbook, AMS states that maintaining the desired or ideal holding temperature is a major factor in protecting perishable foods against quality loss during transportation and storage. The handbook also presents recommended temperatures for holding meat, poultry, fresh fish, and other commodities during transportation.

The Interstate Shellfish Sanitation Commission also has published a manual that provides appropriate temperatures for shipping shellfish.

The International Dairy Foods Association (IDFA) is carrying out a

long-term strategy for ensuring product safety that focuses primarily on HACCP but that also depends for its effectiveness on a series of prerequisite good manufacturing practices (GMP's). The association has developed a manual that is product-oriented and product-specific and contains model HACCP programs for such product categories as fluid milk, ice cream, cheese, and yogurt.

Finally, the HACCP systems that have been implemented voluntarily by some major food service companies provide time, temperature, sanitation, and contamination critical limits to be applied at critical control points such as at shipping and receiving locations and aboard transport vehicles. For example, there are temperature critical limits for trailers that haul refrigerated and frozen foods, procedures for daily monitoring of compliance with these criteria, and documentation of findings and any necessary corrective action.

All these organizations could participate in the development of guidelines for various products. The Federal Government, possibly in cooperation with the States, could provide technical advice and assistance in the development of such guidelines. Since the transportation and storage "gap" in regulatory coverage is similar at the Federal and the State levels, such an approach might be useful.

5. Combination of Approaches

The Agencies intend also to consider some combination of the above-discussed approaches. For example, time/temperature performance standards could be required along with mandatory HACCP-type systems. By specifying critical limits—such as the maximum temperature—to be met in handling, storage, and shipping potentially hazardous foods, there would be some degree of uniformity among processors in measures that they take to ensure the safety and quality of that food while it is being transported and stored.

The combination of a performance standard, such as a time-temperature standard, with voluntary transport and storage "good practice" guidelines on how to achieve that standard would probably be regarded as the most flexible option, though not necessarily the least burdensome of the approaches that involve regulation. Some of the voluntary guidelines mentioned above, such as the IDFA and the AFDO guidelines, make specific time/temperature recommendations or cargo handling procedures intended to prevent physical, biological, or chemical contamination. Some involve the

voluntary implementation of HACCP systems. The voluntary guidelines therefore cover many of the recommendations considered in this ANPR as possible regulatory requirements.

Thus, the use of voluntary guidelines would not necessarily be less burdensome to the industry than regulation-based alternatives. The major disadvantage is the reduced ability of the agencies to assure uniformly effective adoption of the guidelines by transportation and storage facilities and the consequent achievement of food safety goals.

6. Alternative of No Federal Regulatory Initiative

This alternative would mean that the Agencies would rely only on enforcement of current laws and regulations. Both Agencies have the authority to detain or seize adulterated and misbranded food products that are in interstate commerce. The Agencies could, for example, take action on a cargo of potentially hazardous food that is found to be in an off-condition, that is contaminated with some deleterious substance, or that is being held at too high a temperature. Depending on the type of cargo, the food could be detained based on evidence of adulteration and be allowed to be returned to the establishment that produced it, or it could be subject to Government seizure. However, actions of this sort are inefficient ways to encourage safe food handling practices and can involve the Agencies and food companies in costly court actions. Worse, they are merely reactive. Although they may have some deterrent effect on the mishandling of foods, they do not address the underlying causes of the problem.

The Agencies could, and would, continue to promote food safety practices through public information and consumer education, directing their efforts, to the extent possible and appropriate, to food transporters and storage facility operators. The effectiveness of these efforts, however, would depend on the industry also being an advocate for good food storage and handling practices and comprehensive preventive approaches.

Comparison of Alternatives

FSIS and FDA would appreciate comments on the following: Which of the alternatives presented seem most likely to contribute to achieving the goal of reducing the risk of foodborne illness associated with the consumption of potentially hazardous foods? Which of the alternatives is both feasible and is

most likely to prevent food safety hazards from arising during transportation and storage? Which would be most effective and which least? Which would allow industry the greatest flexibility in adopting technologies or developing other means to prevent food safety hazards or reduce the likelihood they will occur? Which would be most likely to encourage the adoption of new technologies, such as improved refrigeration methods, more efficient insulated trailers, more accurate thermography, and state-of-the-art vehicle tracking and communications?

1. Approach to Regulatory Compliance

FSIS and FDA also seek comments on what roles the Federal, State, and local jurisdictions should play in regulating the transportation and storage of potentially hazardous foods. This is particularly important in light of increasingly tight budgets affecting FSIS, FDA, the States, and local jurisdictions, and the consequent need to ensure that all public resources devoted to the common goal of food safety are used in a coordinated way that maximizes public health protection while minimizing public costs.

2. Balancing of Interests and Limitations

Any option involving additional regulation of the conditions under which potentially hazardous foods are transported and stored will necessarily involve investment of a larger proportion of the Agencies' resources to monitoring the transportation and storage of food, compared with resources presently allocated to those activities. Assuming at best no real growth in the Agencies' budgets, it may be necessary to shift resources from in-plant inspection and other activities to the examination of food transportation and storage. Reallocations of personnel would entail judgments on the benefits of making new assignments. Ideally, the Agencies believe, judgments on how best to allocate static or declining resources would be based primarily on assessments of relative risks to public health. Therefore, any such shift of resources would require careful analysis of relative risks to consumers that derive from transportation and storage operations, compared with the risks that derive from food processing and other activities.

Thus, for example, new information may dictate that FDA and FSIS inspectors and FSIS compliance officers be assigned to new tasks to verify compliance with any requirements that apply to the conditions under which potentially hazardous food is

transported by land, air, or sea, or is stored.

Therefore, the agencies would appreciate comments on how best to balance competing demands on Government resources. That is, assuming that the general goal of the Agencies is to achieve maximum food safety protections throughout the farm (pre-harvest)-to-table continuum, is it reasonable for the Agencies to redeploy their personnel and other resources to achieve such additional coverage?

Alternatively, if an option not involving regulation were chosen, such as industry agreements to abide by voluntary guidelines, should the Agencies nonetheless redeploy resources to increase the monitoring of potentially hazardous foods during transportation and storage under their existing authorities to prevent the distribution in commerce of adulterated or misbranded foods?

Of course, Government regulation is rarely more than a part of the solution. The primary responsibility for protecting the safety of food products in distribution channels rests with those in that business—in this case, those who buy and sell, handle, and store, and are responsible for the shipment of potentially hazardous foods.

This responsibility argues for an alternative that involves a strengthening, by industry itself, of the control systems that they utilize. An alternative that induced a more widespread application of available technologies, such as improved refrigeration, thermography, and vehicle tracking and communication systems, could result in efficiency gains to industry and reduced risk to consumers.

3. Costs and Benefits

Companies that institute a HACCP-type system or other control system where such systems are not already in operation would incur one-time direct costs to implement a control system. These costs would include those of setting up the needed documentation, tracking, inventory control, or other systems, and one-time costs of training personnel to operate them. For temperature monitoring, the cost of acquisition of thermometric equipment and temperature recording devices could also occur.

For any alternative that might involve the application of new technologies, the cost to industry of implementing the technologies would have to be considered. Such direct costs could be offset by the benefits of such technology gains as those from: improved thermography, improved temperature control; trailers made with lighter and

more effective insulating materials, more fuel-efficient refrigeration; improved thermographic equipment, more accurate temperature monitoring and control; and from improved vehicle tracking and communication, more efficient and effective delivery with less product loss. The benefits of these technologies can reduce transit time and risk and provide shippers, receivers, and consumers with fresher, higher quality products.

Because of the Agencies' interest in reducing foodborne illness, the Agencies would appreciate data or information on the control or reduction in microbial populations that the application of new technologies could produce. Of special value would be information relating to predictive modeling of time, temperature, and microbial growth under conditions in which the technologies might be applied.

The costs to the Agencies of increased oversight over food transportation and storage would include costs associated with increases in personnel travel, costs for training of personnel in oversight techniques, and costs (mostly one-time) related to personnel reassignments.

The ultimate beneficiaries of a regulatory or non-regulatory initiative in the transportation and storage area would be the general public, to the extent that the initiative resulted in a reduction of foodborne illness. There would be additional tangible and intangible benefits. For some companies, increased reliance on quality control or HACCP-type systems could result in improved product tracking and inventory control, reduction in product loss, and overall efficiency gains. An intangible benefit, increased confidence in the food supply among both domestic and foreign purchasers, could lead to indirect tangible benefits for processors, distributors, and producers, in the form of increased sales.

Information Needed for Regulatory Analyses

As a general matter, when developing new regulations, regulatory agencies take into consideration many factors. FDA and FSIS consider, among other things, the costs of enforcement and compliance (to the Government, regulated entities, and the public) of new regulations. FSIS and FDA also consider, where appropriate, alternative ways of achieving an objective and where applicable, the risks addressed by an intended regulation. The factors the Agencies consider are set forth in statutes and other authorities.

Executive Order 12866 provides that to the extent permitted by law and where applicable, agencies should adhere to certain principles of regulation. These principles include considering to the extent reasonable, in setting regulatory priorities, the degree and nature of the risks posed by various activities within an Agency's jurisdiction. Under the Executive Order, agencies also examine whether an intended regulatory action would be significant. A regulatory action could be considered to be significant for a number of reasons, including if it were determined to have an annual effect on the economy of \$100 million or more.

The Regulatory Flexibility Act (RFA), recently amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA, PL 104-121; 5 U.S.C. 601 *et seq.*), requires assessment of a proposed regulation's economic impact on small entities, which includes small businesses and other small entities, including local governmental units. Agencies are required under the RFA to determine whether a proposed regulatory action would have a significant economic effect on a substantial number of small entities. If it is determined that it would have such an impact, an initial regulatory flexibility analysis is published that discusses various issues including an estimate of the number of small entities to which the proposed rule will apply, the rule's projected reporting, recordkeeping, and compliance requirements, and significant alternatives that would accomplish the stated objectives of an applicable statute which minimize any significant economic impact of the proposed rule on small entities. At the final rule stage, a final regulatory flexibility analysis is published.

The Unfunded Mandates Reform Act (UMRA, 2 U.S.C. 1531 *et seq.*) requires consideration of the possibility that regulatory or other resource-intensive burdens are being imposed by the Federal government without providing for funding to accomplish the mandated function.

FSIS also is required to conduct a risk analysis under the Federal Crop Insurance Reform Act and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 7 U.S.C. 2204e) to ensure adequate risk assessment and cost benefit analysis for major proposed regulations whose primary purpose is to regulate issues of human health, human safety, or the environment. Under this Act, a major rule is defined as a rule that is likely to have an annual impact on the economy of the United States of \$100 million.

Therefore, the Agencies would also use the information requested earlier in this document to help them conduct any risk assessment that may be needed. Especially useful would be information on the following for potentially hazardous foods: (1) The probability of occurrence of hazards in potentially hazardous foods at the beginning of transportation; (2) the hazards that could be introduced or spread during transportation, and the magnitude of these hazards; (3) the occurrence of factors such as improper cooling and temperature maintenance that could increase the probability and/or magnitude of microbial hazards; (4) the probability of occurrence of hazards in potentially hazardous foods at the end of the transportation segment; and (5) the probability of occurrence and magnitude of human foodborne illnesses that can be directly or indirectly attributed to the transportation of potentially hazardous food.

The Agencies also need information about the businesses that may be affected by any of the alternatives being considered in order to assess their potential costs and benefits on small entities under the RFA. Businesses of concern would include establishments that process and ship meat, poultry, eggs, seafood, and other potentially hazardous foods, motor freight companies, food storage warehousing operations, air freight companies, and water transport firms.

Under the Small Business Administration regulations, a small entity in the motor freight and warehousing category is one whose annual receipts are no greater than \$18.5 million. A small entity in the category that includes air freight or railroad transportation is one with no more than 1,500 employees. A small entity in the categories of water transportation or food processing is one that employs no more than 500 people.

Finally, the agencies are requesting relevant environmental information because under the National Environmental Policy Act (42 U.S.C. 4332), the individual or cumulative effect of regulations on the human environment needs to be considered. The agencies do not now possess the data that would permit detailed analysis of any environmental impacts of the alternatives described in this document. Therefore, information on potential environmental impacts is also requested, including: (1) the potential for increased energy consumption that may result either from the need to increase refrigeration during transportation of food or from the use of

more trucks to avoid transporting food in trucks that had previously held cargoes that could affect food safety, (2) increased disposal of defective foods, (3) new or increased use and disposal of sanitizing products, and (4) a description of measures that could be taken to avoid or mitigate adverse environmental impacts that might result from this action.

Done at Washington, DC, on: November 18, 1996.

Thomas J. Billy,
Administrator, Food Safety and Inspection Service.

William B. Schultz,
Deputy Commissioner for Policy, Food and Drug Administration.

[FR Doc. 96-29837 Filed 11-18-96; 5:06 pm]
BILLING CODE 3410-02-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Routers and Switches.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Routers and Switches. The basis for a waiver of the Nonmanufacturer Rule for this product is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before November 29, 1996.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416, Tel: (202) 205-6475.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, tel: (202) 205-6475.

SUPPLEMENTARY INFORMATION: Public law 100-456, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing

regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual (SIC). The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Routers and Switches (SIC 3661, PSC 5805) and invites the public to comment or provide information on potential small business manufacturers for this product.

In an effort to identify potential small business manufacturers, the SBA has searched the Procurement Automated Source System (PASS) and *Thomas Register*, and the SBA will publish a notice in the *Commerce Business Daily*. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of products.

Dated: November 4, 1996.

Judith A. Roussel,
Associate Administrator for Government Contracting.

[FR Doc. 96-29879 Filed 11-21-96; 8:45 am]

BILLING CODE 8025-01-P

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for 8mm Tri-Deck Airborne Recorder (ruggedized).

SUMMARY: The Small Business Administration (SBA) is considering

granting a waiver of the Nonmanufacturer Rule for 8mm Tri-Deck Airborne Recorder (ruggedized). The basis for a waiver of the Nonmanufacturer Rule for this product is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before November 29, 1996.

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The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for 8mm Tri-Deck Airborne Recorder (ruggedized) (SIC 3661, PSC 5836) and

invites the public to comment or provide information on potential small business manufacturers for this product.

In an effort to identify potential small business manufacturers, the SBA has searched the Procurement Automated Source System (PASS) and *Thomas Register*, and the SBA will publish a notice in the *Commerce Business Daily*. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of products.

Dated: November 4, 1996.

Judith A. Roussel,
Associate Administrator for Government Contracting.

[FR Doc. 96-29877 Filed 11-21-96; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ASW-20]

Proposed Revision of Class E Airspace; Gallup, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Gallup, NM. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 24 at Gallup Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 24 at Gallup Municipal Airport, Gallup, NM.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96-ASW-20, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation

Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530; telephone (817) 222-5593.

SUPPLEMENTARY INFORMATION: Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption ADDRESSES. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96-ASW-20." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of

Advisory Circular No. 11-2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Gallup, NM. A new GPS SIAP to RWY 24 at Gallup Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 24 at Gallup Municipal Airport, Gallup, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

ASW NM E3 Gallup, NM [Revised]

Gallup Municipal Airport, NM
(Lat. 35°30'40" N., long. 108°47'22" W.)

Gallup VORTAC
(Lat. 35°28'34" N., long. 108°52'21" W.)

Gallup ILS Localizer
(Lat. 35°30'53" N., long. 108°48'25" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Gallup Municipal Airport and within 1.9 miles each side of the Gallup ILS Localizer southwest course extending from the 6.7-mile radius to 12.6 miles southwest of the airport and within 2 miles each side of the 074° bearing from the airport extending from the 6.7-mile radius to 6.1 miles east of the airport and within 1.3 miles each side of the 242° radial of the Gallup VORTAC extending from the 6.7-mile radius to 11.5 miles southwest of the airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 35°47'30" N, long. 108°34'02" W; to lat. 35°28'50" N, long. 108°34'02" W; to lat. 35°13'15" N, long. 108°08'02" W; to lat. 35°20'25" N, long. 108°10'42" W; to lat. 35°52'00" N, long. 108°47'02" W; to point of beginning excluding that airspace within the New Mexico, NM, Class E airspace area.

Issued in Fort Worth, TX on November 12, 1996.

Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
[FR Doc. 96-29954 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-15-M

14 CFR Part 71

(Airspace Docket No. 96-ASW-18)

Proposed Revision of Class E Airspace; Corsicana, TX

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Corsicana, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 14 at Corsicana Municipal Airport has made this

proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 14 at Corsicana Municipal Airport, Corsicana, TX.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96-ASW-18, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX. **FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530; telephone (817) 222-5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96-ASW-18." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available

for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Corsicana, TX. A new GPS SIAP to RWY 14 at Corsicana Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 14 at Corsicana Municipal Airport, Corsicana, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

ASW TX E3 Corsicana, TX. [Revised]

Corsicana, C. David Campbell Field-Corsicana Municipal Airport, TX.
(Lat. 32°01'29" N., long. 96°23'53" W.)

Corsicana RBN
(Lat. 32°01'40" N., long. 96°23'43" W.)

Powell RBN
(Lat. 32°03'51" N., long. 96°25'41" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of C. David Campbell Field-Corsicana Municipal Airport and within 2.5 miles each side of the 155° bearing from the Corsicana RBN extending from the 6.5-mile radius to 7.4 miles southeast of the airport and within 2.4 miles each side of the 325° radial from the Powell RBN extending from the 6.5-mile radius to 9.7 miles northwest of the airport.

Issued in Fort Worth, TX, on November 12, 1996.

Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
[FR Doc. 96-29955 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-15-M

14 CFR Part 71

(Airspace Docket No. 96-ASW-10)

Proposed Establishment of Class E Airspace; Paragould, AR.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM) that proposed to revise the Class E airspace at Kirk Field, Paragould, AR. The proposal was to revise the controlled airspace extending upward from 700 feet above the ground (AGL) was needed to contain aircraft executing a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 04. Prior to completing the Notice of Proposed Rulemaking process for the revised airspace, a second NDB SIAP to RWY 22 was developed. To avoid confusion and duplication within the rulemaking actions, the proposal to revise the Class E airspace at Kirk Field as proposed in Airspace Docket No. 96-ASW-10 is withdrawn.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530; telephone: (817) 222-5593.

SUPPLEMENTARY INFORMATION: On June 19, 1996, an NPRM was published in the Federal Register (61 FR 31065) to revise Class E airspace at Kirk Field, Paragould, AR. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the NDB SIAP to RWY 04 at Kirk Field. After publication of the NPRM, a new NDB SIAP to RWY 22 was developed that also requires revision of the Class E airspace at Kirk Field. To avoid confusion and to revise the Class E airspace as a result of two new approaches at Kirk Field, the proposed rule is withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 96-ASW-10, as published in the Federal Register on June 19, 1996 (61 FR 31065), is withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Fort Worth, TX on November 12, 1996.
 Albert L. Viselli,
 Acting Manager, Air Traffic Division,
 Southwest Region.
 [FR Doc. 96-29956 Filed 11-21-96; 8:45 am]
 BILLING CODE 4910-13-24

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 5

Revised Procedures for Commission Review and Approval of Applications for Contract Market Designation and of Exchange Rules Relating to Contract Terms and Conditions.

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend its procedures relating to its review and approval of applications for contract market designation and proposed exchange rules relating to contract terms and conditions. These fast-track review procedures are intended further to streamline Commission review of applications for contract market designation and proposed exchange rule amendments of contract terms and conditions.

Specifically, the Commission is proposing a new rule 5.1, providing that exchanges which have already been designated as a contract market may request fast-track review for additional designation applications as an alternative to the current review procedures. Under proposed rule 5.1, applications for designation of certain cash-settled contracts will be deemed to be approved ten days after receipt, unless the exchange is notified otherwise. All other fast-track designation applications will be deemed to be approved, unless the exchange is notified otherwise, forty-five days after receipt.

The Commission also is proposing to amend rule 1.41 to provide an alternative fast-track review of proposed amendments to contract terms or conditions. Similar to the fast-track designation procedures, many categories of exchange rules relating to contract terms already are deemed to be approved ten days after receipt. The Commission is proposing that all other proposed exchange rules relating to contract terms be deemed to be approved forty-five days after receipt by the Commission, unless the exchange is

notified otherwise. Notification by the Commission that a contract application or proposed exchange rule relating to a contract term or condition may not be made effective will extend the applicable period for review for an additional thirty days.

DATE: Comments must be received by December 23, 1996.

ADDRESS: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418-5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to "Fast-track Designation and Rule Approval Procedures."

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418-5260, or electronically, [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Requirements for Commission Designation of Proposed Contract Markets

The requirement that boards of trade meet specified conditions in order to be designated as contract markets has been a fundamental tool of federal regulation of commodity futures exchanges since the Futures Trading Act of 1921, Public Law No. 67-86, 42 Stat. 187 (1921).¹ Currently, the statutory requirements for designation are found in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. § 1 et seq. ("Act"), and additionally, for indexes of equities, in Section 2(a)(1)(B) of the Act. In the Commission's experience, problems of possible price manipulation, cornering or other market distortions are most readily avoided when the terms of a futures contract are properly designed, reflecting closely the underlying cash market. Thus, one of the most effective market surveillance tools has proven to

¹ Designation as a contract market under the 1921 Act was contingent upon a board of trade's providing for the prevention of manipulative activity and the prevention of dissemination of false information, upon providing for certain types of recordkeeping, for admission into exchange membership of cooperative producer associations, and upon location of the contract market at a terminal cash market. See, §§ 5(a), (b), (c), (d) and (e) of the Futures Trading Act of 1921. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill v. Wallace*, 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry was patterned after this statutory scheme.

be prophylactic, close examination of the terms of a contract before it begins to trade.

In the absence of properly designed contract terms, damage to hedgers or industry pricing may result before corrections to the contract can be made. The impact of a market manipulation or other disruption in a newly introduced futures contract potentially could be far wider than the futures market itself, adversely affecting the underlying cash market, as well.² Correcting this type of problem after trading has already begun may require extraordinary measures such as emergency action. At a minimum, such an occurrence would probably result in diminished credibility for futures trading in that contract, and possibly for futures trading, generally.

The designation process yields important benefits by ensuring a mechanism for public input relating to contract design before trading commences. Thus, in addition to independently evaluating the proposal through its own research, Commission staff identifies and interviews knowledgeable trade sources regarding a proposed contract's terms. Moreover, a notice of the public availability of the terms of proposed contracts is published in the Federal Register along with a request for public comment. The proposed contract is also sent by the Commission to its sister agencies having a regulatory interest in the underlying commodity for analysis and possible comment. Not infrequently, this process has identified deficiencies in proposed contracts, many of them serious, which have been corrected before trading has begun. Exchanges have also determined with some frequency to modify proposed contracts in response to suggestions by Commission staff, other government agencies or the public.

The goals of the designation process are reflected in the Act's requirements that, to be designated, contract markets provide for delivery periods which will prevent market congestion (Section 5a(a)(4) of the Act); permit delivery on

² Section 3 of the Act recognizes the national interest in properly functioning futures markets, noting that

The prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce. [P]rices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer . . . rendering regulation imperative for the protection of such commerce and the national public interest therein.

the contract of such qualities, at such points and at such differentials as will minimize market disruptions (Sections 5a(a)(10) and 5(1) of the Act); provide for the prevention of dissemination of false information (Section 5(3) of the Act); provide for the prevention of price manipulation (Section 5(4) of the Act); and in general, that trading in a proposed contract not be contrary to the public interest (Section 5(7) of the Act).³ Contract markets must meet these requirements both initially and on a continuing basis.⁴

To provide guidance to the exchanges in meeting the designation requirements of the statute, in 1975 the newly formed CFTC issued its Guideline No. 1, now codified at 17 CFR Part 5, Appendix A. Guideline No. 1 sets forth the information which must be submitted by an exchange to demonstrate that a proposed contract meets the statutory requirements for designation. It requires that the application for designation include information demonstrating the conformity of contract terms with commercial practices, the adequacy of deliverable supplies or, if applicable, the appropriateness of the cash settlement procedure, and other information as requested.

The Commission, based upon its administrative experience, has periodically revised and updated its procedures to provide exchanges with more specific criteria for meeting the contract market designation requirements; to reflect new developments in futures trading—such as the introduction of financial futures, futures on aggregates or indices of securities and cash settlement as a substitute for physical delivery; and, where appropriate, to lessen the burden on applicants by reducing the information required and streamlining the form of application. In this regard, Guideline No. 1 was last amended in January 1992, substantially reducing and streamlining its requirements. Indeed, much of the application for options contracts has been reduced to

³ In addition to these contract-specific requirements, boards of trade, to be designated, must also meet several general conditions. These, for example, require the board of trade to: provide for various forms of recordkeeping (Section 5(2) and 5a(a)(2) of the Act); provide for compliance with Commission orders (Section 5(6) of the Act); submit its rules to the Commission (Sections 5a(a)(1) and 5a(a)(12)(A) of the Act); and enforce exchange rules (Section 5a(a)(8) of the Act).

⁴ Section 6 of the Act provides, in part, that: [a]ny board of trade desiring to be designated a "contract market" shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

the form of a checklist. Moreover, under the Commission's internal procedures established in 1992, notification of the public availability of proposed contract terms normally appears in the Federal Register within one week of receipt of an application. In addition, under these procedures, substantive issues are identified and communicated informally to the exchange very shortly after receipt, permitting their prompt resolution.

With the changes noted above, the total review time for new contracts has declined significantly. The review and approval of new contracts generally is completed shortly after the Federal Register public comment period ends or as soon as the exchange makes the modifications necessary to address a proposed contract's deficiencies. Over the last five years, the average total review time has been reduced to about three months. Strikingly, this reduction in processing time coincides with the submission of record numbers of new contract proposals.⁵

II. The Proposed Rules

A. Fast-Track Contract Market Designation—Cash-Settled Contracts

As part of its continuing effort to impose the least costly means necessary to achieve the regulatory objectives of the contract designation review process, the Commission previously established a very abbreviated, ten-day review procedure for the designation of contracts that are eligible to be listed for trading under its Part 36 exemptive rules. See, Commission rule 36.4, 17 CFR 36.4 (1996). Such a highly abbreviated review process was appropriate for those contracts, the Commission reasoned, because Part 36 contracts are required to be cash-settled and may not be based on the agricultural commodities enumerated in Section 1a(3) of the Act, thus avoiding issues related to delivery terms. "Notice of Proposed Rulemaking," 59 FR 54139, 54148 (Oct. 26, 1994).

Despite determining to provide this highly abbreviated procedure initially only in the context of the pilot program for Part 36 transactions, the Commission nevertheless indicated that, based upon its administrative experience and consistent with the views expressed by several commenters, such procedures might be appropriately expanded to

⁵ About 230 new contracts have been approved in the four years since Guideline No. 1 was last amended in 1992. These included entirely new products, such as contracts on electricity, air pollution allowances, insurance, cross-currency rates, fertilizers, shrimp, dairy products, and various broad-based or commodity-specific indexes of emerging markets.

some additional categories of applications for designation.⁶ Thus, in promulgating these rules, the Commission noted that it would "evaluate whether . . . the ten-day notification provision should be extended to certain non-section 4(c) contract market transactions when it evaluates trading experience under the pilot program." (60 FR at 51338.)

Although it may have preferred to test these procedures first in the context of Part 36 markets that are by rule limited to the relatively more sophisticated trader, there has been no trading experience in connection with the pilot program for Part 36 transactions.⁷ Moreover, the degree of pre-approval scrutiny appropriate for particular types of proposed contracts is not necessarily based upon restrictions on the nature of the traders who may trade in the market. Accordingly, in light of the increasing expertise of both the exchange and Commission staffs over the years, the Commission has determined to propose a ten-day fast-track review of applications for designation of certain cash-settled contracts for non-Part 36 markets.

This highly-abbreviated, ten-day fast-track procedure is intended only to speed the review and to provide for automatic approval of new contract applications; it does not modify the regulatory protections currently provided under the Act. Accordingly, under the fast-track review procedures, only applications for contract market designation which are complete upon submission; which are not amended, except upon request of the Commission; which do not raise novel or complex issues; and which do not appear, on their face, to contravene a statutory or regulatory requirement, would be automatically deemed to be approved ten days after receipt. The Commission can extend fast-track review for one thirty-day period. This will permit fast-track review to remain available even for those applications which do raise novel or complex issues.

As noted above, because cash-settled contracts avoid issues regarding delivery terms, the ten-day fast-track review is proposed to be available only for cash-settled contracts.⁸ Moreover,

⁶ In this regard, several commenters suggested that the ten-day review process "apply to all exchange-traded contracts or to certain categories of such contracts, such as financial futures and options." 60 FR at 51338.

⁷ The three-year pilot program to test the operation of the Part 36 rules begins the date when the first contract trades pursuant to them. No exchange has yet listed for trading such contracts.

⁸ Although they may be settled by physical delivery, futures contracts for foreign currencies

Continued

applications for designation for those agricultural commodities which are enumerated in section 1a(3) of the Act are not eligible for ten-day fast-track treatment, even if the proposed contracts are cash-settled. In the Commission's administrative experience, cash-price series of agricultural commodities to be used for the purpose of cash-settlement often have raised issues requiring careful analysis.

In addition, fast-track review would not be available for applications for contract market designation for those commodities which are subject to the procedural requirements of section 2(a)(1)(B) of the Act—securities, including any group or index of securities. The procedures specified under that section of the Act provide that the Securities and Exchange Commission make a determination regarding those proposed contracts subject to its provisions.

A separate provision of the Act, section 2(a)(8)(B)(ii), 7 U.S.C. 4a(g), provides forty-five days for the Department of the Treasury and the Board of Governors of the Federal Reserve System to comment on any application by a board of trade for designation as a contract market involving transactions for the future delivery of any security issued or guaranteed by the United States or any agency thereof. It does not, however, require that the two agencies make a determination regarding such contracts. A ten-day fast-track review period, even if extended for an additional thirty days, is inconsistent with the time generally permitted those agencies for comment, and unless such contracts were exempted therefrom, they would likely have to be excluded from this provision of the proposed rule.⁹

The agencies did not comment adversely on inclusion of the section 2(a)(8)(B)(ii) commodities under the

generally do not raise the types of issues common to physical delivery markets. Accordingly, the Commission determined to include contracts for foreign currency within the Part 36 exemption along with cash-settled contracts. Commission rule 36.2(a)(1), 17 CFR 36.2(a)(1). Consistent with that determination, the Commission is also including foreign currency contracts within the ten-day fast-track review procedures, providing there is no legal impediment to delivery of the currency and there exists a liquid cash market in the currency.

⁹ The forty-five day comment period of section 2(a)(8)(B)(ii) may also conflict with the review procedures of a second fast-track procedure discussed below. That procedure provides for a forty-five day fast-track review. Although the other regulators generally have filed comments, if any, in fewer than forty-five days, the full period for comment would be inconsistent with a forty-five day fast-track review if the Commission were unable to provide notice of an application on the very same day of its receipt.

similar, ten-day automatic listing procedures of the Commission's Part 36 rules. Accordingly, the Commission finds that it is in the public interest, and is proposing, that those commodities also be eligible for the comparable fast-track procedures proposed herein. The Commission, therefore, is proposing to exempt these transactions under section 4(c) of the Act from the statutory time permitted the agencies for filing comments provided in section 2(a)(8)(B)(ii) of the Act. Of course, the Commission will continue to provide notice to the other regulators of applications and would be responsive to their requests for additional time to review complex or novel issues raised by an application. Accordingly, the Commission seeks comment on whether the section 2(a)(8)(B)(ii) commodities should be exempted from the forty-five day time for comment and thus be eligible for fast-track treatment, and particularly, for ten-day fast-track review.¹⁰

B. Fast-Track Contract Market Designation—Other Contracts

Use of a ten-day review process is not appropriate for every type of contract. Because many cash agricultural markets are widely dispersed, cash price series for certain of them may be less reliable, available or timely, than for other types of commodities. Moreover, in contracts requiring physical delivery, convergence of the futures and cash market prices is dependent upon properly aligned delivery terms. Accordingly, for these types of contracts, careful analysis and review of contract terms in advance of trading will likely remain an important market surveillance tool. This is particularly true for those commodities which are characterized by seasonal variation in their production or other factors which, from time to time, may impinge on deliverable supplies.

Although a ten-day review period for such contracts might be inconsistent with accomplishing the regulatory objectives embodied in the Act's designation requirements, in light of the increasing expertise and experience of both the Commission and exchange staffs, the Commission believes that,

¹⁰ Because no regulatory requirement other than the time period for comment by other agencies is being waived, for purposes of this exemption "appropriate persons" eligible to enter into the exempted instruments include all those who may otherwise trade designated futures or option contracts. The Commission believes that this exercise of its exemptive authority will not have a material adverse effect on the ability of the Commission, the other regulators, or any contract market to discharge its, or their, duties under the Act.

even for these contracts, substantial reductions in the time currently needed to review such applications for designation can be made. The Commission believes that these savings can be achieved by further streamlining its procedures. This would also preserve the opportunity for public participation in the designation of those contracts. After a thorough review of its present procedures, the Commission believes that for these contracts the current review period can be cut in half.

The Commission, therefore, is proposing an additional fast-track procedure available for applications for designation of contracts for physical delivery or for cash-settlement on the agricultural commodities enumerated in the Act.¹¹ Under this additional fast-track review procedure, applications for contract market designation would be deemed to be approved by the Commission forty-five days after receipt, unless the exchange is notified otherwise. As under the ten-day process, the forty-five day review process would be available only for applications for designation that are complete when filed and not subsequently amended, except as requested by the Commission.

As part of the forty-five day fast-track procedures, the Commission will continue its current practice of publishing in the Federal Register, within a few days of an application's receipt, notice of the public availability of the proposed contract's terms and a request for public comment thereon. The Commission will also continue its practice of interviewing knowledgeable sources regarding cash market practices and whether the proposed contract's terms are consistent with those practices.

However, in order to meet the very compressed time for review, the Commission is proposing to reduce the public comment period for fast-track applications from thirty days, as currently provided under Appendix D to Part 5, to fifteen days. The Commission is aware that some of those entities which have commented in the past on contract applications, particularly membership organizations, may have difficulty in meeting this deadline. However, the proposed reduction in the comment period is necessary to provide the Commission with an opportunity to assess comments which have been filed before the end of the review period and is proportional to

¹¹ However, designation applications for commodities which are subject to the procedural requirements of Section 2(a)(1)(B) of the Act would not be eligible for this fast-track review, either.

the overall reduction in time for Commission review of an application. Moreover, the Commission's recent initiatives to accept public comment for filing through facsimile and electronic mail transmissions should assist commenters in complying with this condensed comment period.

Both the ten-day and forty-five day fast-track periods can be extended by the Commission for one thirty-day period. In those instances where issues raised by the application are complex or novel, where there is an inadequate basis in the application upon which to review the contract terms, or where a contract term raises the issue of whether it violates a statutory or regulatory requirement, the Commission, by notifying the exchange, can extend the review period and halt automatic approval of the application for thirty days. The notification must specify briefly the reason for the extension, including the contract term or terms that are in issue.

If at any time during the review period, the Commission believes that a contract term raises serious issues, such that it may violate a statutory or regulatory requirement, it will so notify the exchange. This notification will halt the automatic approval of the designation, terminate the fast-track procedures and convert the application from fast-track to the current review and approval procedures. Because the fast-track procedures are intended to be used only for those applications for designation which do not raise complex or novel issues, contracts that include such issues which have not been susceptible to ready resolution during the fast-track review period are not appropriate candidates for this automatic approval process.

The exchange, if it disagrees with the Commission's determination to terminate fast-track consideration, may request within ten days of the termination notification that the Commission either approve the application or initiate disapproval procedures, rather than continuing with its review and approval of the application under its current procedures. Historically, the Commission has never disapproved an application for contract market designation. Rather, it has offered exchanges an opportunity to cure defects in applications, including instances where a contract term as initially proposed was in conflict with statutory or regulatory requirements.¹²

¹² Similarly, when public comments identify deficiencies or raise concerns regarding contract terms, exchanges at times have responded by

Proposed rule 5.1 builds on this long-time administrative practice, applying it in the context of fast-track designation review, as well. Where a proposed contract originally filed for fast-track review appears to violate a statutory or regulatory requirement, the Commission presumes that the exchange would prefer to convert the application to one for review under current procedures, thus having an opportunity to cure the defect, rather than to face disapproval. However, when exchanges prefer that the Commission render a decision as to whether to disapprove the application as filed, the Commission will institute a formal disapproval proceeding upon notification that the exchange views its application as complete and final as submitted.

Moreover, at any time during the fast-track review period, the exchange may instruct the Commission to consider the application under the current, rather than the fast-track, review procedures. Current procedures for review and approval of designation applications have developed into an iterative process whereby the dialogue between Commission and exchange staff may result in modifications being made by the exchange to the proposed contract's terms after submission of the application. In contrast, the fast-track procedure is intended to be an automatic process and is based on the supposition that designation applications submitted for fast-track review are complete and final, as filed. Accordingly, because amending the terms of a pending contract submitted for fast-track review after its initial submission—other than correcting typographical mistakes, renumbering, or such other nonsubstantive revisions—make an application ineligible for further fast-track consideration, exchanges are free at any time to instruct that the application be converted to current review procedures. This ensures exchanges the freedom and flexibility to amend contracts after submission by voluntarily converting the review procedure, rather than mandating that they continue with the application in a form that they no longer desire.

By providing an alternative mechanism for reviewing a designation application, the Commission does not intend to affect the standard of review for such contracts. Under Section 5 of the Act, the Commission is "directed to designate any board of trade as a 'contract market' when . . . [it] complies with . . . the [specified]

modifying the proposed contract, sometimes substantially.

conditions." The Commission has been, and will continue to be, mindful that the requirements for designation are performance, rather than design, standards. In this regard, a number of different contract terms or approaches may meet a particular statutory or regulatory designation requirement. Choosing among these acceptable alternatives is a business decision of the exchange. Commission staff will not use either the current designation procedures or the fast-track procedure as a means of expressing any view regarding exchange business decisions. Accordingly, both the current procedures and the fast-track review procedures ultimately impose the same standard of review—that is, should the contract be disapproved because it violates a statutory or regulatory condition of designation.

C. Fast-Track Review of Amendments to Contract Terms and Conditions

In general, exchange rule amendments currently are required by section 5a(a)(12)(A) of the Act to be submitted to the Commission for review and may be made effective after ten days.¹³ The primary exception to this automatic ten-day provision is contract terms and conditions (other than rules setting margin) which are required to be submitted for Commission review and approval. See, section 5a(a)(12)(A) of the Act.¹⁴ If the Commission does not act to approve or disapprove such a rule within 180 days of submission, the exchange may make the rule effective.

Contract terms are treated differently from other exchange rules so that changes to contract specifications, which can modify a contract significantly, can be given the same type of review they would have received if submitted as part of an application for a new designation. Indeed, several exchanges have used the rule amendment process to transform a contract completely, for example, substituting cash settlement for physical

¹³ See also, section 5a(1) of the Act (requiring notice to the Commission of all contract market bylaws, rules, regulations and resolutions).

¹⁴ The Commission routinely reviews for approval certain other categories of exchange rules that must be approved under other sections of the Act or Commission regulations, such as exchange rules relating to exchange-of-futures-for-physical transactions. See, e.g., Section 4c(a) of the Act and Commission rule 1.38(a). Additionally, an exchange may request Commission approval of a rule amendment which, absent this request, would be subject to the automatic ten-day review process.

It should also be noted that there is an entirely separate procedure for exchange rules that are temporary in nature and which have been adopted in response to emergency conditions. None of the existing or proposed procedures discussed above apply to exchange emergency rules.

delivery. Such a profound change is virtually identical to seeking a new designation and raises the same regulatory concerns.

However, not all proposed exchange amendments to contract terms and conditions are subject to a single procedure for review. Based upon its regulatory experience, the Commission, by rule, has created various categories of exchange amendments to contract terms that are subject to automatic approval for both futures and option contracts. See, Commission rule 1.41(h)-(t). For example, among other categories of amendments to contract terms, changes in the composition of a stock or other index are approved upon adoption by the exchange (rules 1.41(h) and (i)), as are changes to survey lists (rule 1.41(j)) and changes to trading hours, if within a specified window (rule 1.41(k)). Other categories of rule amendments, such as changes to trading months (rule 1.41(l)) and changes to contract terms established by independent third parties (rule 1.41(m)) are deemed to be approved ten days after receipt by the Commission. Indeed, rule 1.41(n) enables the Commission to establish such automatic approval procedures for any rule for which such treatment is appropriate.

The exchange rule amendments eligible for such automatic approval procedures typically involve changes to exchange rules which are recurring, predictable, clearly defined and subject to conditions which can be specified in advance. As new commodities or types of contracts are listed for trading, the Commission, based upon its experience, has added new categories of automatic rule approvals, as appropriate. Thus, in addition to the vast majority of exchange rule submissions that are not contract terms and therefore are subject only to a ten-day review, many if not a majority of amendments to contract terms and conditions are already eligible for automatic approval.

In light of the Commission's determination to propose two fast-track periods to review applications for contract market designation, the Commission believes that two similar fast-track periods for amendments to contract terms should be provided as well. Accordingly, the Commission is proposing to add to Commission rule 1.41(b) a fast-track review procedure consistent with the proposed forty-five day fast-track review of designation applications. The current provisions of rule 1.41 providing for ten-day review and automatic approval of many categories of amendments to contract terms would remain unchanged.

The existing procedures for review of designation applications and amendments to contract terms differ in their treatment of requests for public comment. Similar to applications for designation, request for public comment on certain amendments to contract terms and conditions is discretionary. Thus, the Commission may, as a matter of discretion, publish proposed amendments of contract terms for comment "when publication . . . is in the public interest and will assist the Commission in considering the views of interested persons." Commission rule 140.96(b), 17 CFR 140.96(b). For amendments to contract terms published for public comment as a matter of Commission discretion, the Commission will provide a fifteen-day comment period consistent with its proposed practice for fast-track designation applications.

However, Section 5a(12)(A) of the Act requires amendments to contract terms, when determined to be of major economic significance, to be published in the Federal Register. That section of the Act also requires that the comment period be for thirty days. If all proposed amendments to contract terms required a full thirty-day comment period, the Commission's ability to meet a forty-five day deadline would be impossible with its present staff resources. However, only a limited percentage of exchange rule amendments are of major economic significance and would therefore be required to be published for public comment for the thirty-day period. Although acting on even this limited number of submissions within forty-five days will be difficult when a thirty-day comment period is required, the Commission is proposing a forty-five day review period for all proposed amendments of contract terms and designation applications in order to achieve the most consistent and simplest procedures for fast-track review.

D. Implementation

The Commission is proposing these automatic approval procedures to streamline further Commission review of applications for contract market designation and proposed exchange rules relating to contract terms and conditions. It believes that the proposed procedures, by providing the exchanges an alternative means of achieving greater certainty and ease in listing new products, will permit them greater flexibility to compete with foreign exchange-traded products and with both foreign and domestic over-the-counter transactions, while maintaining the Commission's authority to review

proposed contracts and proposed exchange rules relating to existing contracts for their consistency with the Act and Commission regulations and maintaining the public's ability to participate in the process.

To streamline comprehensively the designation and rule approval procedures, the Commission must also examine the form and content of the required submissions. The Commission last amended Guideline No. 1 in 1992. The Commission's 1992 revisions were undertaken with the view of removing duplication of effort between its staff and the exchanges, streamlining procedures, reducing paperwork, and refining the requirements for designation.

As noted above, one of the significant innovations of the 1992 revision was to reduce the form of application for designation of option contracts to a checklist. Although the designation application for futures contracts may be less susceptible to a checklist format, the Commission believes that the concept of an extended checklist may have value in the context of applications for designation of futures contracts, as well. In this regard, to the extent that the required information can be provided in a format requiring less verbiage, both the exchanges and the Commission may save additional staff resources.

Because the Commission believes that significant potential benefits will accrue from the proposed fast-track revisions to its contract designation procedures, it does not wish to delay public consideration of such revisions in order to formulate a proposal concerning Guideline No. 1. Accordingly, the Commission is currently proposing fast-track procedures at this time and will undertake separately the time-consuming task of reviewing the form and content requirements relating to applications for designation contained in Guideline No. 1. Despite this determination to proceed on these proposed fast-track rules separately, the Commission nevertheless is committed to review the broader Guideline No. 1 issues expeditiously. In addition to these proposals regarding fast-track procedures for contract market designation and amendments to contract terms and conditions, the Commission is also considering separately procedures to streamline the review and approval of contract market rules other than contract terms and conditions.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. 47 FR 18818 (April 30, 1982). Those amendments propose to establish alternative streamlined procedures for Commission review and approval of applications by contract markets for additional designations and of amendments to contract terms and conditions. Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. However, the Commission invites comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed rule has no burden, the group of rules (3038-0022) of which this is a part has the following burden:

Average burden hours per response—3,546.26
Number of Respondents—10,971
Frequency of response—on occasion

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Gerald P. Smith, CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418-5160.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract market rules, Rule review procedures.

List of Subjects in 17 CFR Part 3

Contract markets, Designation application.

In consideration of the foregoing, and pursuant to the authority contained in

the Commodity Exchange Act and, in particular, sections 4(c), 4c, 5, 5a, 6 and 8a of thereof, 7 U.S.C. 6(c), 6c, 7, 7a, 8, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 8a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a-1, 13a-2, 16, 19, 21, 23 and 24.

2. In Section 1.41(b), the introductory text, paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5) and the concluding text are proposed to be redesignated as (b)(1)(i), (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(i)(C), (b)(1)(i)(D), (b)(1)(i)(E), and (b)(1)(ii), respectively; newly redesignated paragraph (b)(1)(ii) is proposed to be revised; and paragraphs (b)(2) through (b)(4) are proposed to be added, to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

(b) Submission of rules for prior Commission approval. (1)(i) . . .
(ii) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept for review any rule submission that does not comply with the form and content requirements of paragraphs (b)(1)(i)(A) through (E) of this section.

(2) All proposed contract market rules that relate to terms and conditions submitted for review under paragraph (b)(1) shall be deemed approved by the Commission under section 5a(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(i) The contract market labels the submission as being submitted pursuant to Commission rule 1.41(b)—Fast Track Review;

(ii) The submission complies with the requirements of paragraphs (b)(1)(i)(A) through (E) of this section, or for dormant contracts, the requirements of § 5.2 of this chapter;

(iii) The contract market does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(iv) The contract market has not instructed the Commission in writing during the review period to review the proposed rule under the usual

procedures under section 5a(12)(A) of the Act and paragraph (b)(1) of this section.

(3) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (b)(2) of this section, may notify the contract market making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraph (b)(2) of this section shall be extended for a period of thirty days.

(4) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (b)(3) of this section, the Commission shall notify the contract market that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 5a(12)(A) of the Act and paragraph (b)(1) of this section, if it appears that the proposed rule may violate a specific provision of the Act, regulation, or form or content requirement of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of this section that the proposed rule appears to violate. Within ten days of receipt of this termination notification, the contract market may request that the Commission render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(12)(A) of the Act by notifying the Commission that the contract market views its submission as complete and final as submitted.

3. Section 1.41b is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.41b. Delegation of authority to the Director of the Division of Trading and Markets and Director of the Division of Economic Analysis.

(b) The Commission hereby delegates, until the Commission orders otherwise: (1) To the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or the General Counsel's delegatee, to be exercised by such Director or by such other employee or employees of the Commission under the supervision of

Drafting Information: The process used to develop this rule included numerous reviews by Preserve staff, consultation and cooperation with the Florida Game and Freshwater Fish Commission as required by 10 U.S.C. 698m-2, and informal consultation with the U.S. Fish and Wildlife Service. The primary author of this rulemaking is William J. Carroll, Chief Ranger, Big Cypress National Preserve.

Paperwork Reduction Act

This rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a cost of \$100 million or more in any given year on local, State or tribal governments or private entities.

The Draft General Management Plan/Draft Environmental Impact Statement was available for public review for 180 days from August 8, 1989, to March 1, 1990. In January 1992, the record of decision was signed, and the Big Cypress National Preserve General Management Plan/Final Environmental Impact Statement (Vols. 1 & 2) proposed action was approved. The Big Cypress National Preserve GMP, Vol. 1, page 44, recommends that the NPS promulgate special regulations to allow noncommercial recreational frogging in the Preserve.

Informal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act has resulted in a determination of no effect for this rulemaking process.

The NPS has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

- (a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
- (b) Introduce non-compatible uses which compromise the nature and characteristics of the area, or cause physical damage to it;
- (c) Conflict with adjacent ownerships or lands uses; or
- (d) Cause a nuisance to adjacent owners or occupants.

Based upon this determination, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an

Environmental Assessment (EA) nor an Environmental Impact Statement (EIS), specific to recreational frogging, has not been prepared.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Ch. I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Section 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. Section 7.86 is amended by adding new paragraph (d) to read as follows:

§ 7.86 Big Cypress National Preserve.

(d) *Frogs.* (1) The taking of the pig frog (*Rana grylio*) is allowed within the Preserve subject to public-use limits, times, locations, methods and means of taking, bag limits and permit requirements as established by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions in accordance with the criteria and procedures of sections 1.5 and 1.7 of this chapter.

(3) Violation of the conditions established by the Superintendent is prohibited.

Dated: November 1, 1996.

George T. Frampton, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96-29943 Filed 11-21-96; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD13-96-011]

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulations governing the operation of the drawspans of the

U.S. 101 (New Youngs Bay) highway bridge, mile 0.7, at Smith Point, the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay, and the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, Oregon.

The proposed rule would change the existing regulations for these bridges in three ways: The period during which shorter notice is allowed for requesting an opening of the bridges would be reduced from the existing 5 a.m. to 9 p.m. period to a shorter 7 a.m. to 5:30 p.m. period; the notice required for requesting an opening during the proposed 7 a.m. to 5:30 p.m. period would be increased from 30 minutes to 45 minutes; and the opening signal for the New Youngs Bay Bridge would be changed.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220-7270).

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD13-96-011) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander,

Thirteenth Coast Guard District at the address under ADDRESSES. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The drafters of this notice are Austin Pratt, Project Officer, and Lieutenant Commander John C. Odell, Project Attorney, Thirteenth Coast Guard District Legal Office.

Background and Purpose

At the request of the Oregon Department of Transportation, the Coast Guard is proposing to change the regulations governing the operation of the drawspans of the U.S. 101 (New Youngs Bay) highway bridge, mile 0.7, at Smith Point; the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay; and the Oregon State (Lewis and Clark River), highway bridge, mile 1.0, across the Lewis and Clark River, Oregon.

First, the proposed rule would decrease the period during which shorter notice is allowed when requesting an opening of the draw spans of these bridges. Under the current regulations, the bridges are operated on 30 minutes notice between 5 a.m. and 9 p.m. At all other times of the day, 4 hours notice is required for requesting an opening. Historical data indicates that most requests for openings are in fact being made between 7 a.m. and 5:30 p.m. Records of drawbridge operations show that during the year measured from December 1994 to December 1995, the New Youngs Bay Bridge opened 461 times, the Old Youngs Bay Bridge opened 176 times, and the Lewis and Clark River Bridge opened 525 times. The vast majority (1,068 of 1,162) of these openings were made between 7 a.m. to 5:30 p.m. The proposed rule would alter the period during which shorter notice is required to reflect the historical use of the bridge.

Second, the proposed change would increase the notice period for requesting openings of the drawspans during the proposed period of 7 a.m. and 5:30 p.m. when shorter notice is allowed. The notice required between 7 a.m. and 5:30 p.m. would be increased from 30 minutes to 45 minutes. These bridges are not continuously manned and this aspect of the proposed change is needed to provide bridge operators more time to travel to the bridges through increased traffic congestion on area roads and highways.

Finally, the proposed change would change the published opening signal for the New Youngs Bay Bridge. The current regulations state that the opening signal for the New Youngs Bay Bridge is two prolonged blasts followed by one short blast. The proposed change would create a special opening signal consisting of two prolonged blasts followed by two short blasts. The special opening signal is necessary to prevent confusion with the signal of the nearby Old Youngs Bay Bridge which also has an opening signal consisting of two prolonged blasts followed by one short blast.

Discussion of Proposed Rule

The proposed rule would amend 33 CFR 117.899 to state that the drawspans of all three bridges shall open on signal if at least 45 minutes notice is given between 7 a.m. and 5:30 p.m., and if four hours notice is given at all other times of the day. The change would also change the opening signal for the New Youngs Bay Bridge to two prolonged blasts followed by two short blasts. All other aspects of the current operating regulations would remain the same.

Regulatory Evaluation

The proposed rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 8(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the proposed change would not greatly increase the existing notice requirements for requesting drawbridge openings and the fact that the reduced period during which shorter notice is allowed merely conforms the regulations to the historical use of the bridges.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant effect on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of

the Small Business Act (15 U.S.C. 632). Because the proposed change would not greatly increase the existing notice period for requesting drawbridge openings, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a significant number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of Commandant Instruction M16475.B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.899 is revised to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least 45 minutes notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5:30 p.m. At all other times four hours notice is required. The opening signal is

two prolonged blasts followed by two short blasts.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay at the foot of Fifth Street, shall open on signal for the passage of vessels if at least 45 minutes notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5:30 p.m. At all other times four hours notice is required. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least 45 minutes notice is given by marine radio, telephone, or other suitable means from 7 a.m. to 5:30 p.m. At all other times four hours notice is required. The opening signal is one prolonged blast followed by four short blasts.

Dated: November 4, 1996.

J. David Spede,
Rear Admiral, U.S. Coast Guard, Commander,
13th Coast Guard District.
[FR Doc. 96-29951 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 117

[CGD08-96-048]

RIN 2115-AE47

Drawbridge Operation Regulation; Tchefuncte River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD) and the Town of Madisonville, Louisiana, the Coast Guard is proposing a change to the regulation governing the operation of the swing span drawbridge across the Tchefuncte River, mile 2.5, at Madisonville, St. Tammany Parish, Louisiana. The proposed regulation would require that the draw will open on demand; except that from 5 a.m. until 8 p.m. the draw would open only on the hour. Presently, the draw is required to open on signal; except that, from 5 a.m. to 3 p.m. the draw opens only on the hour and half-hour. This change of eliminating openings at the half-hour will allow for fewer disruptions of vehicular traffic movement and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before January 21, 1997.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or may be delivered to Room 1313 at the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid in this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Discussion of Proposed Rules

Extensive residential development in the Madisonville area has significantly increased the amount of both vehicular traffic and vessel traffic which use the bridge. Navigational openings, recorded by the LDOTD, showed that the bridge had 313 openings for the month of April, 1996; 338 openings for May, 1996; 412 openings for June, 1996 and 407 openings for July, 1996. The vehicular traffic count taken for a two week period in June 1996 by LDOTD showed that during the proposed regulated period for bridge openings (5 a.m. to 8 p.m.), the average daily traffic crossing the bridge was 9195 vehicles per day on weekdays, 7793 vehicles on Saturdays and 7018 vehicles on Sundays. The predominant waterway users of this drawbridge are recreational

boaters. While operators of these boats may be slightly inconvenienced by the regulated openings, they will still have the opportunity to pass through the bridge with knowledge of the schedule for openings and with minimal planning. Most recreational boat owners that use the bridge for vessel passage also use the bridge for vehicular passage. Therefore, they too will benefit from the regulated bridge openings. The draw will open on signal at any time for a vessel in distress, or for an emergency aboard the vessel. Vertical clearance of the bridge in the closed position is 6.2 feet above mean high water at the west rest pier fender and 1.5 feet above mean high water at the pivot pier fender.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that

the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2.(g)(5) of "Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-507, 106 Stat. 5039.

2. Section 117.500 is revised to read as follows:

§ 117.500 Tchefuncte River.

The draw of the SR 22 bridge, mile 2.5, at Madisonville, shall open on signal; except that, from 5 a.m. to 8 p.m., the draw need open only on the hour. The draw shall open on signal at any time for a vessel in distress or for an emergency aboard a vessel.

Dated: November 5, 1996.

T.W. Josiah,
Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.

[FR Doc. 96-29952 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96-186; FCC 96-422]

Assessment of Annual Regulatory Fees for AM and FM Broadcast Radio Licensees

AGENCY: Federal Communications
Commission.

ACTION: Notice of inquiry.

SUMMARY: In its decision establishing regulatory fees for fiscal year 1996, the

Commission stated that it would initiate a Notice of Inquiry, in order to develop a more equitable methodology for assessing regulatory fees upon AM and FM licensees, and in particular, that it would consider a specific methodology proposed by the Montana Broadcasters Association. Currently, the Commission assesses regulatory fees on AM and FM broadcasters based upon a station's license classification. Montana's proposal bases the fee on both a station's class of license and market designation. This Notice of Inquiry requests comments on Montana's proposal and invites interested parties to suggest alternative methodologies for assessing these fees.

DATES: Interested parties may file comments on or before December 23, 1996 and reply comments on or before January 6, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jerome D. Ramson, Office of General Counsel, at (202) 418-1755, or Terry D. Johnson, Office of Managing Director at (202) 418-0445.

SUPPLEMENTARY INFORMATION:

Adopted: October 25, 1996.

Released: November 6, 1996.

I. Introduction

1. By this *Notice of Inquiry*, the Commission is initiating a proceeding to determine if, in FY 1997, it is feasible to utilize a methodology based on market size for assessing annual regulatory fees upon licensees of AM and FM broadcast radio stations. We invite interested parties to comment upon a methodology proposed by the Montana Broadcasters Association (Montana), and to propose any other methodology for assessing AM and FM fees they believe would serve the public interest.

II. Background

2. In establishing our regulatory fee program, we recognized that Congress had required the Commission to adopt the Schedule of Regulatory Fees for FY 1994, contained in section 9(g) of the Communications Act, as amended. 47 U.S.C. 159(g). The Schedule assessed AM and FM radio fees based upon class of station. Thus, each licensee paid a fee identical to other licensees with the same class of station, without regard to the size of its service area. See Implementation of Section 9 of the Communications Act, 59 FR 30984 (June 16, 1994), 9 FCC Rcd 5333, 5339 (1994). Therefore, we declined to consider any

revision to the fee schedule for FY 1994, but we invited interested parties to propose alternative methodologies for various services subject to the regulatory fees, including AM and FM radio, for consideration in our proceeding to adopt the FY 1995 Schedule of Regulatory Fees. 60 FR 3807 (January 19, 1995), 9 FCC Rcd at 5360. Subsequently, in our NOI proposing fees for FY 1995, we recognized that "population density of a (AM or FM) station's geographic location was also a public interest factor warranting recognition in the fee schedule." Therefore, we proposed for consideration by interested parties a methodology incorporating market size in the calculation of AM and FM fees, by assessing higher fees for radio stations located in Arbitron Rating Co. (Arbitron) designated markets. We proposed a two-tiered fee schedule with stations in Arbitron rated markets paying higher fees than the same classes of stations located in smaller, non-Arbitron rated markets. See Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, MD Docket No. 95-3, FCC 95-14, released January 12, 1995 at ¶ 29. See 60 FR 3807 (January 19, 1995). Nevertheless, in our *Report and Order* establishing the FY 1995 fees, we declined to adopt this proposed method because, after consideration of the comments, we found that it did not provide a "sufficiently accurate and equitable method for determining fees." See Assessment and Collection of Regulatory Fees for Fiscal Year 1995 60 FR 34004 (June 29, 1995), 10 FCC Rcd 13512, 13531-32 (1996).

3. In our Notice of Proposed Rulemaking to establish regulatory fees for FY 1996, we stated with regard to the fees for AM and FM radio stations, that we "were particularly interested in a proposal which would associate population density and service area contours with license data" and we again requested interested parties to propose viable alternative methodologies for assessment of AM and FM fees. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-153, ¶ 20-21 (April 9, 1996). See 61 FR 18432 (April 15, 1996). In response, Montana filed comments proposing an AM and FM fee structure based on class of station and on market size. We received no comments addressing Montana's proposal. However, following our own review of the proposal, we decided not to take any action until we had an opportunity to more extensively evaluate the impact of

Montana's proposal on AM and FM licensees through a Notice of Inquiry. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-295, ¶¶ 23-29, July 5, 1996, 61 FR 36629 (July 12, 1996).

III. The Montana Proposal

4. Montana's proposed methodology utilizes broad groupings of radio markets determined by Arbitron market size, with the fee for each market grouping predicated on the ratios that Congress initially established in section 9(g) of the Act (47 U.S.C. 159(g)) for

assessing fees for licensees of television stations serving different sized markets. Montana proposes four specific radio market classifications: Markets 1 through 25; Markets 26-50; Markets 51-100; and Remaining Markets. Montana's proposal assigns stations to each market grouping based upon Arbitron market designations and relies on an analysis of broadcast markets prepared by Dataworld MediaXpert Service which groups radio stations by class of station within a particular market size. It then calculates the fees for stations in different markets utilizing the ratios

between the fees for television markets in section 9(g). Montana argues that its proposal is more equitable than the groupings based on class of station relied on by the Commission, because under its proposal stations in smaller markets would pay lower fees than stations serving more populous markets.

5. In order to collect the total aggregate fees to be recovered from AM and FM radio stations as proposed in the FY 1995 NPRM, Montana's proposed methodology would have allocated fees among radio stations as follows:

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I ¹	FM Class II ²
1-25	\$2,890	\$1,710	\$845	\$315	\$2,890	\$1,940
26-50	2,040	1,140	455	575	2,040	1,370
51-100	1,350	760	305	385	1,350	910
Remaining	850	475	190	240	850	570

¹ Class I includes FM Classes C, C1, C2 and B.

² Class II includes FM Classes A, B1 and C3.

6. However, subsequent to the filing of Montana's proposal, Congress increased the aggregate amount of fees to be recovered by the Commission and amended the Commission's regulatory fee schedule for television stations to increase the fees paid by licensees in larger markets and to reduce the fees

paid by licensees located in Markets 51-100 and the Remaining Markets. Public Law No. 104-134. See Assessment Collection of Regulatory Fees for Fiscal Year 1996, *supra* at ¶ 14. This substantially changed the ratios between the fees for television stations in different sized markets used by Montana

to compute its proposed radio fees. Substituting the actual ratios between the regulatory fees for television stations in different sized markets for the old ratios utilized in Montana's proposal, would have produced the following radio fees for FY 1996:³

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I ⁴	FM Class II ⁵
1-25	\$11,500	\$6,325	\$2,575	\$3,150	\$4,875	\$3,250
26-50	6,675	3,675	1,500	1,850	2,850	1,900
51-100	3,550	1,975	800	980	1,525	1,000
Remaining	1,000	555	225	275	430	285

⁴ Class I includes FM Classes C, C1, C2 and B.

⁵ Class II includes FM Classes A, B1 and C3.

7. The above fees illustrate the impact of the Montana proposal when the changes mandated by Congress to the Regulatory Fee Schedule are considered. We are particularly concerned about the size of the increases in larger markets which, in addition to having more potential listeners, have greater concentrations of stations, thereby increasing the competition for listeners in those markets. Moreover, the accuracy of both sets of calculations are predicated on assumptions that the total aggregate amount of fees to be collected remains unchanged, that the revenue requirement allocated to all broadcast licensees remains unchanged, and that there are no changes in the numbers and classes of licensees subject to broadcast

fees. The calculations presented herein are illustrative only, because the fees are predicated on assumptions that may not re-occur in FY 1997. A change in any or all three of these factors, would result in individual fees different than those illustrated in paragraph 6.

IV. Conclusion

8. As discussed above, we intend to explore in this proceeding whether, in FY 1997, the regulatory fee schedule for AM and FM radio stations should be modified to take into consideration market size. Any such alternative fee schedule that we might propose would be subject to public comment in our proceeding to establish fees for FY 1997. To assist our efforts, we invite public

comment on the Montana proposal or on proposed alternative methods for assessing regulatory fees for the AM and FM radio services.

V. Procedural Matters

9. Accordingly, the Commission adopts this Notice of Inquiry pursuant to authority contained in Sections 4 (i) and (j), 9, 303(r), and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 154 (i) and (j), 9, 303(r), and 403.

10. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.4129 of the Commission's rules, 47 CFR 1.423 and 1.419, interested parties may file comments on or before December 23, 1996 and reply comments

³ By contrast, according to the FY 1996 Schedule of Regulatory Fees, AM class A stations are assessed a fee of \$1,250; Class B stations \$690; Class C

stations \$280; and Class D stations \$345. Similarly, FM Class C, C1, C2 and B stations (Montana's FM Class I) are assessed a fee of \$1,250; and FM Class

A, B1 and C3 stations (Montana's FM Class II) a fee of \$830.

on or before January 6, 1997. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must submit an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office

of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239, 1919 M Street, NW., Washington, DC 20554), of the Federal Communications Commission.

11. This Notice of Inquiry is exempt from restrictions on *ex parte* presentations. See 47 CFR 1.1204(a)(4).

12. Further information on this proceeding may be obtained by

contacting Jerome D. Remson (202-418-1755), Office of the General Counsel, or Terry Johnson (202-418-0445, Office of the Managing Director.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Catena,

Acting Secretary.

[FR Doc. 96-29675 Filed 11-21-96; 8:45 am]

BILLING CODE 4710-01-P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

California Spotted Owl Advisory Committee

AGENCY: Office of the Secretary, USDA.
ACTION: Notice; establishment and request for nominations.

SUMMARY: The Secretary of Agriculture is establishing an advisory committee to review a preliminary revised Draft Environmental Impact Statement for Managing California Spotted Owl Habitat in the Sierra Nevada National Forests of California. The Advisory Committee's final report is due to the Secretary of Agriculture no later than September 30, 1997. Nominations of persons to serve on the Advisory Committee are invited.

DATES: Nominations for membership on the Committee must be received in writing by December 9, 1996.

ADDRESSES: Send nominations for membership on the Committee to the Director, Land Management Planning, MAIL STOP 1104, Forest Service, P.O. Box 96090, Washington, DC 20090-0000.

FOR FURTHER INFORMATION CONTACT: Jonathan Stephens, Land Management Planning Staff, Forest Service, telephone: (202) 205-0948.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to establish a California Spotted Owl Federal Advisory Committee (Committee). The purpose of the Advisory Committee is to review and evaluate the preliminary revised Draft Environmental Impact Statement (DEIS) and make recommendations on how the DEIS integrates the information recently published in the Sierra Nevada Ecosystem Project Report (SNEP) with the forest planning alternatives. The Committee will also examine the

planning models, assumptions, analytical processes, and statistical treatment of information used to develop and support management actions in the preliminary revised DEIS. In addition, the Committee will review other scientific information brought to the Committee's attention that may pertain to the management of National Forest System lands in the Sierra Nevada ecosystem. The Committee will make recommendations to the Secretary on additional analysis and how the Forest Service should proceed regarding the release of a revised DEIS for public comment.

The Secretary has determined that the work of the Advisory Committee is in the public interest and relevant to the duties of the Department of Agriculture.

Membership in the Committee will consist of individuals with the scientific and analytical expertise in the areas of the California Spotted Owl, the Sierra Nevada ecosystem, silviculture, fire ecology, aquatic ecology, fur-bearers, cumulative effects, and other areas necessary to represent all aspects of resource management. Representatives from the Forest Service team which has prepared the preliminary revised DEIS, as well as other Forest Service resource specialists and scientists, will be available to serve as consultants to facilitate review. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Advisory Committee.

Appointments to the Advisory Committee will be made by the Secretary of Agriculture. Equal opportunity practices will be followed in all appointments to the Advisory Committee. To ensure that the recommendations of the Advisory Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: November 18, 1996.
Wardell C. Townsend, Jr.,
Assistant Secretary for Administration.
[FR Doc. 96-29924 Filed 11-21-96; 8:45 am]
BILLING CODE 3410-11-M

Federal Register

Vol. 61, No. 227

Friday, November 22, 1996

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
EFFECTIVE DATE: December 23, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On September 20 and 27, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 49435 and 50804) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Pillow, Bed
7210-01-395-7921

Services

Administrative Services, Social Security Administration, Active Files Unit, Philadelphia, Pennsylvania
Grounds Maintenance for the following Washington, DC locations: USDA Administration Building, 14th & Jefferson Drive, SW, USDA South Building and Auditors Building, 14th & Independence Avenue, SW, USDA Annex Building, 12th & C Streets, SW
Janitorial/Custodial, James River Reserve Fleet Buildings, Admin Building 2606 and Tech Support Building, Fort Eustis, Virginia
Recycling Service, Naval Surface Warfare Center, Bethesda, Maryland.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 96-29946 Filed 11-21-96; 8:45 am]
BILLING CODE 5993-01-P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
COMMENTS MUST BE RECEIVED ON OR BEFORE: December 23, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its

purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies (Requirements for Shaw Air Force Base, South Carolina)

NPA: Lion's Club Industries, Inc., Durham, North Carolina

Envelope, Translucent

7530-01-354-2327

7530-01-354-3982

7530-01-354-3983

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Services

Administrative Services, Poff Federal Building and Courthouse, 210 Franklin Road, SW, Roanoke, Virginia
NPA: Goodwill Industries of Tinker Mountain, Inc., Salem, Virginia

Food Service Attendant, West Virginia Air National Guard, Charleston, West Virginia,

NPA: Goodwill Industries of Kanawha Valley, Charleston, West Virginia

Grounds Maintenance, Camp Lejeune, Main Gate and Holcomb Boulevard, Jacksonville, North Carolina,

NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina

Janitorial/Custodial, VA Connecticut Healthcare System; Newington Campus, Newington, Connecticut,

NPA: CW Resources, Inc., New Britain, Connecticut

Operation of Central Issue Facility, Fort Drum, New York,

NPA: Jefferson County Chapter, NYSARC, Watertown, New York.

Beverly L. Milkman,
Executive Director.

[FR Doc. 96-29947 Filed 11-21-96; 8:45 am]
BILLING CODE 5993-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 57-96)

Foreign-Trade Zone 189—Muskegon, Michigan; Application for Subzone Status, ESCO Company Limited Partnership (Colorformer Chemicals); Extension of Public Comment Period

The comment period for the above case, requesting special-purpose subzone status for the colorformer chemicals manufacturing facility of ESCO Company Limited Partnership (ESCO) (jointly owned by Mitsui Toatsu Chemicals and Yamamoto Chemicals (Japan)), in Muskegon, Michigan (61 FR 38137, 7/23/96) is further extended to January 21, 1996, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 15, 1996.

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 96-29937 Filed 11-21-96; 8:45 am]

BILLING CODE 3510-06-P

International Trade Administration

[A-580-305]

Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On May 24, 1996, the Department of Commerce (the Department) published a notice of preliminary results of administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (49 FR 18336, April 30, 1984). The review covers one manufacturer/exporter of the subject merchandise and the period April 1, 1994, through March 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results of review. Based on our analysis of the comments received, we have not changed our analysis for the final results from that presented in the preliminary results of review.

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1995, Samsung Electronics Co., Ltd. and its U.S. subsidiary, Samsung Electronics America, Inc. (collectively Samsung) requested an administrative review and partial revocation of the antidumping duty order on CTVs from Korea. The Department initiated the review on May 15, 1995 (60 FR 25885), covering the period April 1, 1994, through March 31, 1995 (the twelfth review). On May 24, 1996, the Department published the preliminary results of review (61 FR 28158). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930 (the Act).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round

Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.08, 8528.10.11, 8528.10.13, 8528.10.17, 8528.10.19, 8528.10.24, 8528.10.28, 8528.10.34, 8528.10.38, 8528.10.44, 8528.10.48, 8528.10.54, 8528.10.58, 8528.10.61, 8528.10.63, 8528.10.67, 8528.10.69, 8528.10.71, 8528.10.73, 8528.10.77, 8528.10.79, 8529.90.03, 8529.90.06, and 8540.11.10 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheadings are provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1994, through March 31, 1995.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Samsung and from the International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL-CIO, and the Industrial Union Department, AFL-CIO (the Petitioners).

Comment 1

Samsung argues that the Department's policy, which precludes revocation when one or more periods of no shipments follows three or more periods of no dumping, is not in accordance with the Department's past practice, the antidumping statute (i.e., the Act), or the Department's regulations.

With regard to the Department's past practice, Samsung argues that the Department's decision to deny Samsung's revocation request contradicts its decision in a prior case. Specifically, Samsung argues that the Department has granted a respondent's revocation request even though it was filed in an administrative review period during which the respondent made no shipments to the United States. See, *Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Review*, 56 FR 5391 (February 11, 1991) (hereinafter

Elemental Sulphur from Canada). Samsung contends that the fact that the respondent in *Elemental Sulphur from Canada* filed revocation requests in previous reviews in which it made shipments is not a sufficiently distinguishing factor. Samsung asserts that because the situation here is indistinguishable from the situation in *Elemental Sulphur from Canada* it would be arbitrary and capricious for the Department to deny Samsung's revocation request.

With regard to the Act, Samsung asserts that the Act authorizes the Department to revoke an order after conducting an administrative review but that it does not limit a revocation request to a review in which shipments have occurred. Samsung refers to section 751(d) of the Act to support its claim.

With regard to the Department's regulations, Samsung states that the Department's regulations (specifically section 353.25(b)) do not mandate that a revocation request be filed in only the last year of the three-year period in which shipments to the United States have occurred, only that the request be filed during any anniversary month beginning with the anniversary month of the third consecutive review in which respondent had sales at not less than foreign market value. See section 353.25(b) of the Department's regulations. Samsung states that in accordance with the Department's regulations, it submitted the required certification attesting to the fact that it had not sold CTVs at less than foreign market value during the twelfth review. Samsung contends that the fact that it made no shipments inherently demonstrates that it did not sell CTVs at less than foreign market value during the twelfth administrative review.

Moreover, Samsung argues that according to section 353.25(b)(1) of the Department's regulations, the certification provision does not require that sales be made in the review period in which revocation was requested. Samsung asserts that the issue addressed by the Court of International Trade (CIT) in *Exportaciones Bochica/Floral v. United States*, 802 F. Supp. 447 (1992), *aff'd without opinion*, 996 F.2d 317 (Fed. Cir. 1993) (hereinafter *Bochica/Floral*) is distinguishable from this case. In *Bochica/Floral*, contends Samsung, the Court upheld the Department's interpretation that section 353.25(b) requires "that any revocation request be filed on the anniversary month of the order if it is to be considered in the review requested that month." (Emphasis added). Samsung argues that it did in fact request

revocation in the opportunity month for the twelfth review. Thus, Samsung asserts that *Bochica/Floral* does not control this case and does not prevent the Department from considering revocation in this review.

Samsung asserts that its claim that it did not have to file its revocation request during the anniversary month of the third year of sales at not less than foreign market value is supported by the CIT's differentiation between mandatory and directory statutes. Samsung argues that the CIT has stated that deadlines are usually directory if no limits are affirmatively imposed on the doing of the act after the time specified and no adverse consequences are imposed for delay. See *Kemira Fibres Oy v. United States*, 858 F. Supp. 229 (1994) (hereinafter *Kemira Fibres Oy*). In contrast, Samsung states, where a regulation uses the mandatory term "will", as, for example, in the sunset provision of section 353.25(d)(4), it is clear that failure to comply with the regulatory requirements will result in certain consequences. *Kemira Fibres Oy* at 234. Samsung argues that section 353.25(b) does not impose any time limit on the Department's ability to consider a request to revoke an antidumping duty order which is filed after the three-year base period. Thus, Samsung asserts that nothing in section 353.25(b) prevents a party from submitting a revocation request based on the absence of dumping in prior reviews. Additionally, Samsung argues that section 353.25 (b) does not impose any adverse consequences for waiting to request revocation and, therefore, by the CIT's definition, section 353.25(b) is merely directory, rather than mandatory.

Samsung then argues that it would have requested revocation during the anniversary month of the eighth review, the last review in which Samsung had shipments of CTVs from Korea to the United States, but that the Department's failure to at least publish the preliminary results of review for the sixth and seventh reviews prevented it from doing so. Samsung contends that the regulatory framework and the Department's practice assumes that the reviews for the first two of the three-year base period for qualifying for revocation has been completed or have at least reached the preliminary determination stage. Samsung refers to *Fresh Cut Flowers from Mexico*, 61 FR 28166 (June 4, 1996); *Roller Chain, Other Than Bicycle, from Japan*, 61 FR 28168 (June 4, 1996); *Brass Sheet and Strip from Germany*, 61 FR 20214 (May 6, 1996) to support its claim. Samsung further argues that since the Department

had not published the preliminary results of review by the anniversary month of the eighth review period, the Department should waive its policy of requiring respondents to request revocation during the anniversary month of the third consecutive year of sales at not less than foreign market value. Samsung asserts that waiver of the regulatory requirements is necessary when failure to do so would lead to inequitable results and refers to *Brass Sheet and Strip from France*, 52 FR 812 (1987); *Cold-Rolled Carbon Steel Flat Products from Austria*, 58 FR 37082 (July 9, 1993); *Certain Granite Products from Spain*, 53 FR 24335 (June 28, 1988); *Sugar and Syrups from Canada*, 46 FR 27985 (May 22, 1981); *Cemex, S.A. v. United States*, 1995 CIT Lexis 109, Slip Op. 95-72 (CIT 1995). According to Samsung: (1) the Department has waived deadlines under indistinguishable circumstances (see, *Carton Closing Staples and Stapling Machines from Sweden*, 57 FR 4596 (February 6, 1992)); and (2) the CIT has noted that where the Department is at fault for a party's non-compliance, it must carry the burden of remedying the situation. See *Kemira Fibres Oy* at 235. Samsung further asserts that since the deadline here is directory, not mandatory (as explained earlier), the case for waiver is even more compelling.

Samsung then argues that it would have been fruitless for it to submit a revocation request without the required certification for the twelfth review and that it could not file the required certification since it could not do so on a good faith factual basis. Samsung argues that section 353.25(b) of the Department's regulations requires that a respondent's certification of no shipments at less than foreign market value for the current review period and the two preceding review periods be founded on a good faith factual basis. Samsung states that given the uncertainty of pending reviews it could not form a good faith belief that it had an adequate factual basis to predict de minimis margins in the sixth and seventh reviews (i.e., the Court of Appeals for the Federal Circuit (the Federal Circuit) had before it several precedent-setting issues relating to the first review that would significantly affect the results of all subsequent reviews (the Federal Circuit issued its decision on September 30, 1993 (see *Daewoo Electronics Co., Ltd., et al. v. United States*, 6 F.3d 1511 (Fed. Cir. 1993) (hereinafter *Daewoo*)) and litigation on the fifth and sixth reviews was pending before the CIT). Samsung

contends that the Department has: (1) Acknowledged that a respondent must reasonably believe that a basis for revocation exists before it may file a revocation request (see *Color Television Receivers from the Republic of Korea; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review*, 60 FR 9006, 9007 (February 16, 1995)); and (2) recognized that parties cannot be required to comply with regulatory deadlines when they lack the information to make a good faith claim. See *Television Receivers, Monochrome and Color, from Japan*, 56 FR 5392 (February 11, 1991).

Samsung also claims that the Department has violated Article 11 of the GATT Antidumping Code (the Antidumping Agreement) by continuing to impose duties despite the absence of dumping and by failing to self-initiate a revocation proceeding. Samsung argues that the Antidumping Agreement imposes only two restrictions on the Department's obligation to consider revocation requests: (1) Consideration of a request must be warranted and (2) the requesting party must provide the Department with evidence supporting its claim that the order is no longer needed to protect the domestic industry. Samsung argues that both conditions have been satisfied since it has demonstrated six consecutive years of no dumping and certified that it would agree to the immediate reinstatement of the order if it were found to have sold CTVs at less than foreign market value in the future.

Samsung further claims that because Article 11.1 of the Antidumping Agreement provides that "[a]n anti-dumping order shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury," the Department's failure to self-initiate a revocation review violated the Antidumping Agreement. Samsung states that the Department's initiation of a changed circumstances review constitutes a recognition of the Department's Article 11 obligations. Samsung cites to *Color Television Receivers From the Republic of Korea: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Consideration of Revocation of the Order (in Part)*, 61 FR 32426 (June 24, 1996) in support of its claim.

Samsung argues that because this case is still at the preliminary stage, there is ample time for the Department to consider Samsung's revocation request and, if necessary, conduct a verification. Therefore, contends Samsung, neither the Department nor any interested party

will be prejudiced by the Department's consideration of Samsung's revocation request. Moreover, argues Samsung, no party will be prejudiced by the partial revocation of the antidumping order since Samsung has demonstrated six years of no dumping.

Finally, Samsung argues that the Department's continuation of the order will have the effect of punishing Samsung for the Department's failure to comply with its regulatory deadlines. Samsung contends that this violates the Federal Circuit's finding that "[t]he antidumping duty laws are intended to be remedial, not punitive" as specified in *NTN Bearing Corporation*, 74 F.3d at 1208.

Petitioners disagree with Samsung's assertion that the Department's policy, which precludes revocation when one or more periods of no shipments follows three or more periods of no dumping, is not in accordance with the Department's past practice or the Department's regulations.

With regard to the Department's past practice, Petitioners assert that Samsung's reliance on *Elemental Sulphur from Canada* to define the Department's practice with regard to revocation is wrong. Petitioners contend that the Department's decision in *Elemental Sulphur from Canada* was a significant departure from the Department's regulations and from the Department's established practice of basing revocation of an order on the absence of dumping rather than the absence of shipments. Petitioners claim that the Department's regulations and its discussion of those regulations make clear that revocation under section 353.25(a) cannot be based on the absence of shipments. Rather, Petitioners assert that revocation must be based on an absence of dumping. Petitioners state that in this case, Samsung had no shipments during the twelfth review and, therefore, failed to meet the requirements of the Department's revocation regulations. Petitioners, citing to *Atochem v. United States*, 809 F. Supp. 319, 321, n.5 (1985), note that in certain instances when revocation has not been opposed by any interested party, the Department has taken a "short-cut" approach to revocation. Petitioners state that in those circumstances the Department has apparently taken the view that when the order is no longer of interest to the domestic interested party, certain revocation requests should be treated as a kind of hybrid revocation request that combines the absence of dumping with the lack of interest by the domestic industry and has accorded revocation.

Petitioners assert that Samsung's claim that the Department's regulations do not require that respondent seek revocation of an order during the anniversary month of the third consecutive year of sales at not less than foreign market value (i.e., that respondent can seek revocation anytime after it has established three consecutive years of no dumping) is wrong for several reasons. First, it ignores the plain language of the regulations (section 353.25(b)) which requires a respondent to certify that it did not sell at less than foreign market value in the current review period. Second, Petitioners contend that the goal of the regulations is to ensure that respondents have altered their unfair pricing practices and are not likely to dump in the future. This goal, Petitioners assert, cannot be satisfied simply because a respondent can demonstrate that it did not dump five years earlier and thereafter decided to stop shipping. Moreover, as stated in the preamble to the Department's regulations (*Antidumping Duties; Final Rule*, 54 FR 12742, 12758 (March 28, 1989)), the absence of shipments is an unreliable indicator of whether a respondent is likely to dump in the future. Petitioners contend that if the Department had intended to allow respondents to obtain revocation after three prior, consecutive years of no dumping followed by an indeterminate period of no shipments, the regulations would have included such a provision. Rather, Petitioners assert that the regulations were revised with the express purpose of ensuring that periods of no shipments would not be included in the Department's decision whether to revoke an order under section 353.25(a). Third, Petitioners contend that Samsung's argument ignores the requirements imposed by the Court in *Freeport Minerals Co. v. United States*, 776 F.2d 1029 (Fed. Cir. 1985), and companion cases that require that revocation be based on current data. See *PPG Industries, Inc. v. United States*, 702 F. Supp. 914 (1988); *Matsushita Electric Industrial Co. v. United States*, 688 F. Supp. 617 (1988) *aff'd*, 861 F.2d 257 (Fed. Cir. 1988). Lastly, Petitioners disagree with Samsung's assertion that there is no deadline for submitting a revocation request since the Department's regulations are directory rather than mandatory. Petitioners assert that Samsung's efforts to compare the situation that exists in this case to other cases involving timing requirements and deadlines are clearly in error. Petitioners argue that the requirement that a respondent must have shipments

during the POR to qualify for revocation is not a deadline or timing requirement. Rather, Petitioners claim that it is a substantive requirement of the regulations and the Department must follow its regulations. See *Torrington Company v. United States*, 82 F.3d 1039 (Fed. Cir. 1996); *Chang Tieh v. United States*, 840 F. Supp. 141, 149 (1993).

With regard to Samsung's argument that the Department should waive the requirement of the revocation regulations because Samsung was unable to request revocation in the eighth review, Petitioners state that the timing of events and the actions taken by the Department in prior reviews have no impact on whether Samsung can meet the requirements of revocation in this administrative review. In this review, Petitioners assert that Samsung had no shipments. Since the regulations do not permit the Department to base revocation on the absence of shipments, Samsung has failed to meet the requirements for revocation.

Petitioners argue that contrary to Samsung's assertion, under the law that was in effect at the time of the eighth review, the Department was under no obligation to complete administrative reviews in a twelve-month time frame. See *Nissan Motor Corporation in U.S.A. v. United States*, 651 F. Supp. 1450, 1455 (1986). Consequently, Petitioners argue that Samsung's contention that the Department is under an obligation to carry the burden of remedying the situation is unfounded.

Additionally, Petitioners claim that nothing prevented Samsung from requesting revocation in the eighth review. Petitioners assert that at the time of the initiation of the eighth review, while the final results of the sixth and seventh reviews were still pending, Samsung had received *de minimis* margins in the fourth and fifth reviews. Furthermore, in the final results of the fifth review, the Department made clear that it was not following the CIT's decision in *Daewoo* since it had not had an opportunity to appeal those cases and was instead following its standard practice for calculating the adjustment for the commodity tax. See *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 12701 (March 27, 1991). Petitioners argue that based on the results in the fourth and fifth reviews coupled with the knowledge that the Department did not intend to follow the Court's decision in *Daewoo* until it had an opportunity to appeal the decisions to the Federal Circuit, Samsung could have properly certified that it would have no sales at

less than foreign market value in the eighth review and sought revocation based on the Department's practice as it existed in April 1991. Accordingly, Petitioners conclude that Samsung's attempts to lay blame on the Department for its own failure to request revocation in the eighth review must fail.

Petitioners assert that the Department's decision not to grant Samsung's request for revocation is consistent with the World Trade Organization's (WTO's) Antidumping Agreement. Petitioners argue that the Department's requirements for revocation of at least three consecutive years of no dumping, with reliance on current data, and with no likelihood of a resumption of dumping, are compatible with Article 11's direction that an antidumping duty order should remain in force only as necessary to offset injurious dumping and shall be terminated as soon as the member country's authorities determine that the order is no longer warranted in their judgment. Petitioners contend that the Department's withholding of revocation from Samsung would be upheld by any WTO dispute settlement panel convened under Article 17 of the Antidumping Agreement as a permissible interpretation of the Antidumping Agreement.

Lastly, Petitioners argue that Samsung's assertion that no party would be prejudiced by the partial revocation of the order is untrue. Petitioners assert that in the absence of any showing that Samsung has actually altered its pricing practices to stop dumping and that Samsung is not likely to dump in the future, the domestic industry would be seriously injured by revocation of the order. Furthermore, argue Petitioners, Samsung stopped shipping CTVs from Korea because it had begun to ship to the United States from facilities in Mexico and other countries. Petitioners state that the Department is currently investigating whether this constitutes circumvention (see *Color Television Receivers from Korea; Initiation of Antidumping Duty Order*, 61 FR 1339 (January 19, 1996)), and that the domestic industry would be prejudiced if the Department were to grant revocation in the twelfth review without first determining whether imports entering through Mexico are circumventing the order. According to Petitioners, however, whether Samsung is found to be circumventing the new law is not the only dispositive issue in this case. The absence of shipments does not mean that Samsung would not have dumped if it had been shipping during the most recent periods nor is it

any indication that it would not dump in the future if the order was revoked. Accordingly, the Department should continue to deny Samsung's request for revocation in its final results of review.

Department's Position

In this review, Samsung seeks to invoke the revocation procedure provided for in 19 CFR section 353.25(a), absent shipments of subject merchandise to the United States during the period of this administrative review. Under section 353.25(a)(2), the Department may revoke an order in part if (1) a producer "sold the [subject] merchandise at not less than foreign market value for a period of at least three consecutive years;" (2) it is not likely that the producer will in the future sell the merchandise at less than foreign market value; and (3) if the producer has previously sold the merchandise at less than foreign market value, it agrees to immediate reinstatement of the order if it is found that it sold the merchandise at less than foreign market value in the future (emphasis added). The procedures established for revocation provide for a respondent (1) to request revocation in writing during the third or subsequent anniversary month of the publication of the order, and submit with the request (2) the agreement, as needed, and (3) a certification that respondent "sold the merchandise at not less than foreign market value" during the period of the current review. Thus, the plain language of the regulations indicates that revocation must be based upon three years of sales at non-dumped prices; not on the absence of shipments.

Further, in promulgating the 1989 regulations, the Department made clear that revocation under section 353.25(a)(2) cannot be based upon an absence of shipments. As explained in the preamble to the final regulations, the Department specifically eliminated the regulatory language that allowed respondents to obtain revocation under that provision based upon no shipments and noted as follows:

In a departure from the Department's past practice, this rule does not provide for revocations based on a period of no shipments. It has been the Department's experience that the absence of shipments is no indication of the absence of price discrimination, which is the basis for revocation under this paragraph. In determining, however, whether an order should be revoked based on changed circumstances under paragraph (d), the Department may consider among other things periods of no shipments.

Antidumping Duties; Final Rule, 54 FR 12742, 12758; March 28, 1989 (emphasis added).

Therefore, contrary to Samsung's assertion, it is not the Department's practice, nor is it the intent of the regulations that periods of no shipments be used to satisfy the revocation requirements of section 353.25(a)(2) of the regulations.

Further, we disagree with Samsung's argument that the Department's regulations permit revocation requests to be filed without any further restrictions or conditions during any anniversary month beginning with the third anniversary month (i.e., that respondent could request revocation given three years of sales at not less than foreign market value followed by one or more years of no requests for reviews/no shipment reviews) and that this is supported by the CIT's distinction between mandatory and directory statutes.

In the Department's view, the 1989 amendment to the revocation regulation was also implemented to ensure that current data provide the basis for any revocation determination. The regulation requires that a respondent submit with its revocation request in the third or subsequent anniversary month a certification that:

the person sold the merchandise at not less than foreign market value during the period (under review).

Sections 353.25(b)(1) and 353.22(b) of the Department's regulations.

The requirement that the respondent certify for the current review period, together with the requirement that revocation be based upon three "consecutive years" of no dumping establishes a rolling three-year period (the current year and the two preceding years) that constitute the relevant period for revocation purposes. Thus, the Department interprets section 353.25(b) normally to require a producer or a reseller to submit its revocation request during the opportunity month for the administrative review which the respondent believes would establish its eligibility for revocation (the third year in the rolling period). This interpretation reflects the Department's concern that revocation determinations be based upon current data and is consistent with *Bochica/Floral*. See also, *Freeport Minerals Co. v. United States*, 776 F.2d 1029 (Fed. Cir. 1985) and *PPG Industries, Inc. v. United States*, 12 CIT 1189, 702 F. Supp. 914 (1988).

With respect to Samsung's contention that *Elemental Sulfur* represents the Department's practice on this issue, we

disagree. In that case, the foreign producer sought and received revocation during a period of no shipments (56 FR 5391). In the Department's view, *Elemental Sulfur* is an exception to the Department's standard practice. It is the only revocation granted in a no-shipments review following the promulgation of the 1989 regulations, as stated above. All other such requests were denied. See *Color Television Receivers, Except for Video Monitors, from Taiwan*, 56 FR 4148 (January 13, 1993); *Animal Glue and Inedible Gelatin from West Germany: Final Results of Antidumping Duty Administrative Review*, 54 FR 50791 (December 11, 1989); and *Carbon Steel Wire Rod from Argentina: Preliminary Results of Antidumping Duty Administrative Review*, 54 FR 27921 (July 3, 1989).

Moreover, the facts in *Elemental Sulfur* were significantly different from the present case. In *Elemental Sulfur*, the foreign producer which sought revocation had sales at not less than foreign market value in the three years immediately preceding the revocation review and made a timely request for revocation in the third consecutive year of sales at not less than foreign market value.

In contrast, Samsung has not had shipments of subject merchandise into the United States for a period of more than five years. In such a case the Department's concern about the lack of current data is more compelling. If the Department were to grant such a request, the revocation determination would be based solely upon data from more than five years ago. Further, unlike the respondent in *Elemental Sulfur* which filed a timely request for revocation in the third consecutive year of sales at less than foreign market value, Samsung has not done so in this case.

Moreover, in the present case, it is unnecessary for the Department to exercise the extraordinary discretion Samsung is requesting in this administrative review. Section 353.25(a) contains detailed criteria for revocation, resulting in limited agency discretion. In contrast, under section 353.25(d) the agency has broad discretion to revoke if it finds changed circumstances sufficient to warrant revocation. The discretion Samsung asks the Department to exercise is available under section 353.25(d) and, in fact, such a proceeding is underway. See, *Color Television Receivers from the Republic of Korea: Initiation of Changed Circumstances Review and Consideration of Revocation of Order (in Part)*, 61 FR 32426 (June 24, 1996).

The Department disagrees with Samsung's argument that the Department's failure to complete the sixth and seventh reviews in a timely fashion prevented Samsung from requesting revocation in the eighth review. The issue of Samsung's failure to request revocation in a timely fashion was thoroughly addressed by the Department in the sixth and seventh reviews. *Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 4408 (February 6, 1996). The Department incorporates by reference, its position in the sixth and seventh reviews in this review.

With respect to Samsung's contention that the Department has violated Article 11 of the Antidumping Agreement by continuing to impose duties despite the absence of dumping, and by failing to self-initiate a revocation proceeding, we disagree. The Antidumping Agreement recognizes each country's authority and responsibility to establish rules for the implementation of the Agreement. Article 11 of the Antidumping Agreement provides a broad directive concerning the parameters of the determination. Article 11.2 in part states:

If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

Antidumping Agreement at Article 11.2. In our view, the provisions of section 353.25 of the Department's regulations, which reflect the Department's longstanding practice, fully implement Article 11.2 of the Antidumping Agreement. The regulation is consistent with the broad discretion provided by the statute and reflected in the Antidumping Agreement.

Accordingly, the Department has determined not to revoke the antidumping duty order with regard to Samsung.

Final Results of Review

Based on our analysis of the comments received, we have determined, as we did in the preliminary results, to maintain Samsung's current cash deposit rate. This rate is zero percent, because the margin assigned to Samsung in the most recent final results of review in which it made shipments was a de minimis rate (0.47 percent).

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of

administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Samsung will remain zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) if neither the exporter nor manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 13.90 percent, the "all others" rate, as established in the original less-than-fair-value investigation (49 FR 18336).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 14, 1996.

Robert S. LaRocca,
Acting Assistant Secretary for Import
Administration.

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BILLING CODE 3510-06-P

[A-351-520]

Ferroilicon From Brazil: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

ACTION: Notice of Final Results of
Antidumping Duty Administrative
Review.

SUMMARY: On May 8, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on Ferroilicon from Brazil. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Companhia de Ferro Ligas da Bahia (Ferbasa), for the period August 16, 1993 through February 28, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised our calculations for these final results.

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT:
Wendy Frankel, Office of AD/CVD
Enforcement, Group II, Import
Administration, International Trade
Administration, U.S. Department of
Commerce, 14th Street and Constitution
Avenue, NW., Washington, DC 20230;
telephone: (202) 482-5849.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the *Federal Register* on May 11, 1995 (60 FR 25130).

Background

On May 8, 1996, the Department (the Department) published in the *Federal Register* (61 FR 20793) the preliminary results of its administrative review of

the antidumping duty order on ferroilicon from Brazil. The antidumping duty order on ferroilicon from Brazil was published March 14, 1994 (59 FR 11769). The review covers the period August 16, 1993 through February 28, 1995.

Scope of the Review

The merchandise subject to this review is ferroilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 98 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferroilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferroilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferroilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferroilicon found in a given shipment. Ferroilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferroilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferroilicon. Calcium silicon, ferrocalcium silicon, and magnesium ferroilicon are specifically excluded from the scope of this review.

Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferroilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferroilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Ferroilicon in the form of slag is included within the scope of this review

if it meets, in general, the chemical content definition stated above and is capable of being used as ferroilicon. Parties that believe their importations of slag do not meet these definitions should contact the Department and request a scope determination.

Analysis of Comments Received

We received case and rebuttal briefs from the petitioners, Aimcor and SKW Metals & Alloys, Inc. and from the respondent, Ferbasa. At the request of the petitioners, we held a hearing on June 26, 1996.

Comment 1: The petitioners argue that Brazil's economy was hyperinflationary during the period of review (POR). According to the petitioners, over the 18½ month POR the inflation rate in Brazil was 3,927 percent which greatly exceeds the Department's 60 percent threshold for determining if an economy is hyperinflationary. Petitioners agree with Ferbasa, however, that during the six-month period (September 1994 through February 1995) for which Ferbasa reported sales and cost data, inflation rates in Brazil were below the hyperinflationary levels. Notwithstanding this fact, petitioners argue that inflation rates in Brazil were between 38.86 percent and 44.78 percent per month during the preceding seven months, all of which are in the POR, and that Ferbasa's reported direct materials costs were distorted by this hyperinflation since the materials are inventoried and valued at the time of purchase, but not used in production until some later time.

Petitioners claim that respondent's own data shows that monthly inventory costs increased dramatically over the inflation rate for this period and thus demonstrates the resultant distortion. To eliminate the distortive effects of hyperinflation on Ferbasa's direct materials costs during the POR, the petitioners argue that for the final results, the Department should follow its established hyperinflationary economy practice of determining monthly costs of production (COP), constructed values (CV) and normal value (NV).

Citing the *Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil*, 56 FR 26,979 (June 12, 1991) (*Silicon Metal from Brazil, LTFV*), the petitioners contend that the Department should follow its established practice and use replacement costs rather than historical costs when evaluating dumping from a hyperinflationary economy.

Ferbasa asserts that in its April 10, 1996 submission it provided substantial evidence to support its contention that

Brazil was not a hyperinflationary economy during the relevant portion of this review period. Citing petitioners' June 10, 1996, case brief (p. 29), Ferbasa notes that petitioners acknowledged that Brazil's economy was not hyperinflationary during the six months for which Ferbasa reported home market sales and cost data. Ferbasa argues that for these reasons the Department should continue to use six-month weighted average costs for the final results of review.

Department's Position: Petitioners seek to invoke the Department's practice in hyperinflationary economies, which calls for the use of replacement costs in calculating the cost of production. This methodology recognizes that in a hyperinflationary economy it is not useful to evaluate operating results and financial position in the local currency without restatement. Money loses purchasing power at such a rate that comparison of amounts from transactions and other events occurring at different times is misleading. In cases where the respondent experiences hyperinflation in the comparison market during the period of review (POR), the Department requires that the respondent report current costs for the calculation of COP and CV. This methodology entails valuing any materials used to produce the subject merchandise at the average purchase price of those materials during the month of consumption (i.e., the normal inventory value of raw materials is replaced by the average purchase price for the month in which the materials were consumed). Labor and overhead costs are reported at the actual monthly amount incurred during the month of shipment. See *Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela*, 59 FR 55,437, 55441 (November 7, 1994); *Final Determination of Sales at Less Than Fair Value: Nitrocellulose from Yugoslavia*, 55 FR 34,946 (August 27, 1990) and *Tubeless Steel Disc Wheels from Brazil* 52 FR 6947 (March 20, 1987).

In the present case, the sales at issue occurred during the last six months of the review period (i.e., September 1, 1994 through February 28, 1995). The Brazilian economy experienced significant inflation from September 1993 through June 1994. However, based on our examination of the annualized rate of inflation for September 1994 through February 1995, we have determined that there was no hyperinflation during this time, as the annualized rate of inflation for this six-month period was less than 20 percent. Petitioners' arguments that raw

materials consumed during the segment of the review period where costs are calculated may have been purchased during a period of hyperinflation is speculative and not supported by facts on the record of this case. The home market sales in question occurred fully two months after the period of hyperinflation ended. We concluded that, based upon the company's inventory turnover rate of approximately one month, Ferbasa produced ferrosilicon for these sales at most approximately one month earlier (i.e., at a time when the Brazilian economy was not hyperinflationary). Therefore, because the record supports the conclusion that sales in question were produced in a non-hyperinflationary period, we can reasonably conclude, absent evidence to the contrary, that the costs were not distorted by hyperinflation. Accordingly, consistent with the Department's policy, we have not applied a current cost methodology because hyperinflation did not affect the cost of the sales at issue. See the *Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico*, 61 FR 51676, 51681 (October 3, 1996).

Comment 2: The petitioners contend that Ferbasa failed to follow the Department's explicit instructions to report replacement costs for purposes of calculating COP and CV. The petitioners note that in its original cost response, Ferbasa stated that there were no differences between the costs maintained in Ferbasa's normal cost accounting and financial accounting system and the costs submitted to the Department. The petitioners further note that Ferbasa stated that the costs recorded in its accounting system are historical costs. According to the petitioners, Ferbasa stated that for purposes of reporting costs to the Department, it used a weighted-average monthly cost of inventory (that had not been adjusted for inflation) which the company explained "is essentially the weighted-average purchase price of each material at the time the material is placed in inventory." In other words the petitioners argue, Ferbasa reported historical material costs.

Although Ferbasa stated that it had reported materials costs on a replacement cost basis in its supplemental cost response, petitioners assert that the reported direct materials costs in that response were identical to the costs reported in the original cost response. Finally, petitioners contend that had Ferbasa reported replacement costs, such costs would be expected to

fluctuate at approximately the same rate as inflation; however, Ferbasa's reported materials costs did not appear to do this. Petitioners conclude, therefore, that Ferbasa did not report replacement costs.

Ferbasa contends that the monthly materials cost data provided in its COP responses reflect current material input prices for each month. Ferbasa states that the petitioners' contention that Ferbasa's monthly direct materials costs from September 1994 through February 1995 far exceeded the rate of inflation of 10 percent is misleading and deceptive. According to Ferbasa, the petitioners wrongfully based their contention on the total consumption value of direct materials used in the production of ferrosilicon as reported in Exhibit D-14 of Ferbasa's March 27, 1996, supplemental COP response. Ferbasa argues that the total consumption value of each material input reported therein depends on the quantity of the material input used in the production of ferrosilicon and reveals nothing regarding the average price of these materials in each month. Thus, Ferbasa contends that the petitioners' assertion is without basis and should be rejected outright.

Department's Position: The Department has determined not to treat Brazil as a hyperinflationary economy in this review and therefore it is not appropriate to use a replacement cost methodology for purposes of determining material costs. (See the Department's position with regard to Comment 1.) Thus, the failure to report replacement costs is moot because the information is not necessary.

With regard to the costs reported by Ferbasa in its questionnaire response, we note that Ferbasa has repeatedly stated that it reported costs directly from its internal books and records; these books and records are kept in a manner that is consistent with Brazilian generally accepted accounting principles (GAAP). It is established Department practice to accept costs taken directly from a respondent's accounting system when that system is in accordance with the foreign country's GAAP and it is clear that the figures reported do not distort the dumping calculations. See section 773(d)(1)(A) of the Act and the Statement of Administrative Action (H.R. Doc. No. 316, Vol. I, 103rd Congress, 2nd Sess. (1994)) (SAA), pp. 164-165. See also, *Finally Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30354 (June 14, 1996); *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Columbia*, 60 FR 6981 (February

6, 1995) (*Roses, LTFV*); *Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Pipe from Italy*, 60 FR 31961 (June 19, 1995); *Certain cut-to-length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13834 (March 28, 1996); and *Final Determination of Sales at Less Than Fair Value: Certain Canned Pineapple Fruit Thailand*, 60 FR 29553 (June 5, 1995).

Comment 3: According to the petitioners, Ferbasa repeatedly failed to comply with the Department's explicit and repeated instructions to prepare a worksheet reconciling the reported cost of manufacturing (COM) for ferrosilicon to its internal books and records. The petitioners argue that Ferbasa's failure to provide this reconciliation creates serious impediment to proper analysis of the validity of Ferbasa's reported costs.

Ferbasa contends that the petitioners' allegation results from a basic misunderstanding of Ferbasa's reporting methodology, since, as stated in its March 1, 1996 COP response, Ferbasa affirms that the COM reported to the Department in response to the dumping questionnaire reflects the values in its regular accounting records (i.e., the monthly inventory value and the reported monthly COMs of ferrosilicon are the same).

Department's Position: As we noted earlier, Ferbasa has stated in various earlier submissions that the cost figures reported to the Department directly reflect the costs recorded in its financial statements and thus no reconciliation is necessary since the values are the same. It is established Department practice to accept costs taken directly from a respondent's accounting system when that system is in accordance with the foreign country's GAAP and it is clear that the figures reported do not distort the dumping calculations. See the Department's Position with regard to Comment 2.

Comment 4: Citing section 776(a)(2) of the Act, the petitioners argue that the statute requires the Department to use the facts otherwise available "if an interested party * * * withholds information that has been requested [or] significantly impedes a proceeding." Citing *Sparklers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 15,464-5 (April 8, 1996), petitioners contend, moreover, that the statute codifies the Department's practice of applying an adverse inference in selecting from the facts otherwise available where a party has

"failed to cooperate by not acting to the best of its ability to comply with a request for information."

The petitioners contend that Ferbasa failed to comply with the Department's specific information requests and withheld necessary information available to it, thus significantly impeding this proceeding. More specifically, the petitioners contend that Ferbasa failed to provide: Materials replacement costs, a reconciliation of its reported costs to the inventory values in its normal books and records, supporting documentation for the reconciliation, and taxes on electricity. In addition, the petitioners assert that Ferbasa made misleading and conflicting statements regarding the basis of its reported costs. According to the petitioners, either Ferbasa did not report replacement costs, or did not provide the necessary reconciliation. Thus, petitioners conclude, under either scenario, there exists a fundamental deficiency in Ferbasa's response that "invalidates the reported data and prevents the Department from making a proper dumping margin calculation." (Petitioners brief at 15).

For these reasons, argue petitioners, the Department should find Ferbasa to be a noncooperative respondent and should establish a margin based on the total adverse facts available.

Ferbasa contends that the petitioners' assertion that the Department should find Ferbasa a noncooperative respondent and determine a dumping margin for Ferbasa based on the total adverse facts available is without basis and should be rejected outright. Ferbasa contends that it has fully cooperated with the Department by responding to all the instructions in the original and supplemental questionnaires in a timely manner. Finally, Ferbasa notes that its sales and cost of production responses contain detailed information which reconciles to its financial statements.

Department's Position: As noted in the Department's Position with regard to Comments 2 and 3, we do not agree with the petitioners' assertion that Ferbasa has failed to provide appropriate cost data. Nor do we agree that Ferbasa failed to comply with the Department's requests to a degree that results in a significant impediment to this proceeding. As discussed below, there are several items for which we do not have complete information on the record. Where this has occurred we have used the facts otherwise available to fill these minor gaps as stipulated by section 776(a)(2) of the Act. Because the gaps are not substantial and thus do not affect the integrity of the response to the missing items. In addition, we note that

these facts available insertions are non-adverse, as we did not find that Ferbasa "failed to cooperate by not acting to the best of its ability." See, *Final Determination of Sales at Less Than Fair Value: Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996).

We address the individual items for which we applied facts available in our discussions below in response to the comments raised by the respondent and the petitioners. However, because we used price-to-price comparisons for the preliminary results of review, neither party addressed the issue of profit for purposes of calculating CV. For profit, we used an alternative method under section 773(e)(2)(B)(iii) of the Act, because we had no information that would permit us to use any of the other alternatives under section 773(e)(2). We could not calculate the "profit cap" prescribed by section 773(e)(2)(B)(iii) based on sales for consumption in the "foreign country" of merchandise that is in the same general category of products as the subject merchandise because we had no such information. Instead, we applied section 773(e)(2)(B)(iii) on the basis of the facts available (section 776(b) of the Act). The only information available for these final results for Ferbasa was the profit realized by the respondent as shown in the company's 1994 fiscal year audited financial statement.

Comment 5: The petitioners contend that in the preliminary results the Department improperly added the imputed credit expenses that Ferbasa reported in its revised home market sales listing to Ferbasa's home market prices before using those prices in its sales-below-cost comparison test and in determining NV.

Petitioners assert that the Department calculates home market credit expenses solely for the purpose of making a circumstance-of-sale adjustment for differences between home market and U.S. prices relating to terms of payment; no imputed credit expense adjustment to home market price is made for comparison of home market prices to COP.

Petitioners note that, in the preliminary results analysis memorandum, the Department stated that Ferbasa's reported credit costs represent "upward adjustments to price that Ferbasa made when the payment terms of sale were in excess of 30 days," which should be included in the calculation of home market prices. However, petitioners also note that for sales with payment terms in excess of 30 days, Ferbasa charged its customers for late payment terms and included those charges in the reported prices.

Thus, petitioners argue, the Department should not add imputed credit expenses to home market prices for either the calculation of NV or for comparison of home market prices to COP.

Ferbasa contends that the Department incorrectly added an amount for credit expenses to the reported home market prices in its calculation of NV. Ferbasa suggests that the Department correct this error by subtracting the home market credit expense from the reported home market sales price in the calculation of NV.

Department's Position: We agree with petitioners and respondent that the Department inappropriately added credit expenses to home market prices for purposes of comparing home market prices to COP and calculating NV. For the preliminary results of review, we inaccurately concluded that the reported imputed home market credit expenses represented a charge by Ferbasa to its customers on sales with payment terms in excess of 30 days which should be added to home market prices. However, we have reviewed the record and determined that charges to customers with such payment terms were already included in the prices reported by Ferbasa.

We also agree with petitioners that no imputed expense adjustments are made to home market prices for comparison to COP. See the Department's March 25, 1994, Policy Bulletin 94.6 Treatment of adjustments and selling expenses in calculating the cost of production (COP) and constructed value (CV). Therefore, for these final results of review we have not added any home market credit expenses to home market sales prices in calculating NV or in comparing home market prices to COP.

Comment 6: The petitioners argue that it is inappropriate for the Department to calculate home market imputed credit expenses for Ferbasa using gross unit prices which are inclusive of credit revenues and ICMS and IPI taxes.

Petitioners state that since Ferbasa does not incur an opportunity cost with regard to late payment charges, such charges should not be included in the basis for the calculation of imputed credit expenses. Rather, the petitioners argue that imputed credit expenses should be calculated by applying the short-term borrowing rate to the period during which credit is extended to the purchaser against a price that is net of late payment charges.

Citing the *Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux From France* (Calcium Aluminate from France, LTFV), 58 FR 14,13,

14,139, 14,146 (March 25, 1994), petitioners maintain that with regard to taxes, it is the Department's established practice to exclude taxes from the prices used in calculating imputed credit expenses. Thus, for the final results, the petitioners contend that the Department should exclude the amounts Ferbasa charged its customers for granting late payments terms and the amount of ICMS and IPI taxes paid from the home market prices used to calculate home market imputed credit expenses.

Ferbasa argues that in the final results the Department should continue to use the actual home market credit expenses as reported in the questionnaire response. In addition, Ferbasa supports the Department's preliminary calculation of imputed credit expenses, noting that a seller incurs an opportunity cost with regard to the total sales prices of its merchandise.

Department's Position: We agree in part with both petitioners and respondent. Concerning the issue of taxes, we note that there is no statutory or regulatory basis for including these taxes in the calculation of the credit adjustment. See *Calcium Aluminate from France, LTFV*. While there may be an opportunity cost associated with extending credit on the payment of prices inclusive of taxes, that fact alone is not a sufficient basis for the Department to make an adjustment. We note that virtually every expenses associated with sales is paid for at some point after the cost is incurred. Accordingly, for each post-service payment, there is also an opportunity cost. Thus, to allow the type of adjustment suggested by respondent would imply that in the future the Department would be faced with the impossible task of trying to determine the opportunity cost of every freight charge, rebate, and selling expense for each sale reported. This exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department. See also, *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom*, 58 FR 3253 (January 8, 1993). With regard to late payment charges, we note that Ferbasa has stated that these charges reflect the amount actually paid by the customers as part of the invoice price. The Department calculates imputed credit expenses to capture the opportunity cost associated with not having received payment and not having the merchandise. The fact that the invoice price is increased when the payment terms are in excess of 30 days does not negate the fact of the

opportunity cost associated with the transaction.

Accordingly, we have recalculated home market imputed credit expenses by excluding only the ICMS and IPI taxes included in gross home market prices.

Comment 7: The petitioners note that when the Department performs an analysis of whether home markets sales were sold below cost, it compares home market prices and COP on an "apples-to-apples" basis. Accordingly, the Department either includes or excludes an item from both the COP and the home market prices used in the comparison. The petitioners contend, however, that the Department's preliminary results did not reflect this practice, because the home market prices used by the Department in the sales-below-cost comparison included ICMS and IPI taxes but the COP was exclusive of these same taxes. The petitioners, therefore, contend that the comparison was not an "apples-to-apples" basis.

To correct this error, petitioners assert that the Department should exclude the amount of these taxes from both the home market prices and the COP in the sales-below-cost test.

Department's Position: We agree with petitioners that the Department erroneously compared a tax-inclusive home market price to a tax-exclusive COP for purposes of determining sales below cost. In order to effectuate a fair comparison, it is the Department's practice to compare prices and COP on the same basis. As discussed in the March 25, 1994 policy bulletin 94.6, "[b]oth the net COP and the net home-market prices should be on the same basis * * * otherwise, the comparison would be distorted." Consequently, for these final results of review, we have corrected our calculations and have compared a tax-exclusive COP to tax-exclusive home market prices.

Comment 8: The petitioners contend that in reporting transfer prices for purchases of eucalyptus charcoal from affiliated companies, Ferbasa ignored the Department's instructions to "report the value of the actual eucalyptus charcoal consumed in production on the basis of actual costs of affiliated producers." The petitioners further contend that Ferbasa failed to respond to the Department's instructions to report the value of its iron ore purchased from affiliated producers on the basis of the prices charged for iron ore by unaffiliated suppliers.

The petitioners argue that these instructions are in accordance with Department practice and sections 773(f)(2) and (3) of the statute, which state

that if the transfer price of a major input "is less than the cost production of such input" the Department may determine the value of the input "on the basis of the * * * cost of production."

Instead, according to the petitioners, Ferbasa calculated two incorrect adjustments to all materials costs, based on ratios relating solely to costs and prices of eucalyptus charcoal and iron ore.

For the final results, the petitioners contend that the Department should calculate monthly weighted-average costs of eucalyptus charcoal based on the COP and volume of eucalyptus charcoal purchases from affiliated suppliers and the price and volume of eucalyptus charcoal purchases from unaffiliated suppliers.

To determine the cost of iron ore consumed by Ferbasa in each month, petitioners contend that the Department should: first, determine the total monthly consumption of iron ore by dividing the reported total value of iron ore used in ferrosilicon production by the weighted-average input price reported by Ferbasa for each month; second, multiply the resultant monthly consumption of iron ore by the weighted-average monthly price paid for iron ore from unaffiliated suppliers to derive the monthly total cost of iron ore; and third, divide this amount by the production quantity in the month to determine the per-unit cost of iron ore.

Ferbasa contends that the petitioners' comments reflect a basic misunderstanding of the methodology Ferbasa used to calculate its reported eucalyptus charcoal and iron ore costs. Ferbasa states that it has exhaustively explained its calculation methodology in its original and supplemental COP responses. Moreover, Ferbasa argues, the Department found this methodology reasonable and accepted it for its preliminary results. Ferbasa notes, however, that if the Department should decide in the alternative to recalculate the multipliers based on the "total volume" of charcoal eucalyptus and iron ore purchased from affiliated suppliers, it provided this information in Exhibits D-13 and D-15 of the supplemental COP response.

Department's Position: We agree with petitioners that Ferbasa initially misreported the material costs for eucalyptus charcoal and iron ore by partly relying on affiliated party transfer prices for these inputs that did not represent arms-length prices. We also agree that Ferbasa then inappropriately adjusted all materials costs by using multipliers based on purchases of eucalyptus charcoal and iron ore.

In accordance with sections 773(f)(2) and (3) of the Act, the Department's practice is to first test whether transfer prices between affiliated suppliers represent arms-length transactions. For major inputs we use the transfer price if it is shown to be at arms length and not below the cost of production; however, we use the affiliated supplier's cost of producing the input when the amount represented as the transfer price of such input is less than the cost of producing the input. See *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof; Whether Assembled or Unassembled from Japan*, 61 FR 38129, 38162 (July 23, 1996), and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 51882, 51887 (October 4, 1996).

After reviewing the information submitted by Ferbasa in its original and supplemental COP responses, we have determined that (1) the transfer prices from the affiliated supplier used by Ferbasa in its calculation of reported materials costs for eucalyptus charcoal were below the supplier's cost of producing that major input, and (2) the transfer prices from the affiliated supplier for iron ore were not representative of market prices for that product. Consequently, we have recalculated Ferbasa's reported material costs for eucalyptus charcoal and iron ore.

Ferbasa stated that its prior submissions to the Department contain information sufficient for the Department to recalculate the reported material costs for these inputs, if necessary. We note, however, that although Ferbasa did provide certain data, it did not provide all the necessary information for such a recalculation. With regard to eucalyptus charcoal, Ferbasa provided monthly purchase prices and quantities from unaffiliated suppliers and monthly purchase quantities and COPs for affiliated suppliers. Concerning iron ore, Ferbasa provided monthly purchase prices and quantities from unaffiliated suppliers and monthly purchase quantities from affiliated suppliers. However, Ferbasa did not provide monthly inventory quantities and values for either input. Since we are not calculating materials costs using a replacement cost methodology, we would need the inventory quantities and values in order to properly recalculate the cost of these materials consumed in the production of ferrosilicon during the six-month period of September 1994 through

February 1995. Thus, we are not able to calculate the actual cost of these two materials used in production during this six-month period. Therefore, we have used the facts otherwise available to determine the costs for eucalyptus charcoal and iron ore used in the production of the subject merchandise.

As the facts available, we have adjusted Ferbasa's eucalyptus charcoal costs by the monthly ratio of the affiliate's cost of producing this input to the weighted-average purchase price Ferbasa paid to affiliated and unaffiliated suppliers for the input as reported by Ferbasa in Appendix D-5 of its COP response. Similarly, we have adjusted Ferbasa's iron ore costs by the monthly ratio of average monthly purchase price charged by Ferbasa's unaffiliated supplier to the weighted-average purchase price Ferbasa paid to affiliated and unaffiliated suppliers for the input as reported by Ferbasa in Appendix D-15 of its supplemental COP response.

Comment 9: The petitioners contend that in calculating the selling, general and administrative (SG&A) expenses included in COP, the Department used Ferbasa's interim, unaudited and unconsolidated financial statement which covers only the first two months of 1995.

In addition, in determining interest expenses, petitioners contend that the Department divided the sum of Ferbasa's reported net financing expenses for the six-month period for which Ferbasa reported sales and cost data by the sum of the monthly cost of sales for that period. Thus, petitioners argue, by failing to calculate these ratios based on annual numbers, the Department has acted contrary to its established practice. Citing *Silicon Metal from Brazil, LTFV*, at 26,985, petitioners state that "G&A expenses are period costs which should be based on the annual period in which they were incurred," and claim the same is true for interest expenses. Moreover, according to petitioners, in calculating these ratios, Department practice requires use of a consolidated, audited financial statement for the fiscal year that most closely correlates to the POR. Petitioners conclude, therefore, that the Department should calculate the SG&A and interest expense ratios based on Ferbasa's 1994 audited financial statement since that period most closely approximates the six-month period for which Ferbasa provided sales and cost data.

Furthermore, petitioners emphasize that the Department should use the constant currency figures from the financial statement, which have been adjusted to eliminate the distortive

effects of hyperinflation experienced by Brazil during the first half of 1994.

Ferbasa argues that there are two basic flaws in petitioners' proposition that the Department should use the constant currency figures from the 1994 fiscal year (FY) audited financial statement. First, Ferbasa claims that the figures on the audited statement are the expenses of the consolidated company (Ferbasa and its subsidiaries) and second, the selling expense line item includes expenses such as freight charges and commissions for outside parties that are not related to the selling expenses incurred by Ferbasa.

Additionally, Ferbasa contends that in its COP calculations, the Department incorrectly used a two-month SG&A cost ratio provided in Ferbasa's September 21, 1995 questionnaire response. According to Ferbasa, for the final results of review, the Department should use the six-month (September 1994-February 1995) weighted-average SG&A ratio reported in the COP response. This would be consistent with the Department's use of six-month weighted-average COMs and financing expenses and the Department's determination that Brazil was not a hyperinflationary economy during this period.

Department's Position: We agree with petitioners that Department should use the annual consolidated income statement adjusted for inflation to determine the interest expense ratio. However, it is the Department's practice to base G&A expenses on the unconsolidated financial statement of the company. In this case, we have relied on the 1994 fiscal year unconsolidated audited financial statement to calculate G&A expenses, and the consolidated statement to determine the interest expense ratio. The Department's practice is to use the consolidated income statement for finance expenses because debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit. See *Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Reviews*, 59 FR 42,806 42,807 (August 19, 1994).

Since the value of the Brazilian currency changed significantly for the first half of 1994, costs which were incurred at the end of the year are not comparable to costs incurred at the beginning of the year. Without the application of indexing, the calculation of general expenses for periods of such significant inflation does not produce a meaningful result. To calculate a meaningful general expense amount, it is necessary to restate each month's

general expenses in equivalent terms, that is, the currency value at a given point in time, such as the end of the year. This procedure has already been accomplished and reported in the constant currency column in Ferbasa's income statement. As explained in *Doing Business in Brazil* (Price Waterhouse, 1994), constant currency amounts have been adjusted to price levels current at the balance sheet date. The constant currency column in the financial statement, which reflects an adjustment for the potentially distortive effects of inflation, offers a more accurate measure of Ferbasa's production costs. In an inflationary environment such as Brazil's during a portion of the POR, money loses its purchasing power at such a rate that unadjusted comparisons of transactions that have occurred at different times during the accounting year are misleading. As further described in *Doing Business in Brazil*, the constant currency financial statement is "used by corporate management to monitor and compare results of operations and by financial analysts to evaluate the performance of listed corporations."

Any financial statement which corrects for potential distortions, such as those caused by inflation, are preferable to financial statements which include such distortions.

Further, due to the periodic nature of such costs, we have followed the Department's established practice of calculating G&A and interest expenses using the annual audited income statement for the fiscal year covering the greatest part of the POR. See *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33,539, 33,549 (June 28, 1995) and *Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Steel Flat Products, Cold-Rolled Carbons Steel Flat Products, Corrosion-Resistant Carbon Steel Flat Products, and Cut-to-Length Carbon Steel Plate from Canada*, 58 FR 37105, 37133 (July 9, 1993). To calculate G&A and interest expenses for purposes of COP and CV in these final results, we have therefore used the constant currency values from the 1994 audited financial statement covering the greatest part of the period for which we are using price and other cost data.

With regard to the calculation of selling expenses for purposes of CV, in accordance with established Department practice, we have used the sale-specific selling expenses reported by Ferbasa in its response to the Department's sales questionnaire. See, Policy Bulletin 94.6, Treatment of adjustments and selling

expenses in calculating the cost of production (COP) and (CV).

Comment 10: The petitioners assert that in determining the net interest expenses to be included in COP and CV, it is the Department's established practice to reduce the amount of total interest expenses only by interest income from short-term investments derived from working capital. The petitioners further assert that if a respondent fails to demonstrate that its claimed offset is related solely to short-term income, the Department's practice is to disallow the claimed offset.

Petitioners allege that for this review, Ferbasa failed to demonstrate that its claimed offset was related to short-term interest income. Despite Ferbasa's acknowledgement that two of the six items that comprise its interest income category on the financial statement do not qualify as short-term interest income for purposes of dumping calculations, petitioners argue that Ferbasa failed to make an affirmative demonstration that the remaining four categories do relate solely to short-term interest income.

Thus, the petitioners conclude that the Department should not allow any offset for short-term interest income to the total interest expenses recorded in Ferbasa's financial statement.

Ferbasa opposes the petitioners' recommendation that the Department deny an offset adjustment to claimed interest expenses. In responding to petitioners' argument that it failed to adequately demonstrate that short-term nature of the four categories of interest income for which it claims an adjustment, Ferbasa claims that the four categories of income are related to interest income received from (1) savings or checking accounts, (2) late payments of customer accounts receivables, (3) short-term investment transactions, and (4) monetary correction of gains on receivables. Ferbasa emphasized that these four categories are all of a short-term nature. Accordingly, Ferbasa argues, the Department should continue to grant this adjustment for the final results of review.

Department's Position: The Department generally considers Ferbasa's response with regard to its calculation of interest expense to be in compliance with the statute and with the Department's questionnaire. In its March 27, 1996 supplemental COP response, Ferbasa provided a worksheet demonstrating its calculation of net interest expenses, specifically noting which categories of interest income are not derived from short-term investments and were therefore excluded from its calculation of net interest expenses.

There is no information on the record that would support petitioners' claim that Ferbasa overstated its short-term interest income and consequently understated its interest expense. However, in preparing its reported net interest expenses, Ferbasa used the historical cost figures from the consolidated 1994 fiscal year audited financial statement. As discussed in the Department's Position with regard to Comment 9 above, it is the Department's practice, when calculating general costs on an annual basis for an economy that experienced hyperinflation during that annual period, to rely on values reported on a constant currency basis. Therefore, it was necessary to recalculate Ferbasa's net interest expenses for these final results of review. Because Ferbasa's worksheet did not provide detail concerning short-term vs. long-term interest income based on the constant currency values recorded in its audited financial statements, the Department relied on the facts otherwise available to calculate a net interest expense ratio. As the facts otherwise available the Department (1) determined the ratio of short-term income to total interest income as provided based on the historical cost figures, and (2) applied this ratio to the total interest income value recorded in the constant currency portion of the financial statement to determine the short-term interest income offset to total interest expenses.

Comment 11: The petitioners argue that the Department erred in its calculation of COP by relying on Ferbasa's reported allocation of indirect expenses (consisting of fixed and variable factory overhead) over installed capacity. Petitioners contend that installed capacity is not an appropriate basis for allocating indirect expenses because it is a theoretical parameter that does not reflect the actual operations of a company.

The petitioners contend that Ferbasa reported final numbers already allocated to the production of ferrosilicon but failed to provide a worksheet that would explain how those expenses were allocated. In addition, petitioners suggest that information provided by Ferbasa on the record does not contain sufficient detail to allow the Department to properly allocate these expenses. Therefore, the petitioners conclude that the Department should resort to the facts otherwise available and determine an amount for indirect expenses by multiplying the sum of Ferbasa's reported monthly materials, labor, energy, and utility costs by the variable and fixed overhead ratio provided in the petitioners' sales-below-cost allegation.

Ferbasa contests petitioners' allegations that it did not properly report and allocate its indirect (variable and fixed factory overhead) expenses. Ferbasa claims that it provided itemized costs in its supplemental COP response and that those costs were incurred by the indirect cost centers related to the production of ferrosilicon. Finally, Ferbasa states that it has reported these costs in the same manner as they are allocated in its accounting system (i.e., on the basis of installed capacity) and in accordance with the provisions set forth in section 773(f)(1)(A) of the antidumping statute. In conclusion, Ferbasa argues that the Department should accept its reported allocation of these expenses for the final results of review.

Department's Position: The Department considers Ferbasa's response with regard to the calculation of fixed and variable factory overhead to be in accordance with the Department's questionnaire and the statute. Ferbasa reported these costs in the same manner in which it records them in its financial statement, which it maintains in accordance with Brazilian GAAP. As stated in the Department's Position to Comment 2, it is the Department's established practice to accept costs taken directly from a respondent's accounting system when that system is in accordance with the foreign country's GAAP and it is clear that the figures reported do not distort the dumping calculations. In its March 1, 1996, COP questionnaire response Ferbasa states that the per unit monthly variable and fixed overhead costs were calculated by dividing the total monthly costs by the total monthly quantity produced. Ferbasa further states that the production of ferrosilicon is a continuous process and that the company had no idle assets and incurred no expenses for idle equipment, closures or shutdowns during the POR. See pp. D-20, 25, and 34.

We agree with the petitioners that the Department does not normally accept installed capacity as an allocation factor for costs because it does not necessarily reflect the actual operations of the company. However, based on the information provided by Ferbasa, as discussed above, in this instance installed capacity does in fact reflect the operations of the company during this period. Therefore we have determined that Ferbasa's methodology is an acceptable allocation basis for these costs during this period.

Comment 12: Petitioners contend that in calculating CV the Department must include an amount for ICMS and IPI

taxes incurred on material inputs since the statute requires the inclusion of taxes that are not remitted or refunded upon exportation. See, section 773(e) of the Act.

The petitioners further contend that although the Department instructed Ferbasa to report the net per-unit amounts Ferbasa paid for all internal taxes imposed on purchases of direct materials used to produce ferrosilicon during the POR, Ferbasa only reported ranges of tax rates for ICMS and IPI taxes. Petitioners also argue that in calculating the monthly per-unit amounts incurred for ICMS and IPI taxes, Ferbasa inappropriately based its calculation on the total value of all raw materials purchased rather than on the value of raw materials consumed in the production of ferrosilicon during the POR. Petitioners conclude that this resulted in Ferbasa's reporting tax amounts that do not correspond to the cost of materials consumed.

Because Ferbasa failed to report the amount of taxes for material consumed, the petitioners urge the Department to resort to the facts otherwise available in the calculation of CV and apply the highest ICMS and IPI tax rates reported by Ferbasa of 17 and 15 percent, respectively.

Ferbasa argues that petitioners' contentions on this issue are without merit since the URAA explicitly amended the antidumping law to remove consumption taxes from NV and eliminate the addition of taxes to U.S. price in order to ensure that no consumption tax is included in either market's price (i.e., to achieve tax neutrality). Specifically, section 773(a)(6)(B) of the Act requires the Department to reduce NV by the amount of indirect taxes imposed on the foreign product or components thereof that have been rebated or not collected, to the extent that such taxes are added to or are in the price of the foreign like product. Ferbasa argues, as such, where CV is used as NV, the Department should not include consumption taxes in the NV.

Ferbasa also responds to petitioners' claim that Ferbasa's reporting methodology for calculating taxes is flawed and should be rejected. Ferbasa contends that it calculated the tax rates based on monthly purchases and then applied that rate to the value of monthly consumption in order to derive the reported monthly taxes associated with the production of ferrosilicon during the POR.

Department's Position: We agree with Ferbasa that it reported ICMS and IPI taxes in a manner that is in accordance with Department practice.

Further, we have determined that the ICMS and IPI taxes must be added to the CV of the product under review. Section 773(e) of the Act requires the deduction from CV of any internal taxes applicable directly to material inputs or their disposition which are remitted or refunded upon exportation of the subject merchandise. The ICMS and IPI taxes were paid on material inputs for the production of ferrosilicon by Ferbasa. In so far as Brazil does not rebate upon export the ICMS and IPI taxes paid on the inputs used in the production of finished ferrosilicon, the cost of those exports entering the United States must include the value-added taxes (VAT) which were paid on the inputs, regardless of when or how taxes are recovered on home market sales. It is important to note that indirect taxes such as those at issue here are properly viewed as being imposed upon and "borne by" the product, not the producer. Thus, the fact that a producer may recover the total taxes it paid by virtue of unrelated home market transactions is irrelevant to the question of whether the exported product continues to bear the tax burden. Therefore, the tax amounts must be added to CV to properly reflect the true costs and expenses borne by this product. See *Final Results of Antidumping Duty Administrative Reviews: Silicon Metal Brazil*, 61 FR 48783 (September 5, 1996).

Comment 13: Petitioners state that Ferbasa pays ICMS taxes on its purchases of electricity and that for purposes of calculating CV, such taxes should be included in the reported electricity costs. Petitioners argue that since Ferbasa failed to report these taxes in its submissions, the Department should apply the highest ICMS tax rate (i.e., 17 percent) as the facts otherwise available to calculate an amount of taxes incurred on electricity and incorporate this amount in the calculation of CV.

Department's Position: We agree with petitioners that ICMS taxes paid on electricity for the production of ferrosilicon must also be included in the CV of this product. See the *Department's Position* on Comment 12 above. Because Ferbasa did not provide any information with regard to its payment of taxes on electricity for the production of ferrosilicon, we have determined to use the facts available to fill this gap. Ferbasa reported that during the POR it paid ICMS taxes of up to 17 percent on material inputs. However, since Ferbasa did not provide specific data with regard to ICMS taxes paid on electricity, we have used publicly available data to fill the gap. Specifically, we used information

contained in Price Waterhouse's publication *Doing Business in Brazil*, July 1994, which shows that the intrastate ICMS rate applied to electricity was 18 percent. Therefore as the facts otherwise available, we have applied the 18 percent intrastate ICMS tax rate to the electricity costs reported by Ferbasa and included these figures in our calculation of CV.

Comment 14: Petitioners argue that in its calculations for the preliminary results, the Department used an incorrect exchange rate for converting amounts reported in Reais to U.S. dollars.

Department's Position: We agree with petitioners. The Department inadvertently used an inverted exchange rate for converting amounts reported in Reais to U.S. dollars. We have corrected this mistake for the final results of review.

Comment 15: Ferbasa contends that the Department incorrectly used the monthly interest rate reported in Ferbasa's September 21, 1995 submission for the calculation of Ferbasa's imputed home market credit expense. Ferbasa contends that the Department should have used the monthly interest rates reported in Ferbasa's December 1, 1995 supplemental sales response which reflect Ferbasa's actual short-term borrowings during the POR.

Department's Position: We disagree in part with Ferbasa. Although Ferbasa did provide revised monthly interest rates based on its actual short-term borrowings, we note that these rates were not calculated in accordance with accepted Department methodology. Ferbasa calculated the reported rate as a ratio of total monthly interest payments to the number of "business days," rather than total days in a given month. Since this ratio is applied to a calculation formula that accounts for all days in the month, the result would be an overstated home market imputed credit expense.

Therefore, we have continued to use the monthly short-term interest rates provided by Ferbasa in its original questionnaire response, as published in the *Dinheiro Vivo*.

Comment 16: According to Ferbasa, the Department incorrectly recalculated Ferbasa's U.S. credit expense by using a home market interest rate. In addition, Ferbasa alleges that the Department incorrectly reclassified as "bank fees" its actual U.S. credit expense and adjusted NV for this amount. To correct these errors, Ferbasa contends that the Department should adjust NV only for the amount of its actual U.S. credit expenses which Ferbasa calculated

based on (1) total U.S. sales prices, (2) its rate of U.S. dollar denominated short-term borrowings, and (3) the period of time between date of shipment and date of receipt of payment by the U.S. customer. Ferbasa argues that use of its reported actual short-term U.S. credit expense would be consistent with longstanding Department practice.

Department's Position: We agree with Ferbasa on both points. First, we erroneously misclassified Ferbasa's reported U.S. credit expenses as bank fees and thus double-counted U.S. credit expenses in our calculation of NV. We have corrected this for these final results. Second, we also agree that we incorrectly recalculated Ferbasa's U.S. credit expenses by using a home market interest rate for borrowings in Reais.

As the Department stated in the *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 6998 (February 6, 1995), "in determining the U.S. interest rate, it is the Department's policy that the interest rate used for a particular credit calculation should match the currency in which the sales are denominated."

After reviewing the information submitted on the record, we have determined that Ferbasa correctly reported its U.S. imputed credit expenses in its original submission, by using its actual cost of short-term borrowing in U.S. dollars during the period. Therefore, for these final results, we have used Ferbasa's reported U.S. credit expenses for input credit costs incurred for U.S. sales.

Comment 17: According to Ferbasa, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and eliminate the addition of taxes to U.S. price, in order to ensure that no consumption tax is included in the price in either market (i.e., to achieve tax neutrality). Specifically, section 773(a)(6)(B) of the Act requires the Department to reduce NV by the amount of indirect taxes imposed on the foreign product or components thereof that have been rebated or not collected, to the extent that such taxes are added to or are included in the price of the foreign like product.

Despite the statutory requirement, Ferbasa argues that for the preliminary results of review, the Department failed to deduct from the home market selling price the IPI tax included in the home market gross unit price. Ferbasa concludes that to correct this error for the final results the Department should deduct the amount of the IPI tax (reported in the field ITAX) from the gross unit price in its calculation of NV.

The petitioners argue that the adjustment for taxes referenced by Ferbasa is relevant only in price-to-price comparisons. In so far as Department practice will require significant changes in the margin calculations which will result in a price to CV comparison, the petitioners contend that the issue is moot and need not be considered by the Department.

Department's Position: We agree with petitioners that as a result of corrections and changes to our calculation of COP, our margin calculations have been based on a price to CV comparison. Therefore, the issue of deducting IPI taxes from home market prices need not be addressed in this notice.

Comment 18: Ferbasa argues that the Department, in its calculation of NV, failed to offset the U.S. commissions by an amount of home market indirect selling expenses and inventory carrying costs even though no commissions were paid for home market sales of ferrosilicon, but a commission was paid for the U.S. sale. Citing \$353.58(c) of the Department's regulations, Ferbasa contends that where a commission is paid in one market and not in the other market, the commission should be offset by the sum of the indirect selling expenses and inventory carrying costs incurred in the other market up to the lesser of the commission or the selling expenses/inventory carrying costs. Finally, Ferbasa argues that the Department should correct this oversight for the final results of review by applying its indirect selling expense ratio against gross unit prices less the IPI tax.

Petitioners argue that Ferbasa's contentions regarding the commission offset are incorrect. Petitioners suggest that since Ferbasa stated that its reported indirect selling expenses reconcile to its financial statements and its financial accounting system does not reflect any taxes, home market indirect selling expenses should be calculated using gross unit price reduce by all taxes.

Department's Position: We agree with Ferbasa that in the preliminary results margin calculations the Department inadvertently did not make an offsetting adjustment to NV for the commission incurred on the U.S. sale of ferrosilicon. We have corrected this oversight for these final results of review. However, we also agree with petitioners that it appears that Ferbasa calculated its indirect selling expense and inventory carrying cost ratios against a sales value that was exclusive of both IPI and ICMS taxes. Therefore, we have calculated this adjustment by applying the combined indirect selling and inventory carrying

cost ratios to home market prices that are net of both of these taxes.

Final Results of Review

As a result of our analysis of the comments received, we determined that the following margins exist for the period August 16, 1993 through February 28, 1995:

Manufacturer/producer/exporter	Margin (percent)
Companhia de Ferro Ligas da Bahia	00.05

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentages stated above. The Department will issue appraisal instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, an earlier review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier review or the LTFV investigation, whichever is the most recent; and, (4) the cash deposit rate for all other manufacturers or exporters will be 35.95 percent, the "all others" rate established in the antidumping duty order (59 FR 11760, March 14, 1994).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement

could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 4, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.
[FR Doc. 96-29936 Filed 11-21-96; 8:45 am]
BILLING CODE 3510-06-01

[A-580-325]

Certain Oil Country Tubular Goods Other Than Drill Pipe From Korea; Notice of Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

EFFECTIVE DATE: November 22, 1996.

SUMMARY: On September 17, 1996, the Department of Commerce ("the Department") published in the *Federal Register* (61 FR 48882) a notice announcing the initiation of an administrative review of the antidumping duty order on certain oil country tubular goods other than drill pipe from Korea, covering the period February 2, 1995, through July 31, 1996. This review has now been terminated as a result of the withdrawal of the request for administrative review by the interested party.

FOR FURTHER INFORMATION CONTACT: Jacqueline Wimbush, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482-1394.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1996, SeAH Steel Corporation ("SeAH"), a manufacturer of merchandise subject to this order, requested that the Department conduct an administrative review of the antidumping duty order of SeAH from Korea, pursuant to section 19 CFR 353.22(a) (1994) of the Department's regulations. The period of review is February 2, 1995 through July 31, 1996. On September 17, 1996, the Department published in the Federal Register (61 FR 48882) a notice announcing the initiation of an administrative review of the antidumping duty order on certain oil country tubular goods other than drill pipe from Korea, covering the period February 2, 1995 through July 31, 1996.

Termination of Review

On October 21, 1996, we received a timely request for withdrawal of the request for administrative review from SeAH. Because there were no other requests for administrative review from any other interested party, in accordance with § 353.22(a)(5) of the Department's regulations, we have terminated this administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22.

Dated: November 15, 1996.

Joseph A. Spetrini,
Deputy Assistant Secretary, Enforcement
Group III.

[FR Doc. 96-29941 Filed 11-21-96; 8:45 am]
BILLING CODE 3510-08-P

[A-485-602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Amendment of Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: On October 2, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, (TRBs) from Romania. The review covered eight companies and the period June 1, 1994

through May 31, 1995. Based on the correction of ministerial errors made in the margin calculation in those final results, we are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On October 2, 1996, the Department published in the Federal Register (61 FR 51427) the final results of its administrative review of the antidumping duty order on TRBs from Romania (52 FR 23320, June 19, 1987). On October 7, 1996, we received a timely allegation from respondent, Tehimportexport, S.A. (TIE), that the Department made ministerial errors in the final results. The petitioner, The Timken Company, has not responded to these allegations.

In its final results, the Department used information from a publicly available summarized version of selling, general, and administrative (SG&A) expenses from two Thai bearing companies used in the 1988-1990 administrative review of antifriction bearings from Romania. TIE alleges that the Department failed to exclude from the surrogate value for SG&A expenses the Thai sales business tax incurred only on home-market sales; failed to exclude from the surrogate SG&A rate freight costs incurred on one type of sale; and used an improper formula to weight average the SG&A expenses between the two types of sales made by the Thai companies. We agree with TIE that we made ministerial errors with regard to the Thai business tax and the freight costs, and have amended our final results for these ministerial errors. However, we disagree with TIE that the other alleged error is ministerial, and

have not amended our final results for such claimed error. For further discussion, see *Decision Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III*, dated November 1, 1996, "Decision Memorandum Regarding the Ministerial Error Allegation in the 1994-1995 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania," which is on file in the Central Records Unit (room B-099 of the Main Commerce Building).

Amended Final Results of Review

As a result of our correction of the ministerial errors, we have determined the margin to be:

Manufacturer/ exporter	Time period	Margin (per- cent)
Romania Refs	6/1/94-5/31/95	7.67

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results for all shipments of TRBs from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for TIE and all other exporters will be 7.67 percent; and (2) for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely

written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: November 14, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 96-29940 Filed 11-21-96; 8:45 am]
BILLING CODE 3510-08-P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1986 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96-113. Applicant: The College of New Jersey, Hillwood Lakes, CN-4700, Trenton, NJ 08650. Instrument: Electron Microscope, Model H-7000-S. Manufacturer: Hitachi Instruments, Japan. Intended Use: The instrument will be used to examine the following at the ultrastructural level: (a) the gills and a recently discovered gland in the blue crab, (b) the kidneys, gills and intestines of clams and oysters and (c) the chromatoplasts of algae. Research will be conducted to determine: (a) the function of the newly discovered gland and how it influences the function of the gill at various salinities, (b) how the clam depurates heavy metals from its body through the various organs believed to be involved in excretion and (c) the process by which chloroplasts in the algae become replaced (or turned into) other types of chromatoplasts. In addition, the instrument will be used for educational purposes in several undergraduate courses. Application accepted by Commissioner of Customs: October 31, 1996.

Docket Number: 96-114. Applicant: Centers for Disease Control and Prevention, NCEH, DEHLS, Mailstop F-18, 4770 Buford Highway, NE, Atlanta, GA 30341-3724. Instrument: ICP Mass Spectrometer, Model MAT ELEMENT. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for analysis of radionuclides in a reference population in the U.S. and determination of radionuclides in persons with known or suspected exposure to these elements. High sample throughput (40-50 specimens per day) will be required, placing demands on the capacity of this instrument for automation. Application accepted by Commissioner of Customs: October 31, 1996.

Docket Number: 96-115. Applicant: Horn Point Environmental Laboratory, 2020 Horn Point Road, P.O. Box 775, Cambridge, MD 21613. Instrument: Fluorometer. Manufacturer: Heinz Walz, GmbH, Germany. Intended Use: The instrument will be used to investigate photosynthesis in microscopic algae (phytoplankton) as they exist in nature (specifically in the Chesapeake Bay) and in culture. An essential requirement of the research is that measurements be made on field samples directly without previous manipulation to boost the signal strength, such as filtration or other steps to concentrate the organisms. In addition, the instrument will be used in a MEES-699 course on Methods in Photosynthetic Regulation—PAM Fluorometry to train students on the use of the instrument in photosynthetic research of phytoplankton and higher plants. Application accepted by Commissioner of Customs: November 6, 1996.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 96-29938 Filed 11-21-96; 8:45 am]
BILLING CODE 3510-08-P

Northwestern University Medical School; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1986 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96-087. Applicant: Northwestern University Medical School, Chicago, IL 60611. Instrument: Electron Microscope, Model JEM-1220. Manufacturer: JEOL Ltd., Japan.

Intended Use: See notice at 61 FR 51276, October 1, 1996. Order Date: June 3, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 96-29939 Filed 11-21-96; 8:45 am]
BILLING CODE 3510-08-P

The University of North Carolina; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1986 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96-095. Applicant: The University of North Carolina at Chapel Hill, Chapel Hill, NC 27599-3290. Instrument: Stopped-Flow Spectrophotometer, Model SF-61DX2. Manufacturer: Hi-Tech Ltd., United Kingdom. Intended Use: See notice at 61 FR 51276, October 1, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) sequential multi-mixing of three reagents under computer control, (2) a diode array detector with an anti-bleaching shutter and (3) a flow circuit consisting of a fused silica block to minimize artifacts associated with tubing and leakage. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign

instrument which is being manufactured in the United States.
Frank W. Creel,
 Director, Statutory Import Programs Staff.
 [FR Doc. 96-29944 Filed 11-21-96; 8:45 am]
 BILLING CODE 3810-06-0

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued. Applicant has requested expedited review.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 96-00007." A summary of the application follows.

Summary of the Application

Applicant: Committee for the Fair Allocation of Rice Quotas ("CFARQ"), 3050 K Street, N.W., Suite 400, Washington, D.C. 20007.

Contact: Laurence J. Lasoff, Attorney, Telephone: (202) 342-8400.

Application No.: 96-00007.

Date Deemed Submitted: November 8, 1996.

Members (in addition to applicant): Cargill Incorporated, Greenville, Mississippi; Louis Dreyfus Corporation, Wilton, Connecticut; and Riviana Foods, Inc., Houston, Texas.

CFARQ seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products

Semi-milled and wholly milled rice; whether or not polished or glazed (Harmonized Tariff Schedule 1006.30) (referred to as "milled rice") and husked (brown) rice (Harmonized Tariff Schedule 1006.20).

Export Markets

For purposes of administering the European Union's tariff rate quota: The countries of the European Union.

For purposes of Export Trade Activity and Method of Operation: All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. The Committee will administer a system for allocating the U.S. share of the European Union ("EU") tariff rate quotas ("TRQs") for milled rice and brown rice (roughly 38,000 tons of milled rice and 8,000 tons of brown rice) agreed to as compensation to the United States for the enlargement of the EU to include Austria, Finland, and Sweden, as follows:

a. The Committee will operate a quota tender system in which certificates of quotas will be offered on open tender to the highest bidder 30 days prior to the release of each quota tranche, as defined by the EU.

b. The administration of the quota tender system will be carried out by an independent economic consultant, who will be retained by the Committee for purposes of administering the tender program.

c. Thirty days prior to the beginning of each tranche of tariff rate quota, the Committee, through its consultant, will offer separate sub-parcels of quota amounting to 100 tons each. Anyone, whether a member of the Committee or not, will be eligible to bid on each sub-parcel, upon posting a five percent bid bond.

d. The Committee will issue a written request to bid on each available sub-parcel, as well as an official form on which to place the bid. Potential bidders will have five working days to respond to the bid request. All bid information will be returned to the consultant within five working days. At the close of the five day period, the consultant will award certificates of quotas to the highest bidder on each sub-parcel upon payment of monies bid. Additionally, the certificates will be re-tradeable.

e. In the event that identical bids are submitted on a particular sub-parcel, the consultant will split the parcel among the relevant bidders.

2. The Committee will oversee the redistribution of proceeds arising out of the administration of the quota tender system as follows:

a. The Committee will not decide on the distribution of proceeds arising out of a particular quota year until the passage of at least one year after the conclusion of the quota year in question.

b. Once the proceeds from a particular quota year become eligible for distribution, the Committee will decide on the amount and method of distribution based on a four-fifths vote of the member companies.

c. In considering the method of redistribution the Committee may take into account a number of factors including: (1) the share of the European market held by the individual members during the period; (2) the share of the world market held by the individual members during the period; (3) extraordinary factors that may have affected individual members during the period; and (4) such other factors as the Committee deems appropriate.

3. The Committee and/or its Members may use funds generated through the quota tender process to conduct market development activities if the Committee so chooses. The Committee and/or its Members may exchange or discuss information necessary for the carrying out of such programs.

4. The Committee and/or its Members may:

a. Provide for an administrative structure to implement the foregoing tariff rate quota system, relating to the U.S.-EU Compensation Agreement and EU regulations, including the hiring of

an independent economic consultant to administer the quota tender system;

b. Exchange and discuss information regarding the structure and method for administering the foregoing tariff rate quota system, relating to the U.S.-EU Compensation Agreement and EU regulations;

c. Discuss the type of information needed regarding past transactions and exports that are necessary for administering the foregoing tariff rate quota system relating to the U.S.-EU regulations and for effectuating any redistribution of proceeds arising out of the administration of the system.

Abbreviated Amendment Procedures

New Committee members may be incorporated in the Certificate through an abbreviated amendment procedure. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the Committee members that desire to become members under the Certificate pursuant to the abbreviated amendment procedure and certifying for each such member so identified its sale of individual products in its prior fiscal year. Notice of the members so identified shall be published in the Federal Register.

However, the Committee may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the Federal Register, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the Federal Register so amend the Certificate, such amendment must be sought through the non-abbreviated amendment procedure.

Terms and Conditions of Certificate

1. Except as expressly authorized in Export Trade Activity and Methods of Operation 4(C), in engaging in Export Trade Activities and Methods of Operation, neither the Committee nor any Member shall intentionally disclose, directly or indirectly, to any other Member (including parent companies, subsidiaries, or other entities related to any Member not named as a Member) any information regarding its or any other Member's costs, production, inventories, domestic

prices, domestic sales, capacity to produce Products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods; unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide export sale and the disclosure is limited to the prospective purchaser.

2. The Committee and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

"Member" means a member of the Committee who has been certified as a "Member" within the meaning of Section 325.1(1) of the Regulations. Members must sign the Operating Agreement of the Committee in order to participate in the certified activities. Any U.S. company, that is actively engaged in rice milling or that has exported U.S. rice in the preceding or current calendar year and that wishes to participate in the activities covered by this certificate, may join the Committee's membership by executing the Operating Agreement and paying a membership fee of \$3,000 per calendar year. Any Committee member that is not a listed Member may join the Committee's export trade certificate of review by requesting that the Committee file for an amended certificate. A Member may withdraw from coverage under this certificate at any time by giving written notice to the Committee, a copy of which the Committee will promptly transmit to the Secretary of Commerce and the Attorney General.

Dated: November 18, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96-29065 Filed 11-21-96; 8:45 am]

BILLING CODE 3810-06-0

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of the Panel Review.

SUMMARY: On October 28, 1996 the Binational Panel completed its review of the Final Determination in the antidumping duty administrative review made by the International Trade Administration respecting Gray Portland Cement Clinker from Mexico, Secretariat File No. USA-95-1004-02.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: On September 13, 1996 the Binational Panel issued its decision affirming the Final Determination in this matter and instructed the Secretariat to issue a Notice of Final Panel Action. The Notice of Final Panel Action was issued on September 25, 1996. No Request for an Extraordinary challenge was filed within 30 days of the issuance of the Notice of Final Panel Action. Therefore, on the basis of the Panel decision and Rule 80 of the NAFTA Article 1904 Panel Rules, the Panel Review was completed and the panelists were discharged from their duties effective October 28, 1996.

Dated: October 29, 1996.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 96-29846 Filed 11-21-96; 8:45 am]

BILLING CODE 3810-07-0

National Oceanic and Atmospheric Administration

[D. 110696B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a research permit (P610A).

SUMMARY: Notice is hereby given that Steven A. Serfling of Mote Marine Laboratory & Mote Aquaculture (P610A) has applied in due form for a scientific research permit to take listed shortnose sturgeon.

DATES: Written comments or requests for a public hearing on this application must be received on or before December 23, 1996.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910-3226 (301-713-1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432 (813-893-3141).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Steven A. Serfling, Mote Marine Laboratory & Mote Aquaculture (P610A), requests a research permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

The applicant requests a five-year permit to hold and breed hatchery raised, listed shortnosed sturgeon at Mote Marine Laboratory in Florida to determine effects of high temperatures, low oxygen and salinity on their survival and growth. In addition, attempts will be made to locate listed shortnosed sturgeon in the St. Johns and St. Marys rivers in Florida. If any sturgeon are found, tissue samples will be collected for toxic compound analysis.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: November 8, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96-29916 Filed 11-21-96; 8:45 am]

BILLING CODE 3510-25-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 18, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 **CORRELATION** will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the

implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit 200-238, 300-369, 400-469 and 600-670, as a group.	464,917,189 square meters equivalent.
Sublevels within the aggregate	
218	5,723,243 square meters.
219	20,894,921 square meters.
225	10,015,676 square meters.
300/301	7,762,034 kilograms.
313	48,065,078 square meters.
314	7,869,461 square meters.
315	23,608,382 square meters.
317/326	21,462,164 square meters.
334/335	154,008 dozen.
336	85,562 dozen.
338/339/638/639	1,540,113 dozen.
342/642	453,477 dozen.
347/348	1,112,304 dozen.
350	172,564 dozen.
361	1,163,640 numbers.
363	24,834,888 numbers.
369-D 1	554,682 kilograms.
410/624	11,446,488 square meters of which not more than 2,657,962 square meters shall be in Category 410.
433	18,451 dozen.
445/446	72,280 dozen.

Category	Twelve-month restraint limit
604	543,342 kilograms of which not more than 415,270 kilograms shall be in Category 604-A ² .
607	5,046,324 kilograms.
647/648	513,372 dozen.
669-P ³	1,848,942 kilograms.

¹ Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0045, 6302.91.0005 and 6302.91.0006.

² Category 604-A: only HTS number 5509.32.0000.

³ Category 669-P: only HTS numbers 6306.32.0010, 6306.32.0020, 6306.33.0010, 6306.33.0020 and 6306.39.0000.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-29902 Filed 11-21-96; 8:45 am]

BILLING CODE 3510-05-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Applications for Designation in Futures and Futures Option Contracts on the 91-Day Mexican Treasury Bill (CETES)

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in the 91-Day Mexican Treasury Bill (CETES) futures contract and options on that futures contract.

The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 23, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME 91-day Mexican Treasury Bill contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC, 20581, telephone 202-418-5277. Facsimile number: (202) 418-5527. Electronic mail: ssherrod@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418-5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three

Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Dated: November 18, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96-29633 Filed 11-21-96; 8:45 am]

BILLING CODE 3501-01-P

Coffee, Sugar & Cocoa Exchange: Applications for Designation in Futures and Futures Option Contracts on BFP (Basic Formula Price) Milk

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Coffee, Sugar & Cocoa Exchange (CSCE or Exchange) has applied for designation as a contract market in futures and a futures option on BFP milk. The proposed contracts will be in addition to the CSCE's existing physical delivery milk futures contract and its associated option contract. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest; will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 23, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the BFP milk futures and the option.

FOR FURTHER INFORMATION CONTACT: Please contact Frederick Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC, 20581, telephone 202-418-5273. Facsimile number: (202) 418-5527. Electronic mail: flinse@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of

the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418-5100.

Other materials submitted by the CSCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.6. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CSCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Dated: November 15, 1996.

Blake Linn,

Acting Director.

[FR Doc. 96-29834 Filed 11-21-96; 8:45 am]

BILLING CODE 8101-01-P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FARS, Part 217, Special Contracting Methods, and related clauses in Subpart 252.217 OMB Control No. 0704-0214.

Type of Request: Extension.
Number of Respondents: 43,300.
Responses Per Respondent: 1.57.
Annual Responses: 67,800.
Average Burden Per Response: 9.5 hours.

Annual Burden Hours: 641,175.
Needs and Uses: This collection of information addresses the policies and

procedures for the acquisition of supplies and services by special contracting methods. The information collected hereby, will be used to identify sources of supply, as well as to determine if contractors are adequately insured, and to evaluate reimbursement requests, requests to change place of performance, and proposals for over and above work on existing contracts.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: November 15, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-29919 Filed 11-21-96; 8:45 am]

BILLING CODE 5000-04-M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Associated Forms; and OMB Control Number: DoD FARS, Part 245, Government Property, and Related Clauses in Parts 252 and 253; DD Forms 1149, 1149C, 1342, 1419, 1637, 1639, 1640, and 1662; OMB Control No. 0704-0246.

Type of Request: Extension.
Number of Respondents: 14,890.
Responses Per Respondent: 2.8.
Annual Responses: 43,617.
Average Burden Per Response: 72 minutes.

Annual Burden Hours: 52,890 hours.
Needs and Uses: This collection of information addresses the requirements related to providing Government property to contractors; contractor use

and management of Government property; and the reporting, redistribution, and disposal of contractor inventory. The information collected hereby, will be used by contractors, property administrators, and contracting officers to maintain Government-furnished property records.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: November 15, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-29920 Filed 11-21-96; 8:45 am]

BILLING CODE 5000-04-M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Associated Forms; and OMB Control Number: Appointment of Chaplains for the Military Services; DD Forms 2088 and 2741; OMB Control No. 0704-0190.

Type of Request: Reinstatement.
Number of Respondents: 717.
Response per Respondent: 1.
Annual Responses: 717.
Average Burden per Response: 1.19 hours.

Annual Burden Hours: 851 hours.
Needs and Uses: This collection of information addresses the requirements related to the appointment of chaplains to the military services. The information collected hereby, will ensure that religious organizations seeking to endorse chaplains are indeed eligible to do so, and that applicants so endorsed

are professionally qualified for appointment as a military chaplain. Additionally, it will provide information used in determining eligibility for promotion of appointees to the military chaplain services.

Affected Public: Not-for-profit institutions.

Frequency: On occasion and Triennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward G.

Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: November 15, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-29921 Filed 11-21-96; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Army Science Board Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

NAME OF COMMITTEE: Army Science Board (ASB).

DATE OF MEETING: 25 & 26 November 1996.

TIME OF MEETING: 0900-1800 (both days).
PLACE: Pentagon—Washington, DC.

AGENDA: The Army Science Board (ASB) Ad Hoc Study on "The Impact of Information Warfare on Army Command, Control, Communications, Computers and Intelligence (C4I) Systems" will have a two day report writing session. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information,

please contact Michelle Diaz at (703) 695-0781.

Michelle P. Diaz,

Program Support Specialist, Army Science Board.

[FR Doc. 96-29923 Filed 11-21-96; 8:45 am]

BILLING CODE 3710-06-M

Department of the Navy

Notice of Availability of the Department of Navy Final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel

SUMMARY: The Department of the Navy (Navy) is giving notice of the availability of the Final Environmental Impact Statement (EIS) for a Container System for the Management of Naval Spent Nuclear Fuel.

The Final EIS was prepared in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality regulations implementing NEPA, 40 CFR Parts 1500-1508; and Chief of Naval Operations Environmental and Natural Resources Program Manual, OPNAV Instruction 5090.1B. The Final EIS addresses the need, alternatives, and environmental impacts of manufacturing containers; loading containers, and handling and storage of naval spent nuclear fuel at the Department of Energy's Idaho National Engineering Laboratory (INEL); transportation of naval spent nuclear fuel loaded containers to a notional repository or a centralized interim storage site; and the storage, handling, and transportation of certain radioactive waste associated with naval spent nuclear fuel management. The Department of Energy is participating as a cooperating agency and adopted this Final EIS (DOE/EIS-0251) on October 9, 1996.

Upon completion of general distribution of the document, DOE will file the Final EIS with the Environmental Protection Agency, which will then publish this Notice of Availability in the Federal Register. The Final EIS will also be available to the public in DOE reading rooms and designated information locations which are identified in the Availability of Copies section of this notice. The Navy plans to issue a Record of Decision on the Final EIS by December 31, 1996.

ADDRESSES: Requests for copies of the Final EIS and for further information on the Final EIS should be directed to: Mr. William Knoll of the Naval Propulsion Program of the Department of the Navy, Code NAVSEA 08U, 2531 Jefferson

Davis Highway, Arlington, Virginia 22242-5180, Telephone: 703-602-8329. Copies of the Final EIS may be obtained by following instructions given below in the AVAILABILITY OF COPIES section.

Background

The Navy issued a Draft EIS for public comment and published a Notice of Availability in the Federal Register on May 14, 1996 (61 CFR 24293).

Thereafter, the Navy held six public hearings in three locations in the States of Idaho and Utah, in order to obtain public comments on the Draft EIS. The comment period was originally scheduled for 45 days, but a 15-day extension was granted based on a request from the State of Nevada. Public comments were received by mail, telephone, and facsimile. Comments on the DEIS were received from a broad spectrum of private citizens, local, state, and federal officials. Native American Tribes and public interest groups also provided comments. Comments are reprinted in the Final EIS in Chapter 11, which is new in its entirety. The response to each comment is provided following the text of the comment.

Public comments on the Draft EIS were assessed and considered both individually and collectively by the Navy and DOE. Some comments resulted in modifications to the EIS. Changes to the EIS are annotated by sidebars in the margins. For other comments, the Navy explained why a change to the EIS was not warranted. Most responses to such comments communicated government policy, indicated that the comment was beyond the scope of the EIS, explained the relationship of this EIS to other related NEPA documents, referred commenters to information in the EIS, answered technical questions, or further explained technical issues.

The Final EIS, like the Draft EIS, addresses the potential environmental impacts associated with the need and alternatives for selecting a container system for the management of naval spent nuclear fuel on a national level. The Final EIS also addresses potential environmental impacts related to manufacturing containers; loading containers, handling and storage of naval spent nuclear fuel at the Idaho National Engineering Laboratory (INEL); transportation of naval spent nuclear fuel to a notional repository or centralized interim storage site; and the storage, handling, and transportation of low-level radioactive waste, referred to as special case waste, associated with naval spent nuclear fuel management.

The six container system alternatives considered are:

(1) **No-Action Alternative—Use of existing technology to handle, store, and subsequently transport naval spent nuclear fuel to a geologic repository or a centralized interim storage site using the Navy M-140 transportation cask.** Prior to shipment to a repository or centralized interim storage site, naval spent nuclear fuel would be managed at INEL in water pools or dry containers, then loaded into M-140 transportation casks. At the repository, the naval spent fuel would be unloaded from the M-140 transportation casks and placed in a geologic repository's surface facilities for loading into disposal containers. Following unloading, the M-140 transportation casks would be returned to INEL for reuse.

(2) **Multi-Purpose Canister Alternative—Use of large multi-purpose canisters for storage, transportation, and disposal of naval spent nuclear fuel, without repackaging or further handling of individual spent nuclear fuel assemblies.** In addition to the sealed metal canisters, specialized casks or overpacks would be required for different stages of the process, such as on-site transfer, dry storage, transportation to a geologic repository or a centralized interim storage site, and disposal.

(3) **Current Technology/Supplemented by High Capacity Rail Alternative—Use of existing M-140 transportation casks, but with redesigned internal structures to accommodate a larger amount of naval spent nuclear fuel per cask, thus reducing the total number of shipments required.**

(4) **Transportable Storage Cask Alternative—Use of an existing, commercially available cask for storage at INEL and shipment of naval spent nuclear fuel to a geologic repository or centralized interim storage site.** At a repository, the naval spent fuel would be unloaded from the casks and placed in a geologic repository's surface facilities for loading into disposal containers. The unloaded transportable storage casks could be returned to INEL for further storage and transport.

(5) **Dual-Purpose Canister Alternative—Use of an existing, commercially available canister and overpack system for storage at INEL and shipment of naval spent nuclear fuel to a geologic repository or centralized interim storage site.** At a repository, the naval spent fuel would be unloaded from the canisters and placed in a geologic repository's surface facilities for loading into disposal containers.

(6) **Small Multi-Purpose Canister Alternative—Use of smaller multi-purpose canisters, rather than large**

multi-purpose canisters. The small multi-purpose canisters would be similar in design, operations, and function to the large multi-purpose canisters, but would offer a lower weight and size alternative for transportation and handling at a geologic repository or centralized interim storage site.

In addition, the environmental evaluations in this Final EIS include several actions which are related to the container system choice: manufacturing the container system; handling and transportation associated with the container system; modifications at INEL to support loading naval spent nuclear fuel into containers for dry storage; the location of the dry storage at INEL; and the storage, handling, and transportation of special case waste associated with naval spent nuclear fuel. The Draft EIS did not contain a preferred alternative and concluded that the environmental impacts were small and comparable among all alternatives. The identification of a preferred alternative in the Final EIS takes into consideration the following factors: (1) public comments; (2) protection of human health and the environment; (3) cost; (4) technical feasibility; (5) operational efficiency; (6) regulatory impacts; and (7) storage or disposal criteria which may be established for a notional repository or centralized interim storage site outside the State of Idaho.

The Navy's preferred alternative for a container system for the management of naval spent nuclear fuel is the Dual-Purpose Canister Alternative. A system allowing the naval spent fuel assemblies to be loaded into a canister with a welded closure, which can be placed into separate shielded storage overpacks and transportation overpacks, would allow the Navy to take advantage of savings in costs, occupational exposure, handling, complexity, and environmental impacts associated with handling and waste generation in comparison to cask-based designs which require additional handling of individual fuel assemblies.

While a multi-purpose canister system has the potential to produce even greater savings in these areas, the disposal container design and waste acceptance requirements for a geologic repository have not yet been established. When these standards are established, they could result in a need to open canisters originally intended for disposal for purposes such as inspection or changes in the contents. The future requirements might even require the individual fuel assemblies to be transferred to some different container for disposal. This means that multi-

purpose canister systems do not provide any definite functional advantages over the dual-purpose canister system at this time. On the other hand, it is possible that the canisters for dual-purpose canister systems may prove suitable for disposal in a geologic repository once the standards are determined.

Dates

A 45 day comment period following issue of the Draft EIS would have ended on July 3, 1996; however, the comment period was extended to July 18, 1996 based on a request from the State of Nevada. The Record of Decision is expected to be issued by December 31, 1996.

Availability of Copies of the Final EIS

Copies of the Final EIS are being distributed to Federal, State, and local officials and agencies; and to organizations and individuals known to be interested in the EIS. Additional copies may be obtained by contacting Mr. Knoll at the above address (see ADDRESSES). Copies of the Final EIS will be available for public review at the locations listed below. Copies of selected reference materials and public hearing transcripts are available in Reading Rooms and Other Information Locations listed below. Copies of the reference material may also be obtained upon request.

The Final EIS is about 700 pages in length. Separately bound copies of the 19-page Executive Summary are available for review for those who do not wish to have the entire Final EIS. When requesting copies of the Final EIS, please indicate whether you wish to receive only the Executive Summary, or the entire Final EIS.

Location of Reading Rooms

—Public Reading Room for U. S. DOE Headquarters; 1000 Independence Avenue, SW; 1E-190 Forrestal Building; Washington, DC
—Public Reading Room for U. S. DOE—Idaho Operations Office; 1776 Science Center Drive; Idaho Falls, ID
—Public Reading Room for U. S. DOE—Nevada Operations Office; 3004 South Highland Drive; Las Vegas, NV
—Flagstaff Public Library; 300 West Aspen Street; Flagstaff, AZ
—Sacramento Library; Central Office; 828 I Street; Sacramento
—Denver Public Library; 1357 Broadway; Denver, CO
—Boise Public Library; 715 South Capital Boulevard; Boise, ID
—Shoshone-Bannock Library; Bannock and Pima Streets; HRDC Building; Ft. Hall, ID
—Idaho Falls Public Library; 457 Broadway; Idaho Falls, ID

—Pocatello Public Library; 912 East Clark Street; Pocatello, ID
—Albuquerque Bernalillo County Library; 501 Copper NW; Albuquerque, NM
—Deschutes County Library; 507 NW Wall Street; Bend, OR
—Salt Lake City Public Library; 209 East 500 South; Salt Lake City, UT
—Laramie County Library; 2800 Central Avenue; Cheyenne, WY

Other Information Locations

—Lost River Community Library; 126 South Front Street, Box 170; Arcò, ID
—Idaho State Library; 325 West State Street; Boise, ID
—City of Burley, Public Library; 1300 Miller Avenue; Burley, ID
—Coeur d'Alene Public Library; 201 Harrison Avenue; Coeur d'Alene, ID
—City of Emmett, Public Library; 275 South Hayes; Emmett, ID
—City of Gooding Public Library; 306 5th Avenue West; Gooding, ID
—Consolidated Free Library; 8385 North Government Way; Hayden Branch; Hayden Lake, ID
—City of Homedale, Public Library; 125 West Owyhee; Homedale, ID
—Ketchum Public Library; 415 Spruce Avenue North; Ketchum, ID
—Las Vegas Public Library; 833 Las Vegas Boulevard North; Las Vegas, NV
—Moscow Public Library; 100 South Jefferson; Moscow, ID
—University of Idaho Library; Rayburn Street Moscow, ID
—Ola District Library; 11475 Ola School Road; Ola, ID
—Clearwater Memorial Library; 402 Michigan Avenue; Orofino, ID
—Idaho State University Library, Documents Department; 741 South 7th Avenue; Pocatello, ID
—Salmon Public Library; 204 Main Street; Salmon, ID
—Shoshone Public Library; 211 South Rail Street; Shoshone, ID
—Twin Falls Public Library; 434 Second Street East; Twin Falls, ID
—Caliente Public Library; 120 Depot Avenue; Caliente, NV
—Carson City Public Library; 900 North Roop Street; Carson City, NV
—Elko Public Library; 720 Court Street; Elko, NV
—Lincoln County Public Library; Alamo Branch; First West Street; Alamo, NV
—Lincoln County Public Library; Pioche (Main Branch); Number 1 Main Street; Pioche, NV
—Pahrump Public Library; 2101 East Calvado Boulevard; Pahrump, NV
—Smokey Valley Library District; Hadley Circle; Round Mountain, NV
—Tonopah Public Library; 171 Central; Tonopah, NV

—Brigham City Library; 20 North Main Street; Brigham City, UT
—Cedar City Library; 136 West Center; Cedar City, UT
—Delta City Library; 76 North 200 West; Delta, UT
—Logan City Library; 255 North Main; Logan, UT
—Marriott Library; University of Utah; Salt Lake City, UT
Dated: November 18, 1996.

F.J. Bowman,

Admiral, USN, Director, Naval Nuclear Propulsion Program.

[FR Doc. 96-29935 Filed 11-21-96; 8:45 am]

BILLING CODE 5010-FF-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.
DATES: Tuesday, November 26, 1996: 6:30 pm–9:30 pm, 7:00 pm to 7:30 pm (public comment session).
ADDRESSES: The Northern New Mexico Community College, 1002 North Onate Street, Espanola, New Mexico 87501, 505-988-3400.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800) 753-8970, or (505) 753-8970, or (505) 262-1800.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Tuesday, November 26, 1996

6:30 PM—Call to Order and Welcome
7:00 PM—Public Comment
7:30 PM—Old Business
—Approval of Bylaws
—Priority Issues for Work Plan
—Proposed Statement of Work
—Presentation on Cultural Inclusion in our Decisionmaking

9:30 PM—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (800) 753-8970. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Harman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185-5400.

Issued at Washington, DC, on November 19, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96-29889 Filed 11-21-96; 8:45 am]

BILLING CODE 5010-01-P

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.
DATES: Thursday, December 5, 1996: 8:30 a.m.–5:00 p.m.

ADDRESSES: Red Lion Lloyd Center, 1000 NE Multnomah, Portland, Oregon.
FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:**December Meeting Topics**

The Hanford Advisory Board will receive information on and discuss issues related to: the Columbia River Comprehensive Impact Statement, Historic Preservation, Reactors on the River, FY 1999 DOE Budget Process and Timeline, Project Hanford Management Contract, Institutional Controls, and Tri-Party Agreement Negotiations on Spent Fuel. The Board will also receive updates from various Subcommittees, including updates on: Tank Waste Remediation System, 200 Area Soils Remediation Strategy, the FFTF Option for Tritium Production, and the National Equity Dialogue.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-196, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)-376-9628.

Issued at Washington, DC on November 19, 1996.

Rachel M. Samuel,
Acting Deputy Advisory Committee
Management Officer.

[FR Doc. 96-29890 Filed 11-21-96; 8:45 am]
BILLING CODE 9490-01-P

Federal Energy Regulatory Commission

[Docket No. CP97-71-000]

ANR Pipeline Company; Notice of Application

November 18, 1996.

Take notice that on October 25, 1996, ANR Pipeline Company (ANR), 500

Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97-71-000 an application pursuant to Section 7(c) of the Natural Gas Act and Subpart A of Part 157 of the Commission's regulations for a certificate of public convenience and necessity for authorization to construct and operate new pipeline facilities to be located both offshore and onshore Louisiana. ANR proposed to construct: (a) Approximately 37 miles of 30-inch mainline loop, from a point in Eugene Island Block 63 to ANR's existing Patterson compressor station located in St. Mary Parish, Louisiana; (b) approximately 0.25 miles of 36-inch replacement pipe and two additional separators within the Patterson compressor station yard; and (c) approximately 0.2 miles of 30-inch loop between Eugene Island Block 188 platforms "A" and "B", all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

ANR states that the proposed facilities are designed to increase ANR's transmission capacity by up to 461 Mmcft per day to facilitate the transportation by ANR of the anticipated gas production from the shallow and deepwater producing regions in offshore Louisiana. ANR avers that its existing offshore pipeline network can already accommodate much of the anticipated new gas production and, with its expansion project, accommodate virtually all of the capacity requirements of many of the proposed new offshore pipeline projects with the least installation of new facilities, at the lowest cost. ANR requests that the cost of these new facilities be treated on a rolled-in basis in ANR's next rate case.

ANR states it intends to conduct an open season and to make the proposed expansion capacity available on a non-discriminatory basis to any shipper that has executed a transportation service agreement with ANR.

ANR estimates a construction cost of approximately \$51.2 million, which it will finance from internally general funds.

The Commission's staff will defer establishing a schedule for an environmental assessment, pending the submission of complete environmental information necessary to evaluate ANR's application.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 9, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29854 Filed 11-21-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. CP97-87-000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

November 18, 1996.

Take notice that on November 7, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a prior notice request with the Commission in Docket No. CP97-87-000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a 2-inch turbine meter at its Donnellson meter station and to abandon its Cal Spray meter station, both in Lee County, Iowa, under ANR's blanket certificate issued in Docket No. CP82-480-000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

ANR proposes to construct a 2-inch turbine meter at the Donnellson meter

station in Lee County and to operate the facility under Section 7 of the NGA. ANR states that the proposed turbine meter at the Donnellson meter station would enable ANR to accommodate greater winter flow rates than the existing 2-inch positive displacement meter can currently handle. ANR delivers natural gas to MidAmerican Energy Company (MidAmerican) at this meter station. ANR further states that the proposed annual quantities of natural gas that would be delivered at the Donnellson meter station would not affect the installation of the proposed 2-inch turbine meter. ANR estimates that it would cost \$28,200 to construct the proposed 2-inch turbine meter.

ANR also proposes to abandon its Cal Spray meter station¹ (located on the Donnellson meter station site) which consists of two 6-inch orifice meters. ANR states that it no longer needs these facilities, because MidAmerican no longer serves Chevron Chemical Company's (Chevron) anhydrous ammonia plant at this location. Following Chevron's closing of the anhydrous ammonia plant, MidAmerican eliminated its tie-in with ANR at the Cal Spray meter station.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29855 Filed 11-21-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. ER96-2910-000]

Lykes-Duke/Louis Dreyfus, Ltd.; Notice of Issuance of Order

November 18, 1996.

Lykes-Duke/Louis Dreyfus, Ltd. (Lykes-Duke) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Lykes-

¹ 24 FPC 177 (1980).

Duke requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Lykes-Duke. On November 1, 1996, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 1, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Lykes-Duke should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Lykes-Duke is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Lykes-Duke, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order and to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Lykes-Duke's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 2, 1996. Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29868 Filed 11-21-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. ER96-2992-000]

NGTS Energy Services; Notice of Issuance of Order

November 18, 1996.

NGTS Energy Services (NGTS) submitted for filing a rate schedule

under which NGTS will engage in wholesale electric power and energy transactions as a marketer. NGTS also requested waiver of various Commission regulations. In particular, NGTS requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NGTS.

On November 1, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NGTS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NGTS is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NGTS's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 2, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29858 Filed 11-21-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. ER96-2957-000 and ER96-2958-000]

Northrop Grumman Corporation and Grumman Aerospace Corporation; Notice of Issuance of Order

November 19, 1996.

Northrop Grumman Corporation (Northrop Grumman) and its subsidiary

Grumman Aerospace Corporation (Grumman) filed a joint application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Northrop Grumman and Grumman requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Northrop Grumman and Grumman. On November 13, 1996, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates And Denying Requests For Rejection And Hearing (Order), in the above-docketed proceedings.

The Commission's November 13, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Northrop Grumman or Grumman should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Northrop Grumman and Grumman are hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Northrop Grumman or Grumman, respectively, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Northrop Grumman's or Grumman's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 13, 1996.

Copies of the full text of the Order are available from the Commission's Public

Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29885 Filed 11-21-96; 8:45 am]

BILLING CODE 9717-01-M

[Docket No. ER95-3090-000]

ONEOK Power Marketing Company; Notice of Issuance of Order

November 19, 1996.

ONEOK Power Marketing Company (ONEOK) submitted for filing a rate schedule under which ONEOK will engage in wholesale electric power and energy transactions as a marketer. ONEOK also requested waiver of various Commission regulations. In particular, ONEOK requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ONEOK.

On November 4, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ONEOK should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ONEOK is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ONEOK's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 4, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch,

888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29883 Filed 11-21-96; 8:45 am]

BILLING CODE 9717-01-M

[Docket No. ER97-320-000]

Pacific Gas and Electric Company; Notice of Filing

November 18, 1996.

Take notice that on November 1, 1996, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment (Second Amendment) to the Control Area and Transmission Service Agreement (Agreement) between PG&E and Deste Power Services, Inc. (DPS) which was filed previously with the Commission on December 6, 1994, in FERC Docket No. ER95-282-000.

The purpose of the Second Amendment is to adopt new contract language which reflects settlement of various terms which were previous issues between the Parties.

Copies of the filing were served upon DPS and California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 29, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29857 Filed 11-21-96; 8:45 am]

BILLING CODE 9717-01-M

[Docket No. CP97-91-000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 18, 1996.

Take notice that on November 12, 1996, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No.

CP97-91-000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a new delivery point for Hughes Natural Gas, Inc. (Hughes) authorized in blanket certificate issued in Docket No. CP82-413-000, all as more fully set forth in the request on file with the Commission and open public inspection.

Tennessee proposes to install, own, operate and maintain a 2-inch tie-in assembly with check valve on its existing right-of-way, located on Tennessee's system in Montgomery County, Texas. Tennessee states that they would inspect installation of the interconnect piping, meter facilities, pressure regulation and strainer facilities, the Hughes has agreed to install. Tennessee further states that they would operate the meter facilities and that Hughes would own, operate and maintain the interconnect piping, pressure regulation and strainer facilities. Hughes would also own and maintain the meter facilities to be located on a site, provided by Hughes, adjacent to and along Tennessee's existing right-of-way. Hughes has agreed to reimburse Tennessee for the estimated cost of the project which is \$7,100.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29836 Filed 11-21-96; 8:45 am]

BILLING CODE 9717-01-M

[Docket No. ER96-2635-000]

Tosco Power Inc.; Notice of Issuance of Order

November 19, 1996.

Tosco Power Inc. (Tosco) submitted for filing a rate schedule under which Tosco will engage in wholesale electric power and energy transactions as a

marketer. Tosco also requested waiver of various Commission regulations. In particular, Tosco requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Tosco.

On September 12, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Tosco should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Tosco is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Tosco's issuance of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 3, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29884 Filed 11-21-96; 8:45 am]

BILLING CODE 9717-01-M

[Docket No. ER95-1474-001, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company [Docket No. ER95-1474-001]

Take notice that on September 23, 1996, Wisconsin Electric Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Colorado [Docket No. ER96-2552-000]

Take notice that on November 12, 1996, Public Service Company of Colorado (Public Service) tendered for filing the First Amendment to its Amended Power Purchase Agreement between Public Service and UtiliCorp United, Inc. (West-Plains Energy). The purpose of the First Amendment is 1) to revise the Stranded Cost provision in accordance with language required by Order No. 888 in response to concerns raised by the Division of Applications in a deficiency letter issued on September 27, 1996, and 2) to correct a typographical error in Exhibit A. Public Service in its filing has also provided additional information requested by the Division of Applications in the deficiency letter.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Yadkin, Inc.

[Docket No. ER96-2603-001]

Take notice that on October 15, 1996, Yadkin, Inc. (Yadkin) filed Revised Sheet No. 5 to its FERC Electric Tariff, Original Vol. No. 2 (Tariff No. 2). Tariff No. 2 was accepted for filing in a letter order dated September 30, 1996 in Docket No. ER96-2603-000, which letter order directed Yadkin to make certain changes to the Tariff. The revised tariff sheet contains these changes.

Yadkin states that this filing was served on the North Carolina Public Utilities Commission upon each person who is designated on the official service list compiled by the Secretary of the Commission in this proceeding.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company [Docket No. ER96-2686-001]

Take notice that on November 6, 1996, Northeast Utilities Service Company tendered for filing a compliance filing in the above-referenced docket.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER96-2817-001]

Take notice that on November 4, 1996, Montaup Electric Company tendered for filing an executed revised Service Agreement for the sale of power and energy to Duke/Louis Dreyfus Energy Services L.L.C. under its FERC Electric Tariff Original Volume No. 4.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER96-2873-000]

Take notice that on November 1, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, an amended and restated Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with PacifiCorp Power Marketing. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to PacifiCorp Power Marketing pursuant to the tariff, and for the sale of capacity and energy by PacifiCorp Power Marketing to WestPlains Energy-Kansas pursuant to PacifiCorp Power Marketing's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by PacifiCorp Power Marketing.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER96-2874-000]

Take notice that on November 1, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, an amended and restated Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with PacifiCorp Power Marketing. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to PacifiCorp Power Marketing pursuant to the tariff, and for the sale of capacity and energy by PacifiCorp Power Marketing to Missouri Public Service pursuant to PacifiCorp Power Marketing's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by PacifiCorp Power Marketing.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Columbus Southern Power Company

[Docket No. ER97-34-000]

Take notice that Columbus Southern Power Company on November 4, 1996, tendered for filing an amendment to its original filing in the above-referenced docket.

A copy of the filing was served upon the Public Utilities Commission of Ohio and all parties of record.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Manner Technologies, L.L.C.

[Docket No. ER97-135-000]

Take notice that on November 5, 1996, Manner Technologies, L.L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Companies Services, Inc.

[Docket No. ER97-239-000]

Take notice that on October 29, 1996, Southern Companies Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company tendered for filing the quarterly report of short-term transactions under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4).

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Atlantic City Electric Company

[Docket No. ER97-243-000]

Take notice that on October 28, 1996, Atlantic City Electric Company (AE) tendered for filing a summary of transactions made by AE during the 3rd quarter of calendar year 1996 pursuant to its market-based rate power service tariff, made effective by the Commission on April 29, 1996 in Docket No. ER96-640-000.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. UGI Utilities, Inc.

[Docket No. ER97-245-000]

Take notice that on October 28, 1996, UGI Utilities, Inc. tendered for filing a Notice of Succession advising the Commission that UGI Corporation changed its name to UGI Utilities, Inc.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services

[Docket No. ER97-246-000]

Take notice that on October 28, 1996, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (the Operating Companies), tendered for filing letter agreements and amendments to Unit Power Sales Agreements between the Operating Companies and Florida Power Corporation and City of Tallahassee, Florida, respectively, respecting changes to the methods and procedures for calculating the cost of capital for use in developing capacity charges.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER97-346-000]

Take notice that on November 7, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission its agreement with the Power Authority of the State of New York (the Authority) for the Authority's sale to NMPC of Economic Development Power (EDP) and NMPC's EDP tariff leaves as approved by the New York State Public Service Commission. Take notice that on November 7, 1996, NMPC supplemented its initial filing to replace the superseded version of the EDP agreement that had been mistakenly filed with the correct version of the agreement.

NMPC continues to request an effective date of October 24, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service, the New York Power Authority and counsel for multiple intervenors.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER97-384-000]

Take notice that on November 6, 1996, Portland General Electric Company (PGE), tendered for filing a contract with the Bonneville Power Authority to upgrade specific local transmission facilities.

Copies of this filing were caused to be served upon the Bonneville Power

Authority and the Oregon Public Utility Commission.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER97-385-000]

Take notice that on November 6, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Ohio Edison Company (OEC), dated October 31, 1996. This Service Agreement specifies that OEC has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95-276-000 and allows GPU and OEC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 31, 1996, for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Company

[Docket No. ER97-386-000]

Take notice that on November 6, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Franklin County PUD and Idaho Power Company.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER97-387-000]

Take notice that on November 6, 1996, PECO Energy Company (PECO),

filed a Service Agreement dated October 29, 1996 with Wisconsin Electric Power Company (WEPCO) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds WEPCO as a customer under the Tariff.

PECO requests an effective date of October 29, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to WEPCO and to the Pennsylvania Public Utility Commission.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. MidAmerican Energy Company

[Docket No. ER97-388-000]

Take notice that on November 6, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing proposed changes in its Rate Schedule FERC No. 66. Such change is comprised of a revised Exhibit A to Transmission Service Contract No. 3-07-60-P0217 entered into by MidAmerican's predecessor, Iowa Public Service Company, with The United States of America.

MidAmerican states that the revised exhibit changes the delivery and measurement voltages at three points of delivery under the contract.

MidAmerican proposes an effective date of July 28, 1996, for the rate schedule change and states that good cause exists for this waiver because the change does not increase any rate charged under the rate schedule, increases the delivery and measurement voltage for the service provided under the contract and the customer has agreed to this effective date as evidenced by its signature to the exhibit.

Copies of the filing were served upon representatives of the customer under the contract, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Pacific Gas and Electric Company

[Docket No. ER97-389-000]

Take notice that on November 1, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing: 1) an amendment dated March 7, 1995 to the "Settlement Agreement Concerning FERC Docket No. E-7777-000, et al., between Pacific Gas and Electric Company and the City of Santa Clara" PG&E Rate Schedule No. 127 (Settlement Agreement); and 2) a Notice of Termination of that rate schedule.

Copies of this filing have been served upon Santa Clara and the California Public Utilities Commission.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Kentucky Utilities Company

[Docket No. ER97-390-000]

Take notice that on November 6, 1996, Kentucky Utilities Company (KU), tendered for filing non-firm transmission service agreements with Florida Power & Light Company and Williams Energy Services Company under its Transmission Services (TS) Tariff.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Baltimore Gas and Electric Company

[Docket No. ER97-391-000]

Take notice that on November 5, 1996, Baltimore Gas and Electric Company (BGE) filed various Service Agreements with Virginia Electric and Power Company, Citizens Lehman Power Sales, Morgan Stanley Capital Group Inc., Dupont Power Marketing, Inc. and Western Power Services, Inc. under BGE's Transmission Service Tariff (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to customers listed above under the provisions of the tariff. BGE requests an effective date of November 11, 1996, for the Service Agreements.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Boston Edison Company

[Docket No. ER97-392-000]

Take notice that on November 7, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Electric Clearinghouse, Inc. (Clearinghouse). Boston Edison requests that the Service Agreement become effective as of October 15, 1996.

Edison states that it has served a copy of this filing on Clearinghouse and the Massachusetts Department of Public Utilities.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Boston Edison Company

[Docket No. ER97-393-000]

Take notice that on November 7, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service

Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for The Chicopee Electric Light Department (Chicopee). Boston Edison requests that the Service Agreement become effective as of October 15, 1996.

Edison states that it has served a copy of this filing on Chicopee and the Massachusetts Department of Public Utilities.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Boston Edison Company

[Docket No. ER97-394-000]

Take notice that on November 7, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Bangor Hydro-Electric Company (Bangor). Boston Edison requests that the Service Agreement become effective as of October 15, 1996.

Edison states that it has served a copy of this filing on Bangor and the Massachusetts Department of Public Utilities.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Boston Edison Company

[Docket No. ER97-395-000]

Take notice that on November 7, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Rainbow Energy Marketing Corporation (Rainbow). Boston Edison requests that the Service Agreement become effective as of October 15, 1996.

Edison states that it has served a copy of this filing on Rainbow and the Massachusetts Department of Public Utilities.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Southern Indiana Gas and Electric Company

[Docket No. ER97-397-000]

Take notice that on November 7, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing two (2) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. Aquila Power Corporation
2. Dayton Power and Light Company

Copies of the filing were served upon each of the parties to the Service Agreements.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Southern Indiana Gas and Electric Company

[Docket No. ER97-398-000]

Take notice that on November 7, 1996, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Aquila Power Corporation
2. Dayton Power and Light Company

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. MP Energy, Inc.

[Docket No. ER97-399-000]

Take notice that on November 7, 1996, MP Energy, Inc. (MP Energy), tendered for filing pursuant to section 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

MP Energy intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MP Energy sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. MP Energy is not in the business of generating, transmitting, or distributing electric power.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-400-000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Englehard Power Marketing, Inc. (EPM).

Con Edison states that a copy of this filing has been served by mail upon EPM.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-401-000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc. (MSCG).

Con Edison states that a copy of this filing has been served by mail upon MSCG.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-402-000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Long Island Lighting Company (LILCO).

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-403-000]

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to AIG Trading Corporation (AIG).

Con Edison states that a copy of this filing has been served by mail upon AIG.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Detroit Edison Company

[Docket No. ES97-9-000]

Take notice that on November 12, 1996, Detroit Edison Company (Detroit Edison) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term debt and assume and guarantee obligations, in an aggregate principal amount of not more than \$400 million outstanding at any one time, pursuant to a Loan Agreement, a Nuclear Fuel Heat Purchase Contract and two Credit Agreements with Renaissance Energy Company.

Detroit Edison also requests an exemption from the Commission's competitive bidding requirements.

Comment date: December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. OA97-25-000]

Take notice that on October 11, 1996, Northern States Power Company (Minnesota) (NSP-MN) and Northern States Power Company (Wisconsin) (NSP-WI) (jointly hereinafter NSP) submitted for filing its Open Access Transmission Tariff. NSP states that the terms and conditions of service included in NSP's Transmission Tariff conform to the terms and conditions of service contained in the pro forma tariff included in Order No. 888. NSP has already established all rates and charges for such service pursuant to a settlement agreement which was approved by the Commission on February 14, 1996, in Docket No. ER94-1090-000 and ER94-1113-000.

NSP respectfully requests an effective date of October 11, 1996.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29859 Filed 11-21-96; 8:45 am]
BILLING CODE 6717-01-P

[Project No. 11374-001 Iowa]

Butler County Conservation Board; Notice of Availability of Final Environmental Assessment

November 18, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Greene Milldam Hydroelectric Project, located on the Shell Rock River, Butler County, Iowa, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29882 Filed 11-27-96; 8:45 am]
BILLING CODE 6717-01-M

Sunshine Act Meeting

November 19, 1996.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.
DATE AND TIME: NOVEMBER 26, 1996, 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA.

* NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE (202) 208-0400. FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208-1827.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF

ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 663KD MEETING—NOVEMBER 26, 1996, REGULAR MEETING (10:00 A.M.)

CAH-1.

DOCKET# HB08-94A-75, 001, VIRGINIA ELECTRIC AND POWER COMPANY
OTHER# HB08-94A-76, 001, VIRGINIA ELECTRIC AND POWER COMPANY
HB08-95A-75, 001, VIRGINIA ELECTRIC AND POWER COMPANY
HB08-95A-76, 001, VIRGINIA ELECTRIC AND POWER COMPANY.

CAH-2.

DOCKET# P-2105, 039, PACIFIC GAS AND ELECTRIC COMPANY

CAH-3.

OMITTED

CAH-4.

DOCKET# P-1494, 123, GRAND RIVER DAM AUTHORITY

CONSENT AGENDA—ELECTRIC

CAE-1.

DOCKET# ER96-2789, 000, PUGET SOUND POWER & LIGHT COMPANY

CAE-2.

DOCKET# ER96-2964, 000, ENSERCO ENERGY, INC.

CAE-3.

DOCKET# ER96-3157, 000, NIAGARA MOHAWK POWER CORPORATION

CAE-4.

DOCKET# ER97-7, 000, THE WASHINGTON WATER POWER C COMPANY

CAE-5.

DOCKET# ER96-3146, 000, WEST PENN POWER COMPANY

CAE-6.

OMITTED

CAE-7.

OMITTED

CAE-8.

DOCKET# OA96-5, 000, MIDWEST ENERGY, INC.

OTHER# OA96-24, 000, BANGOR HYDRO-ELECTRIC COMPANY

OA96-35, 000, MAINE PUBLIC SERVICE COMPANY

OA96-60, 000, BLACK HILLS POWER & LIGHT COMPANY

OA96-72, 000, ST. JOSEPH LIGHT & POWER COMPANY

OA96-157, 000, UNITED ILLUMINATING COMPANY

OA96-215, 000, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

OA96-222, 000, NORTHWEST PUBLIC SERVICE COMPANY

OA96-224, 000, CITIZENS UTILITIES COMPANY

CAE-9.

DOCKET# EC96-13, 000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.

OTHER# ER96-1236, 000, IES UTILITIES, INC., INTERSTATE POWER COMPANY AND WISCONSIN POWER & LIGHT COMPANY, ET AL.

ER96-2560, 000, IES UTILITIES, INC.,
INTERSTATE POWER COMPANY AND
WISCONSIN POWER & LIGHT
COMPANY, ET AL
CA96-133, 000, INTERSTATE ENERGY
CORPORATION
CAE-10.
DOCKET# OA96-25, 001, BLACK CREEK
HYDRO, INC.
OTHER#S OA96-58, 001, GRAHAM
COUNTY ELECTRIC COOPERATIVE,
INC.
OA96-65, 001, BARRON ELECTRIC
COOPERATIVE
OA96-71, 001, MADISON GAS AND
ELECTRIC COMPANY
OA96-81, 001, INDIANAPOLIS POWER
AND LIGHT COMPANY
OA96-160, 001, NEW ENGLAND
ELECTRIC TRANSMISSION
CORPORATION, ET AL
OA96-173, 001, EDISON SAULT
ELECTRIC COMPANY
OA96-216, 001, CITIZENS UTILITIES
COMPANY
OA96-217, 001, CONSOLIDATED WATER
POWER COMPANY
CAE-11.
DOCKET# EL96-60, 000, RIO GRANDE
ELECTRIC COOPERATIVE, INC. V.
CENTRAL POWER AND LIGHT
COMPANY
CAE-12.
DOCKET# EL96-75, 000, ENCOGEN ONE
PARTNERS LTD.
CONSENT AGENDA—GAS AND OIL
CAG-1.
DOCKET# RP97-34, 000, EAST
TENNESSEE NATURAL GAS
COMPANY
OTHER#S RP97-34, 001, EAST
TENNESSEE NATURAL GAS
COMPANY
CAG-2.
DOCKET# RP97-47, 000, ANR PIPELINE
COMPANY
CAG-3.
OMITTED
CAG-4.
DOCKET# RP97-50, 000, TEXAS
EASTERN TRANSMISSION
CORPORATION
CAG-5.
DOCKET# RP97-52, 000, COLUMBIA
GULF TRANSMISSION CORPORATION
CAG-6.
DOCKET# RP97-53, 000, STEUBEN GAS
STORAGE COMPANY
CAG-7.
OMITTED
CAG-8.
OMITTED
CAG-9.
DOCKET# RP97-71, 000,
TRANSCONTINENTAL GAS PIPE LINE
CORPORATION
CAG-10.
DOCKET# RP97-72, 000, ANR PIPELINE
COMPANY
CAG-11.
DOCKET# RP96-200, 013, NORAM GAS
TRANSMISSION COMPANY
CAG-12.
DOCKET# RP97-41, 000,
TRANSWESTERN PIPELINE COMPANY
CAG-13.

DOCKET# RP97-43, 000, KOCH
GATEWAY PIPELINE COMPANY
CAG-14.
OMITTED
CAG-15.
DOCKET# RP97-57, 000, NORAM GAS
TRANSMISSION COMPANY
CAG-16.
DOCKET# PR96-13, 000, NORTHERN
ILLINOIS GAS COMPANY
CAG-17.
DOCKET# RP96-211, 005,
TRANSCONTINENTAL GAS PIPE LINE
CORPORATION
CAG-18.
DOCKET# RP96-347, 001, NORTHERN
NATURAL GAS COMPANY
CAG-19.
DOCKET# RP96-190, 004, COLORADO
INTERSTATE GAS COMPANY
OTHER#S RP96-190, 005, COLORADO
INTERSTATE GAS COMPANY
CAG-20.
DOCKET# RP97-44, 000, PACIFIC GAS
TRANSMISSION COMPANY
CAG-21.
DOCKET# RP97-69, 000, NORTHWEST
PIPELINE CORPORATION
CAG-22.
DOCKET# RP96-366, 001, FLORIDA GAS
TRANSMISSION COMPANY
OTHER#S PA94-15, 002, FLORIDA GAS
TRANSMISSION COMPANY
CAG-23.
DOCKET# RP96-351, 002, ARKANSAS
WESTERN PIPELINE COMPANY
CAG-24.
DOCKET# RP96-216, 004, TEXAS
EASTERN TRANSMISSION
CORPORATION
CAG-25.
DOCKET# RP96-173, 003, WILLIAMS
NATURAL GAS COMPANY
OTHER#S RP96-183, 066, WILLIAMS
NATURAL GAS COMPANY
CAG-26.
DOCKET# RP96-181, 003, TRUNKLINE
GAS COMPANY
CAG-27.
DOCKET# RP96-362, 002, ANR PIPELINE
COMPANY
CAG-28.
DOCKET# RP96-259, 001, PANHANDLE
EASTERN PIPE LINE COMPANY
CAG-29.
DOCKET# RP96-224, 002, PANHANDLE
EASTERN PIPE LINE COMPANY
CAG-30.
DOCKET# RP96-247, 001, MIDWESTERN
GAS TRANSMISSION COMPANY
CAG-31.
DOCKET# RP96-331, 003, NATIONAL
FUEL GAS SUPPLY CORPORATION
CAG-32.
DOCKET# IS94-10, 007, AMERADA HESS
PIPELINE CORPORATION
OTHER#S IS94-11, 007, ARCO
TRANSPORTATION ALASKA, INC.
IS94-12, 007, BP PIPELINES (ALASKA)
INC.
IS94-13, 006, MOBIL ALASKA PIPELINE
COMPANY
IS94-14, 007, EXXON PIPELINE
COMPANY
IS94-15, 007, MOBIL ALASKA PIPELINE
COMPANY

IS94-16, 007, PHILLIPS ALASKA
PIPELINE CORPORATION
IS94-17, 007, UNOCAL PIPELINE
COMPANY
IS94-31, 007, UNOCAL PIPELINE
COMPANY
IS94-34, 006, ARCO TRANSPORTATION
ALASKA, INC.
IS94-38, 007, PHILLIPS ALASKA
PIPELINE CORPORATION
OR94-2, 000, TRANS ALASKA PIPELINE
SYSTEM
CAG-33.
OMITTED
CAG-34.
DOCKET# RP96-312, 003, TENNESSEE
GAS PIPELINE COMPANY
CAG-35.
DOCKET# RP94-326, 002, K N
INTERSTATE GAS TRANSMISSION
COMPANY
OTHER#S RP95-81, 001, K N
INTERSTATE GAS TRANSMISSION
COMPANY
CAG-36.
DOCKET# RP96-359, 003,
TRANSCONTINENTAL GAS PIPE LINE
CORPORATION
CAG-37.
DOCKET# RP96-234, 000, ANR PIPELINE
COMPANY
CAG-38.
DOCKET# IS96-10, 000, MILNE POINT
PIPE LINE COMPANY
OTHER#S IS96-8, 001, MILNE POINT PIPE
LINE COMPANY
CAG-39.
DOCKET# CP96-1391, 006, ARCADIAN
CORPORATION V. SOUTHERN
NATURAL GAS COMPANY
CAG-40.
DOCKET# CP96-16, 001,
TRANSCONTINENTAL GAS PIPE LINE
CORPORATION
OTHER#S CP96-16, 000,
TRANSCONTINENTAL GAS PIPE LINE
CORPORATION
CAG-41.
DOCKET# CP96-52, 001, PINE NEEDLE
LNG COMPANY, LLC
OTHER#S CP96-52, 000, PINE NEEDLE
LNG COMPANY, LLC
CP96-134, 000, TRANSCONTINENTAL
GAS PIPE LINE CORPORATION
CP96-134, 001, TRANSCONTINENTAL
GAS PIPE LINE CORPORATION
CAG-42.
DOCKET# CP96-185, 000, ANR PIPELINE
COMPANY
OTHER#S CP96-188, 000, GPM GAS
CORPORATION
CAG-43.
DOCKET# CP96-583, 000, MIDCON
TEXAS PIPELINE CORPORATION
HYDRO AGENDA
H-1.
DOCKET# RM95-16, 000, REGULATIONS
FOR THE LICENSING OF
HYDROELECTRIC PROJECTS
NOTICE OF PROPOSED RULEMAKING.
ELECTRIC AGENDA
E-1.
DOCKET# EC96-19, 000, PACIFIC GAS &
ELECTRIC COMPANY, SAN DIEGO GAS

& ELECTRIC COMPANY AND
SOUTHERN CALIFORNIA EDISON
COMPANY
OTHER#S ER96-1663, 000, PACIFIC GAS
& ELECTRIC COMPANY, SAN DIEGO
GAS & ELECTRIC COMPANY AND
SOUTHERN CALIFORNIA EDISON
COMPANY
ORDER ON APPLICATION RELATED TO
CALIFORNIA RESTRUCTURING.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR-1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC-1.
RESERVED
Lois D. Cashell,
Secretary.
[FR Doc. 96-30010 Filed 11-20-96; 11:05
am]
BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION
AGENCY

[ER-FRL-5475-1]

Environmental Impact Statements;
Notice of Availability

Responsible Agency: Office of Federal
Activities, General Information (202)
564-7167 or (202) 564-7153.
Weekly receipt of Environmental
Impact Statements Filed November 11,
1996 Through November 15, 1996
Pursuant to 40 CFR 1506.9.

EIS No. 960532, FINAL EIS, FHW, PA,
Erie East Side Access Study,
Transportation Improvement, PA-
4034, Section A40, COE Section 404
Permit, Erie County, PA, Due:
December 23, 1996, Contact: Manuel
A. Mark (717) 782-3461.

EIS No. 960533, FINAL SUPPLEMENT,
FHW, TX, TX-161 Construction,
Updated Information on I-20 to TX-
183, Funding, Coast Guard Section 10
Permit and Possible COE Section 404
Permit, Cities of Grand Prairie and
Irving, Dallas County, TX, Due:
December 23, 1996, Contact: Peter A.
Lombard (817) 978-3646.

EIS No. 960534, FINAL EIS, NPS, WA,
Elwha River Ecosystem Restoration
Implementation Project, Olympic
National Park, Clallam County, WA,
Due: December 23, 1996, Contact:
Brian Winter (360) 452-0302.

EIS No. 960535, FINAL EIS, FRC, WA,
Condit Hydroelectric Project (FERC
No. 2342-005), Relicensing, White
Salmon River, Klickitat and Skamania
Counties, WA, Due: December 23,
1996, Contact: John Blair (202) 219-
2845.

EIS No. 960536, DRAFT EIS, FTA, MD,
Glen Burnie Light Rail Extension,
Transportation Improvement, between
Cromwell Station Stop to the Glen
Burnie Town Center, Central Light
Rail Line (CLRL), Funding, Anne
Arundel and Baltimore Counties, MD,
Due: January 10, 1997, Contact: Alfred
Lebeau (215) 656-6900.

EIS No. 960537, FINAL EIS, FHW, CA,
Arden Garden Connector Project,
Arden Way in North Sacramento to
Garden Highway in South Natomas
across the Natomas East Main
Drainage Canal, Funding, Sacramento
County, CA, Due: December 23, 1996,
Contact: John R. Schultz (916) 498-
5041.

EIS No. 960538, FINAL EIS, USN, Naval
Spent Nuclear Fuel Container System
Management, Loading, Handling and
Dry Storage, Transportation and
Storage, Handling and Transportation
of certain Associated Radioactive
Waste, Implementation, United States,
Due: December 23, 1996, Contact:
William Knoll (703) 602-8229.

EIS No. 960539, FINAL EIS, DOE,
Adoption—Naval Spent Nuclear Fuel
Container System Management,
Loading, Handling and Dry Storage,
Transportation and Storage, Handling
and Transportation of certain
Associated Radioactive Waste,
Implementation, United States, Due:
December 23, 1996, Contact: William
Knoll (703) 602-8229. The US
Department of Energy (DOE), has
adopted the US Department of the
Navy's FEIS #960538, filed with the
Environmental Protection Agency on
11-15-96. DOE is a cooperating
agency on this project. Recirculation
of the document is not necessary
under Section 1506.3(c) of the
Council on Environmental Quality
Regulations.

EIS No. 960540, DRAFT EIS, COE, IA,
Channel Maintenance Management
Plan, Implementation, 9-Foot
Navigation Channel Project, Upper
Mississippi River, Güttenberg, IA,
Due: January 21, 1997, Contact: Robert
Whiting (612) 290-5264.

EIS No. 960541, FINAL EIS, BIA, NM,
Jemez Mountains Electric
Cooperative, Construction, Operation
and Maintain, El Rancho Substation,
Sante Fe County, NM, Due: December
23, 1996, Contact: Curtis Canard (505)
766-3374.

Amended Notices

EIS No. 960359, DRAFT EIS, BLM, ID,
Challis Land and Resource
Management Plan, Implementation,
Upper Columbus—Salmon Clearwater
Districts, Salmon River, Lemhi and
Custer Counties, ID, Due: January 06,

1997, Contact: Kathe Rhodes (206)
756-5440.
Published FR 08-09-96—Review Period
Extended.

EIS No. 960403, DRAFT EIS, NPS, MA,
Cape Cod National Seashore General
Management Plan, Implementation,
Barnstable County, MA, Due:
November 30, 1996, Contact: Maria
Burks (508) 349-3785.

Published FR-09-06-96—Review
Period Extended.

EIS No. 960450, DRAFT EIS, FAA, MO,
Lambert-St. Louis International
Airport (Lambert) Improvements,
Construction and Operation, Airport
Layout Plan Approval, City of St.
Louis, St. Louis County, MO, Due:
December 18, 1996, Contact: Ma.
Maira Keane (816) 426-4731.

Published FR-10-04-96—Review
Period extended.

EIS No. 960482, DRAFT EIS, NPS, WA,
Lake Crescent Management Plan,
Implementation, Olympic National
Park, WA, Due: February 03, 1997,
Contact: Joe Dunstan (206) 220-4273.
Published FR-10-18-96—Review
Period Extended.

EIS No. 960503, DRAFT EIS, FTA, TX,
North Central Corridor Light Rail
Transit (LRT) Extension,
Transportation Improvements,
Funding, NPDES Permit and COE
Section 404 Permit, Dallas and Collin
Counties, TX, Due: December 09,
1996, Contact: Jesse Balleza (817)
860-9663.

Published FR-10-25-96 Correction to
Telephone Number.

EIS No. 960519, DRAFT EIS, UAF, CA,
NM, Airborne Laser (ABL) Phase
Program Definition and Risk
Reduction Phase, Proposed Locations:
Home Base Edwards Air Force Base;
Diagnostic Test Range—White Sands
Missile Range, NM; and Expanded
Area Test Range—Western Range
(Vandenberg Air Force Base and Point
Mugu Naval Air Warfare Center
Weapons Division), CA and NM, Due:
January 10, 1997, Contact: Major Kark
Frecks (703) 695-8942.

Published FR-11-08-96—Correction to
EIS Titled and Due Dated.

EIS No. 960523, FINAL EIS, COE, FL,
Coast of Florida Erosion and Storm
Effects Study Region III, Construction,
Operation and Maintenance, Shore
Protection Project, Palm Beach,
Broward and Dade Counties, FL, Due:
December 16, 1996, Contact: Michael
Dupes (904) 232-1689.

Published FR-11-15-96—Due Date
Correction.

EIS No. 960524, FINAL EIS, AFS, CA,
Snowy Trail Off-Highway Vehicle Re-
Route, Smith Fork Parcel of Los
Padres National Forest, Approval and

Implementation, Mount Pinos Ranger District, Ventura County, CA, Due: December 16, 1996, Contact: Mark Bethke (805) 245-3731.
Published FR-11-15-96—Due Date Correction.

EIS No. 960529, FINAL EIS, FRC, WA, Cushman Hydroelectric Project (FERC No. 460), Relicensing, North Fork Skokomish River, Mason County, WA, Due: December 16, 1996, Contact: John Blair (202) 219-2845.
Published FR-11-15-96 Due Date Correction.

EIS No. 960531, FINAL EIS, DOE, TN, GA, TX, SC, MO, Programmatic EIS-Stockpile Stewardship and Management Project, Reduced Nuclear Weapons Stockpile in the Absence of Underground Testing, Eight Sites: Oak Ridge Reservation (ORR), Savannah River Site (SRS), Kansas City Plant (KCP) Pantex Plant, Los Alamos Nat'l Lab., Lawrence Livermore Nat'l Lab., Sandia Nat'l and Nevada Test, Due: December 16, 1996, Contact: Alfred W. Feldt (202) 586-5449.
Published FR-11-15-96—Due Date Correction.

Dated: November 19, 1996.
William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 96-29917 Filed 11-21-96; 8:45 am]
BILLING CODE 6960-60-P

[ER-FRL-5475-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 28, 1996 Through November 1, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D-AFS-G65065-AR Rating LO, Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker, Amendment No. 22 to the Ouachita National Forest Land and Resource Management Plan, Scott and Polk Counties, AR.

Summary: EPA had no objection to the selection of the preferred alternative described in the draft EIS.

ERP No. D-COE-E30038-FL Rating EC2, Coast of Florida Erosion and Storm Effects Study Region III, Construction, Operation and Maintenance, Shore Protection Project, Palm Beach, Broward and Dade Counties, FL.

Summary: EPA expressed some environmental concerns regarding the long-term consequences of how these actions will affect the ecology of the Florida shoreline.

ERP No. D-COE-K36117-CA Rating EC2, Kaweah River Basin Investigation Feasibility Study, Flood Protection of Terminus Dam, Increase Storage Space in Lake Kaweah for Irrigation of Water Supply, Construction, Modification and Operation, San Joaquin Valley, Tulare and King Counties, CA.

Summary: EPA expressed environmental concern with proposed mitigation and recommended selection of the Locally Preferred Plan (LPP) alternative which would address these adverse impacts while meeting project purposes. EPA also expressed concern with the potential adverse impact to riparian and oak woodland/savannah habitat.

ERP No. D-COE-K39044-CA Rating EC2, Norco Bluffs Bank Stabilization Measures, Implementation, Riverside County Flood Control and Water Conservation District, National Economic Development, Santa Ana River, City of Norco, Riverside County, CA.

Summary: EPA expressed environmental concerns over potential impacts associated with herbicides, consistency with applicable water quality protection requirements.

ERP No. D-DOE-C06012-NY Rating EO2, West Valley Demonstration Project for Completion and Western New York Nuclear Service Center Closure or Long-Term Management, Appalachian Plateau, City of Buffalo, NY.

Summary: EPA had environmental objections to this project because of the limited information concerning site contamination, clean-up levels, waste disposal, ground and surface water radiation risk assessment, and institutional controls. Additional information is requested in the final EIS to address these items. A follow up meeting has also been requested.

Final EISs

ERP No. F-BLM-J65198-WY, Green River Resource Area Land and Resource Management Plan, Implementation, Rock Springs District, Sweetwater, Fremont, Uinta, Sublette and Lincoln Counties, WY.

Summary: EPA expressed no comments or concerns.

ERP No. F-COE-E01002-NC, Texasgulf Open Pit Mine Continuation, Construction and Operation, Permit Approval, Pamlico River, Aurora, Beaufort County, NC.

Summary: EPA supported mining configuration Alternatives D, E-1, and E-2 because these minimize impacts on wetlands of special concern. The up-front mitigation being provided is satisfactory pending resolution of some technical wetland issues. EPA would object to Alternatives A, B (the applicant's choice), and C, as these would destroy most of the wetlands of special concern.

ERP No. F-COE-E32193-00, Savannah Harbor Navigation Project, Operation and Maintenance, Long Term Management Strategy Study, Chatham County, GA and Jasper County, SC.

Summary: Because operational changes to the Savannah Harbor are so comprehensive, EPA continued to have some concerns regarding the long-term consequences of how all of the proposed elements of the management plan will be coordinated and subsequently function.

ERP No. F-COE-G36146-LA, Amite River and Tributaries Flood Control Project, Implementation, East Baton Rouge Parish Watershed, Florida Parishes, LA.

Summary: EPA had no objections to the selection of the preferred alternative.

ERP No. F-FRC-L05213-WA, Rocky Reach Hydroelectric Project (FERC No. 2145) Operating License Amendment Issuance to Increase Lake Entiat Reservoir, Chelan and Douglas Counties, WA.

Summary: EPA concurs with the Final EIS's conclusion that amending the license for the Rocky Reach project under the applicant's proposal and the FERC staff's two alternatives would not adequately protect Mid-Columbia River salmon stocks. EPA supports FERC's selection of the no-action alternative as the preferred alternative.

ERP No. FB-COE-E36013-MS, Mississippi River and Tributaries Flood Control Plan, Big Sunflower River Maintenance Project, Yazoo Basin, Sunflower, Washington, Humphreys, Sharkey and Yazoo Counties, MS.

Summary: EPA expressed concern over the environmental consequences associated with channelizing over one hundred miles of streams in the Big Sunflower watershed. EPA also suggested that a non-structural approach may provide needed flood protection with minimal environmental impacts.

Dated: November 19, 1996.

William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 96-29916 Filed 11-21-96; 8:45 am]
BILLING CODE 6960-60-P

[FRL-5654-5]

Community-Based Environmental Protection Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92-463, EPA gives notice of a two-day meeting of the Community-Based Environmental Protection Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the Community-Based Environmental Protection Committee was formed to identify opportunities for harmonizing environmental policy, economic activity, and ecosystem management.

The meeting is being held to discuss recommendations the Committee plans to submit to EPA. Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Tuesday, December 17, 1996, and Wednesday, December 18, 1996, at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C. On Tuesday, December 17, the Committee will meet from 9:00 a.m. to 5:00 p.m., and on Wednesday, December 18, the Committee will meet from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Written comments should be sent to: Deborah Ross, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M Street SW., Washington, D.C. 20460.
FOR FURTHER INFORMATION CONTACT: Deborah Ross, Designated Federal Officer, Direct line (202) 260-0752, Secretary's line (202) 260-0744.

Dated: November 7, 1996.

Deborah Ross,
Designated Federal Officer.
[FR Doc. 96-29927 Filed 11-21-96; 8:45 am]
BILLING CODE 6960-60-M

[FRL-5654-2]

Science Advisory Board Notification of Public Advisory Open Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Ecological Risk Subcommittee of the Science Advisory Board's (SAB) Integrated Risk Project will meet on December 10-12, 1996, at the Bourbon Orleans Hotel, 717 Orleans Street, New Orleans, LA, 70116, telephone (504) 523-2222. The meeting is open to the public and will begin at 8:30 a.m. on December 10 and at 8:00 a.m. on December 11 and 12. Due to limited space, seating at the meeting will be on a first-come basis.

The main purpose of the meeting is to: (1) complete discussion of a methodology for identifying and ranking ecological risks as part of the SAB's Integrated Risk Project; and (2) meet with representatives of the IRP Human Exposure and Health Subcommittee to discuss integration of methodologies for ranking human health and ecological risks.

Background on the Integrated Risk Project: In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (1) develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (2) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (3) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (4) identify the uncertainties and data quality issues associated with the relative rankings. Since that time, five SAB panels, working at the direction of an ad hoc Steering Committee established by the Executive Committee, have been discussing methods for: (1) Assessing relative risks; (2) selecting suites of risk reduction options; and (3) conducting economic analysis of various risk management options. A final report is expected in early summer of 1997.

Single copies of *Reducing Risk* can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260-8414, or fax (202) 260-1889. Members of the public desiring additional information

about the meeting, including an agenda, should contact Ms. Constance Valentine, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260-8414, fax at (202) 260-7118, or via The INTERNET at: Valentine.Connie@EPAMAIL.EPA.GOV.

Providing Oral or Written Comments:

Anyone wishing to make an oral presentation at the meeting should contact Stephanie Sanzone, Designated Federal Official for the Subcommittee, no later than 4:00 p.m., December 2, 1996, at (202) 260-6557 or via the Internet at: Sanzone.Stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Ms. Sanzone no later than the time of the presentation for distribution to the Committee and the interested public. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: November 14, 1996.
Donald G. Barnes,
Staff Director, Science Advisory Board.
[FR Doc. 96-29871 Filed 11-21-96; 8:45 am]
BILLING CODE 6960-60-P

[PF-674; FRL-5574-2]

Pesticide Tolerance Petition; Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice is a summary of a pesticide petition proposing the establishment of a regulation for residues of spinosad in or on cotton. **DATES:** Comments, identified by the docket number (PF-674), must be received on or before December 23, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending

electronic mail (E-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data on this notice of filing may be filed online at many Federal Depository Libraries. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca (PM 13), Rm. 204, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4735) from DowElanco 9330 Zionville Road, Indianapolis, IN 46268-1054 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide spinosad in or on the raw agricultural commodity cottonseed at 0.02 ppm. Spinosad is a fermentation derived tetracyclic macrolide product produced by the actinomycete, *Saccharopolyspora spinosa* and consists of two structurally related compounds, namely spinosyn A and spinosyn D which provide the insect control activity for this new product. The two spinosyns only differ from each other in the substitution of a hydrogen by a methyl group and have structures consisting of a basic amine group, two sugars, and a large complex hydrophobic ring. This new active ingredient that has been accepted by EPA as a reduced risk product is being proposed for registration as a broad

spectrum worm control product on cotton. The proposed analytical method is based on high performance liquid chromatography (HPLC) with ultraviolet (UV) detection.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, DowElanco has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by DowElanco and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Petition Summary

A. Residue Chemistry

The metabolism of spinosad in plants (cotton) and animals (goats and poultry) is adequately understood for the purposes of this tolerance. A rotational crop study showed no carryover of measurable spinosad related residues in representative test crops. Residues in the magnitude of residue study were non-detectable in or on cottonseed. Residues of spinosad did not concentrate in process fractions in samples treated at a 6X application rate. There is a practical method (HPLC with UV detection) for detecting (0.004 ppm) and measuring (0.01 ppm) levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for this tolerance. The method has had a successful method tryout in EPA's laboratories.

B. Toxicological Profile

1. *Acute toxicity.* Spinosad has low acute toxicity. The rat oral LD50 is 3738 mg/kg for males and >5000 mg/kg for females, whereas the mouse oral LD50 is >5000 mg/kg. The rabbit dermal LD50 is >5000 mg/kg and the rat inhalation LC50 is >5.18 mg/l air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water-based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicity.* Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using mouse lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been

conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity.* Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage (highest dose tested). This was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOELs for maternal and fetal effects in rats were 50 and 200 mg/kg/day, respectively. A teratology study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day (highest dose tested). Maternal toxicity was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOELs for maternal and fetal effects in rabbits were 10 and 50 mg/kg/day, respectively. The NOEL found for maternal and pup effects in a rat reproduction study was 10 mg/kg/day. Neonatal effects at 100 mg/kg/day (highest dose tested in the rat reproduction study) were attributed to maternal toxicity.

4. *Subchronic toxicity.* Spinosad was evaluated in 13-week dietary studies and showed NOELs of 4.9 mg/kg/day in dogs, 6 mg/kg/day in mice, and 8.6 mg/kg/day in rats. No dermal irritation or systemic toxicity occurred in a 21-day repeated dose dermal toxicity study in rabbits given 1000 mg/kg/day.

5. *Chronic toxicity.* Based on chronic testing with spinosad in the dog and the rat, a reference dose (RfD) of 0.025 mg/kg/day is proposed for spinosad. The RfD has incorporated a 100-fold safety factor to the NOELs found in these two chronic tests. The NOELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOELs shown in the rat chronic study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats.

6. *Carcinogenicity.* Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOELs shown in the mouse oncogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. The NOELs shown in the rat chronic/oncogenicity study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats. A maximum tolerated dose was achieved at the top dosage level tested in both of these

studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, DowElanco concludes that a cancer risk assessment should not be necessary.

7. *Neurotoxicity.* Spinosad did not cause neurotoxicity in rats in acute, subchronic, or chronic toxicity studies.

8. *Endocrine effects.* There is no evidence to suggest that spinosad has an effect on any endocrine system.

9. *Animal metabolism.* There were no major differences in the bioavailability, routes or rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. In addition, the routes and rates of excretion were not affected by repeated administration.

10. *Metabolite toxicity.* The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, DowElanco concludes there is no need to address metabolite toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* For purposes of assessing the potential dietary exposure from use of spinosad on cotton, a conservative estimate of aggregate exposure is determined by TMRC assuming that 100% of the cotton crop has a residue of spinosad at the tolerance level of .02 ppm. The potential dietary exposure is obtained by multiplying the tolerance residue level on cottonseed (0.02 ppm) by the consumption data which estimates the amount of cottonseed products consumed by various population subgroups. Cottonseed is fed to animals; thus exposure to residues in cottonseed might result if such residues are transferred to meat, milk, poultry, or eggs. However, based on the results of animal metabolism studies in goat and poultry and the level of spinosad residues expected in animal feeds (<0.02 ppm), DowElanco concludes that there is no reasonable expectation that measurable residues of spinosad will occur in meat, milk, poultry or eggs under the terms of the proposed use of spinosad on cotton. There are no other established U.S. tolerances for spinosad and no other registered uses for spinosad on food or feed crops in the United States. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of spinosad on cotton that is based on a conservative exposure assessment. Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with spinosad wherein its properties show

little or no mobility in soil DowElanco concludes, there is no anticipated exposure to residues of spinosad in drinking water. In addition, there is no established Maximum Concentration Level for residues of spinosad in drinking water.

2. *Non-dietary exposure.* There are no other uses currently registered for spinosad. The proposed use on cotton involves application of spinosad to crops grown in an agriculture environment. Thus, the potential for non-occupational exposure to the general population is not expected to be significant.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also has effects on the GABA receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus DowElanco believes it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment.

E. Safety Determinations

1. *U.S. population in general.* Using the conservative exposure assumptions and the proposed RfD described above, the aggregate exposure to spinosad use on cotton will utilize 0.004% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Thus, DowElanco concludes that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues (<0.02 ppm) on cottonseed.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and

a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for spinosad relative to pre- and post-natal effects for children is complete. Further, for spinosad, the NOELs in the chronic feeding studies which were used to calculate the RfD (0.025 mg/kg/day) are already lower than the NOELs from the developmental studies in rats and rabbits by a factor of more than 10-fold.

Concerning the reproduction study in rats, the pup effects shown at the highest dose tested were attributed to maternal toxicity. Therefore, DowElanco concludes that an additional uncertainty factor is not needed and that the RfD at 0.025 mg/kg/day is appropriate for assessing risk to infants and children.

Using the conservative exposure assumptions previously described, the percent RfD utilized by the aggregate exposure to residues of spinosad on cottonseed is 0.012% for children 1 to 6 years old, the most sensitive population subgroup. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, DowElanco concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on cottonseed.

F. International Tolerances

There are no Codex maximum residue levels established for residues of spinosad on cottonseed or any other food or feed crop.

II. Administrative Matters

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the docket control number, PF-674. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4

p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number PF-674 including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall 2, 1921 Jefferson Davis Highway Arlington, VA 22202.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 15, 1996.

Peter Caultkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96-29929 Filed 11-21-96; 8:45 am]
BILLING CODE 6960-60-P

[PF-673; FRL-5573-6]

Pesticide Tolerance Petition; Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice is a summary of a pesticide petition proposing the establishment of a regulation for residues of thiazopyr in or on orange and grapefruit. This summary was prepared by the petitioner.

DATES: Comments, identified by the docket number [PF-673], must be received on or before, December 23, 1996.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments on this notice may be filed on-line at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comments concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne Miller (PM-23) Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305-6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 3F4187 from Rohm and Haas Company, Philadelphia, PA, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide thiazopyr in or on the raw agricultural commodity orange (whole fruit) and grapefruit (whole fruit) at 0.05 ppm. The proposed analytical method is gas chromatography using mass selective detection.

Pursuant to section 408(d)(2)(A)(i) of the FFDC, as amended, Rohm and Haas Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was

prepared by Rohm and Haas Company and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioners and not necessarily EPA's and to remove certain extraneous material.

I. Rohm & Haas Petition Summary

A. Residue Chemistry

1. *Plant metabolism.* Metabolism studies were conducted on peanuts, cotton and lemon. The metabolism of thiazopyr in all crops was extensive. Little thiazopyr was observed in crop tissues. About 10 metabolites were identified and quantified in each study. In peanuts, cotton, and lemon, any individual metabolite represented less than 13-, 9-, and 10-percent of the total dosage, respectively. The metabolic pathway for all three crops is the same.

2. *Analytical method.* A gas-liquid chromatographic analytical method using mass selective detection has been validated in citrus for enforcement purposes. This method converts thiazopyr and its metabolites to a common moiety which is quantified. The limit of quantitation of the method is 0.025 ppm for citrus whole fruit and processed fractions.

3. *Magnitude of residues.* The maximum application rate of 2 pounds of the active ingredient per acre was applied 3 months prior to harvest in 20 field trials. No detectable thiazopyr residue was found above the limit of quantitation of the residue method in whole fruit. After a single application of thiazopyr at 10 pounds per acre 3 months prior to harvest, processed commodities of citrus were produced and analyzed. No residue was found above the limit of quantitation of the method in the processed fractions.

B. Toxicological Profile

1. *Acute toxicity.* Thiazopyr technical was practically non-toxic by ingestion of a single dose (LD₅₀ > 5.0 g/kg) in rats and was practically non-toxic by dermal application (LD₅₀ > 5.0 g/kg in rats). Thiazopyr technical was not significantly toxic to rats after a 4-hr inhalation exposure, with an LC₅₀ value of > 1.2 mg/L (highest concentration attainable) for both sexes. Thiazopyr technical was classified as slightly irritating to the eye and no more than slightly irritating to the skin. Thiazopyr technical was not a dermal sensitizer.

2. *Genotoxicity.* Thiazopyr technical was negative (non-mutagenic) in the Ames microbial mutation assay with and without hepatic enzyme activation. Thiazopyr technical was negative in a hypoxanthine guanine phosphoribosyl

transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, thiazopyr technical did not induce unscheduled DNA synthesis (UDS) or repair when tested up the maximum soluble concentration in culture medium. In an *in vivo* bone marrow cytogenetic (micronucleus) assay no significant increases in micronuclei were seen in bone marrow cells. Thiazopyr did not produce chromosome effects *in vivo*. On the basis of the results of this battery of tests, it is concluded that thiazopyr is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity.* No observed effect levels (NOELs) for developmental toxicity were established at 100 mg/kg/day in the rat and 175 mg/kg/day in the rabbit. In a 2-generation reproduction study in rats there were no treatment-related effects on any reproductive parameter in the adults or their offspring. The NOEL was considered to be 1,000 ppm for reproductive effects (73 - 91 mg/kg/day for males and females, respectively) and 10 ppm for adult toxicity (0.72 - 0.94 mg/kg/day for males and females, respectively). Overall, thiazopyr was not associated with significant developmental or reproductive effects below maternally toxic doses.

4. *Subchronic toxicity.* The NOEL in a 90-day rat feeding study was 100 ppm (6.6 - 8.0 mg/kg/day in males and females, respectively), and the LOEL was 1,000 ppm (68 - 79 mg/kg/day in males and females, respectively) based on increases in absolute and relative liver weights, hepatic enlargement and discoloration, hepatocellular hypertrophy, and effects on parameters associated with altered liver function.

In a 90-day dog feeding study the NOEL was 10 ppm (0.2 mg/kg/day for males; 0.3 mg/kg/day for females) and the lowest observed effect level (LOEL) 100 ppm based on hepatocellular hypertrophy/hyperplasia.

In a 21-day dermal toxicity study in the rat, the NOEL was 100 mg/kg/day. The LOEL was 500 mg/kg/day based on minimal hepatocellular vacuolation in females.

5. *Chronic toxicity.* In a 2-year combined chronic toxicity/oncogenicity study in the rat the NOEL was 100 ppm (4.4 - 5.6 mg/kg/day for males and females, respectively), and the LOEL was 1,000 ppm (44.4 - 56.0 mg/kg/day) based on hematologic and clinical chemistry changes, increased organ weights and incidences of hepatocellular hypertrophy and vacuolation, nephropathy, and thyroid follicular hypertrophy and/or

hyperplasia. An increased incidence of thyroid follicular tumors was observed in males at the two highest doses of 1,000 and 3,000 ppm. The thyroid tumors were determined in three special thyroid function studies to be secondary to a disturbance of thyroid/pituitary homeostasis and were attributed to a hormonally-mediated mechanism for thyroid tumor induction. The effects were dose-responsive and with the exception of thyroid weight, all effects were completely reversible when thiazopyr was removed from the diet.

In an 18 month combined chronic toxicity/oncogenicity study in the mouse the NOEL was 10 ppm in males (1.6 mg/kg bw/day) and 100 ppm in females (26.8 mg/kg bw/day) and the LOEL 100 ppm in males (16.9 mg/kg bw/day) and 400 ppm in females (108.1 mg/kg bw/day) based on increased absolute and relative liver weights, serum chemistry changes, enlarged and/or discolored livers, hepatocellular hypertrophy, increased eosinophilia and vacuolization in livers of both sexes. No evidence of oncogenicity was observed at any dose level.

In a 1-year dog feeding study the NOEL was 20 ppm (0.8 mg a.i./kg bw/day) and the LOEL 200 ppm (8.0 mg/kg/day) based on liver hypertrophy and changes in clinical chemistry parameters associated with liver function.

6. *Animal metabolism.* Thiazopyr technical administered by the oral or intravenous route in the rat was extensively absorbed and extensively degraded via oxidation of the thiazoline ring, oxidation of the isobutyl side chain of the pyridine ring and cleavage of the methyl ester. Thiazopyr was rapidly and extensively eliminated, with very low residues in the tissue and carcass. Glycine thioamide ester and unsaturated nitrile acid were the major metabolites in rat excreta. Thiazopyr was also rapidly eliminated from goats and chickens, and oxidation of the thiazoline ring and the isobutyl side chain were also the major route for metabolic degradation of thiazopyr in goat and chicken.

7. *Metabolite toxicity.* Common metabolic pathways for thiazopyr have been identified in animals (rat, hen, goat, bluegill sunfish) and crop plants (cotton, peanut, citrus). Pathways common to both types of metabolism include oxidative opening of the thiazoline ring, oxidation of the isobutyl side chain and methyl ester cleavage. Overall, the metabolism of thiazopyr is similar in plants and animals. Thiazopyr undergoes extensive degradation and elimination to polar metabolites that are unlikely to

accumulate in humans or animals exposed to these residues in the diet.

A 4-week dietary study was conducted to assess the subchronic toxicity of thiazopyr monoacid. The results of this study suggest that thiazopyr monoacid also perturbs thyroid/liver homeostasis by the same mechanism elucidated for the parent compound, thiazopyr. The NOEL for this study was 1,000 ppm (1,591 mg/kg/day for males; 1,740 mg/kg/day for females). In comparison to the NOEL of 100 ppm in the rat subchronic and chronic dietary studies, the NOEL of 1,000 ppm in this study suggests that thiazopyr monoacid is approximately 10-fold less toxic than the parent, thiazopyr.

8. *Conclusions.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), the EPA's Health Effects Division Carcinogenicity Peer Review Committee concluded that there was limited evidence for carcinogenicity and therefore classified thiazopyr as a Group C-possible human carcinogen. A Margin of Exposure (MOE) approach was recommended to evaluate potential consequences of human exposure. A NOEL of 4.4 mg/kg/day and a LOEL of 44.2 mg/kg/day were selected as the critical dose levels to be used in the MOE carcinogenicity risk assessment.

The database for chronic toxicity assessment is complete. Based on chronic toxicity testing, the dog was the most sensitive species. The RfD Committee of the USEPA Health Effects Division established a Reference Dose (RfD) for thiazopyr of 0.008 mg/kg/day based on the NOEL of 0.8 mg a.i./kg/day and application of a 100-fold safety factor.

C. Aggregate Exposure

1. *Dietary exposure—(i) food.* For purposes of assessing the potential dietary exposure under this tolerance, EPA estimates aggregate exposure using the tolerance on citrus whole fruit at 0.05 ppm. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of citrus or citrus products eaten by various population subgroups. Citrus pulp is fed to animals, thus exposure of humans to residues in citrus pulp might result if such residues are transferred to meat, milk, poultry, or eggs. However, based on the results of animal metabolism studies and the amount of thiazopyr residues expected in animal feeds, EPA has concluded that there is no reasonable expectation that measurable residue of thiazopyr will occur in meat and milk. Citrus pulp is not a poultry

feed item, thus no residues are expected in poultry or eggs. There are no other established U.S. tolerances for thiazopyr, and there are no registered uses for thiazopyr on food or feed crops in the United States.

Using a Dietary Risk Evaluation System analysis, Rohm and Haas calculates that the potential exposure to thiazopyr from consumption of orange and grapefruit products represents 1.47 percent of the thiazopyr RfD for the general population. The percentage of the RfD for the most highly exposed sub-group, non-nursing infants, is 3.14 percent. In conducting this exposure assessment, Rohm & Haas has made very conservative assumptions—that 100 percent of the oranges and grapefruit contain thiazopyr residues and that those residues would all be at the level of the tolerance. This clearly is an overestimation of the potential human exposure.

(ii) *Drinking water.* Other potential dietary sources of exposure of the general population to residues of pesticides are residues in drinking water. A prospective ground water study conducted in a citrus grove, in an area considered vulnerable to leaching of pesticide residue to groundwater, demonstrated that thiazopyr does not leach. A degradate of thiazopyr, thiazopyr monoacid, was observed. Using consumption of 2 liters per day of drinking water (consistent with the National Primary Drinking Water Regulations—Synthetic Organic and Inorganic Chemicals, (56 FR 3526, January 30, 1991)), and the most conservative estimate of potential monoacid concentration, Rohm and Haas calculates that the monoacid uses 2.9 percent of the thiazopyr RfD. This value is substantially below the 20 percent of the RfD typically allocated for drinking water in 56 FR 3526. In conducting this exposure assessment, Rohm and Haas has made the very conservative assumption that all drinking water contains the maximum level of monoacid residues observed in a study designed to evaluate the worst case situation. In addition, the thiazopyr monoacid was considered for purposes of this assessment to be toxicologically equivalent to the parent compound, even though the monoacid metabolite is expected to be of lower overall toxicity than the parent compound.

2. *Non-dietary exposure.* Thiazopyr is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

There is no reliable information to indicate that thiazopyr has a common

mechanism of toxicity with any other chemical compound. Thiazopyr is based on a totally new class of chemistry, thus EPA should consider only the potential risks of thiazopyr in its exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above, and based on the completeness and reliability of the toxicity data, Rohm and Haas has concluded that aggregate exposure to thiazopyr will utilize 4.37 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to thiazopyr residues.

The complete toxicology profile of thiazopyr shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based on this observation thiazopyr does not meet the criteria for an estrogenic compound.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of thiazopyr, EPA considers data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals, data on systemic toxicity, and the survival, growth and development of the offspring.

Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. The NOEL at 0.8 mg/kg/day from the dog study, which was used to calculate the RfD (discussed above), is already lower than the NOEL's from the developmental studies in rats and rabbits by a factor of more than 100 fold. Therefore, Rohm and Haas concludes that an additional uncertainty factor is not warranted and that the RfD at 0.008 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

F. International Tolerances

There are no Codex maximum residue levels (MRL) established for residues of thiazopyr.

G. Other Considerations/Conclusions

Thiazopyr will be a useful addition for weed control in citrus growing areas, particularly where annual grass pressures are high, because it provides control against aggressive grass weeds at significantly lower use rates than existing products. Thiazopyr has a new unique mode of action and offers benefits in integrated pest management programs to counter the potential for weed resistance. Thiazopyr is extremely safe around citrus trees, including young citrus trees.

Therefore, permanent tolerances should be established for residues of thiazopyr in orange (whole fruit) at 0.05 ppm and grapefruit (whole fruit) at 0.05 ppm.

II. Administrative Matters

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the docket number, (PF-673). All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF-673] including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing rulemaking, as well as the public version as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form

as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental Protection,
Administrative Practice and Procedure,

Agricultural Commodities, Pesticides and Pests, Reporting and Recordkeeping Requirements.

Dated: November 14, 1996.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96-29930 Filed 11-21-96; 8:45 am]

BILLING CODE 5620-60-F

FEDERAL COMMUNICATIONS COMMISSION

Renewal Application Designated for Hearing

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following application for renewal of broadcast license:

Licensor	City/State	File No.	MM Docket No.
Quality Broadcasting, Inc.	Macon, GA	BR-951130C7	96-323

(Seeking renewal of the license of WNEX(AM))

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon the following issues:

(a) To determine whether Quality Broadcasting, Inc. has the capability and intent to expeditiously resume the broadcast operations of WNEX(AM), consistent with the Commission's Rules.

(b) To determine whether Quality Broadcasting, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the dockets section of the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202-857-3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96-29961 Filed 11-21-96; 8:45 am]

BILLING CODE 5710-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that

the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 26, 1996, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Revision and reissuance of the Statement of Policy Regarding the Payment of State and Local Taxes.

Memorandum and resolution re: Rescission of the Statement of Policy on Retail Repurchase Agreements.

Discussion Agenda

Memorandum and resolution re: Final Rule Amending Part 327—Assessment Provisions Related to Adjusted Attributable Deposit Amount.

Memorandum and resolution re: BIF Assessment Rates for the First Semiannual Assessment Period of 1997.

Memorandum re: FICO Assessment. The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416-2449 (Voice); (202) 416-2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: November 19, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96-30006 Filed 11-20-96; 10:43 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1144-DR]

New Hampshire; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Hampshire (FEMA-1144-DR), dated October 29, 1996, and related determinations.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3806.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 26, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96-29896 Filed 11-21-96; 8:45 am]

BILLING CODE 5710-02-F

[FEMA-1134-DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-1134-DR), dated September 6, 1996 and related determinations.

EFFECTIVE DATE: November 4, 1996.

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FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 21, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96-29807 Filed 11-21-96; 8:45 am]

BILLING CODE 6710-06-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No: 202-011456-016.
Title: South Europe American Conference.

Parties:

DSR-Senator Lines GmbH
Evergreen Marine Corporation (Taiwan) Ltd.
Italia di Navigazione, S.p.A.
A.P. Moiler-Maerak Line
Nedlloyd Lijn B.V.
P & O Containers Limited
Sea-land Services, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would allow members to join only one loading range of the Eastbound Section of the conference. Other conforming language changes are also being made.

Agreement No: 217-011557.
Title: Contship/Zim/TMM Space Charter Agreement.

Parties:

Contship Containerlines Limited ("Contship")
Transportacion Maritima Mexicana, S.A. de C.V. ("TMM")
Zim-Israel Navigation Co., Ltd. ("Zim")

Synopsis: The proposed Agreement would permit Zim to charter space from Contship and TMM aboard their vessels

operated in the trade between United States Gulf Coast and Florida ports and ports in Italy, France, Spain, Portugal, and Mexico. The parties have requested a shortened review period.

Dated: November 18, 1996.

By order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 96-29822 Filed 11-21-96; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 27, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 20, 1996.

William W. Wiles,
Secretary of the Board.

[FR Doc. 96-30005 Filed 11-20-96; 10:40 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Laboratory Evaluation of Whole Body Isometric Strength Capability During Simulated Scaffold End Frame Lifting.

Time and Date: 1 p.m.-3 p.m., December 13, 1996.

Place: Suncrest Facility, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding technical and scientific aspects of the NIOSH study "Laboratory Evaluation of Whole Body Isometric Strength Capability during Simulated Scaffold End Frame Lifting." Peer review panelists will review the study protocol and provide individual advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Agenda items are subject to change, as priorities dictate.

Contact Person for Additional Information: Robert G. Cullip, Ph.D., M/S 119, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone 304/285-5968.

Dated: November 18, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-29872 Filed 11-21-96; 8:45 am]

BILLING CODE 6160-10-P

Food and Drug Administration

[Docket No. 96N-0402]

Agency Information Collection Activities: Proposed Collection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. The agency is also announcing that it intends to send blood banks, blood collection facilities, and blood component manufacturing facilities the annual request to complete Blood Establishment Registration and Product Listing, Form FDA 2830. This notice solicits comments on blood establishment registration and product listing requirements using form FDA 2830.

DATES: Submit written comments on the collection of information by January 21, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Geraldine M. Hogan, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-19, Rockville, MD 20857, 301-827-1481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. FDA submitted a copy of this notice to OMB for its review of this information collection, and requested emergency processing. OMB approved the information collection through February 28, 1997, and assigned OMB control number 0910-0052. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information,

including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Blood Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607—(OMB Control Number 0910-0052)

Under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, place of business and all such establishments, and submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or

processed by him or her for commercial distribution. In 21 CFR part 607, FDA has issued regulations implementing these requirements for manufacturers of human blood and blood products. Pursuant to these regulations, the agency seeks the information required by the act, including the location of the facility, name of the reporting official, type of ownership, type of establishment, and identification of blood and blood products being manufactured. Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the nation's blood supply. Form FDA 2830, Blood Establishment Registration and Product Listing, is used to collect this information. The likely respondents are blood banks, blood collection facilities, and blood component manufacturing facilities.

FDA estimates the burden of this collection of information as follows: Based upon the past experience of the Center for Biologics Evaluation and Research, Division of Blood Applications, in regulatory blood establishment registration and product listing with new blood banks, the time needed for industry to complete the FDA 2830 is estimated to be 1 hour. For annual re-registration of blood banks, the time needed for industry to complete the FDA 2830 form is estimated to be 1/2 hour because re-registrants only need to refer to their files or written instructions for a small portion of the information required. Blood banks should familiar with the regulations and registration requirements to fill out this form.

ESTIMATED ANNUAL REPORTING BURDEN

Form No. FDA 2830 (21 CFR Part 607)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Initial registration	300	1	300	1	300
Re-registration	3,000	1	3,000	0.5	1,500
Total	3,300		3,300		1,800

There are no capital costs or operating and maintenance costs associated with this collection.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Dated: November 15, 1996.

William K. Hubbard,
Associate Commissioner for Policy Coordination.

[FR Doc. 96-29832 Filed 11-21-96; 8:45 am]

BILLING CODE 4160-01-P

[Docket No. 96N-0416]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 23, 1996.

ADDRESSES: Submit written comments on the collection of information to the

Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Wolff, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-19, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Infant Formula Recall Regulations—21 CFR 107.230, 107.240, 107.250, 107.260, 107.280 (OMB Control Number 0910-0188—Reinstatement)

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350e(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in section 412(i) or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula

presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the act states that the Secretary shall by regulation prescribe the scope and extent of recalls of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations (part 107, subpart E (21 CFR part 107, subpart E)) implement these statutory provisions.

Section 107.230 requires each recalling firm to evaluate the hazard to human health, devise a written recall strategy, promptly notify each affected direct account (customer) about the recall, and furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and provide FDA with a copy of the notice. Section 107.240 requires the recalling firm to notify the appropriate FDA district office of the recall by telephone within 24 hours, to submit a written report to that office within 14 days, and to submit a written status report at least every 14 days until the recall is

terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelf life of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described above are designed to enable FDA to monitor the effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market. If manufacturers were not required to provide this information to FDA, FDA's ability to ensure that recalls are conducted properly would be greatly impaired.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
107.230	0.5	1	0.5	4,500	2,250
107.240	0.5	1	0.5	1,482	741
107.250	0.5	1	0.5	120	60
107.260	0.5	1	0.5	650	325
Total				6,752	3,376

There are no capital costs or operating and maintenance costs associated with this collection.

No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they

would occur in the normal course of activities.

The reporting burden estimate is based on agency records, which show that there are five manufacturers of infant formula and that there have been three recalls in the last 6 years, or 0.5 recalls annually.

Dated: November 15, 1996.
William K. Hubbard,
Associate Commissioner for Policy Coordination.
[FR Doc. 96-29845 Filed 11-21-96; 8:45 am]
BILLING CODE 4180-01-F

[Docket No. 06F-0138]

Bio-Cide International, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 6A4499) proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions in processing

water and ice which directly contact seafood such as finfish, shellfish, and crustaceans for the control of naturally occurring spoilage microorganisms to increase shelf life and to enhance seafood product freshness.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3074.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 9, 1996 (61 FR 21193), FDA announced that a food additive petition (FAP 6A4499) had been filed by Bio-Cide International, Inc., 2845 Broce Dr., Norman, OK 73072. The petition proposed to amend the food additive regulations in part 173 *Secondary Direct Food Additives Permitted in Food for Human Consumption* (21 CFR part 173) to provide for the safe use of acidified sodium chlorite solutions in processing water and ice which directly contact seafood such as finfish, shellfish, and crustaceans for the control of naturally occurring spoilage microorganisms to increase shelf life and to enhance seafood product freshness. Bio-Cide International, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 6, 1996.

Alan M. Kulis,
Director, Office of Premarket Approval,
Center for Food Safety and Applied Nutrition.
[FR Doc. 96-29829 Filed 11-21-96; 8:45 am]
BILLING CODE 4180-01-F

Advisory Committee; Notice of Meetings

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory

committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place: December 12 and 13, 1996, 1 a.m., Holiday Inn—Bethesda, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, December 12, 1996, 8 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 12:15 p.m.; open public hearing, 12:15 p.m. to 12:30 p.m., unless public participation does not last that long; open committee discussion, 12:30 p.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 5:30 p.m.; open committee discussion, December 13, 1996, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 1 p.m.; open committee discussion, 1 p.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 3:30 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM-350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-3514, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area). Blood Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 6, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of December 12, 1996, the

committee will discuss the status of review of recombinant Factor IX, BeneFIX, Genetics Institutes, and review the FDA proposal on limiting plasma pool size for fractionated plasma products. In the afternoon, the committee will review issues of safety and efficacy concerning solvent detergent plasma, New York Blood Center. On the morning of December 13, 1996, the committee will review the status of HTLV-1/HTLV-II EIA, Abbott Laboratories, as in vitro diagnostic test kit to screen blood donors for the human lymphotropic virus Types I and II, and the use of external controls with licensed infectious disease diagnostic test kits used for blood donor screening. In the afternoon, the committee will hear an informational report on the reinvention of the biologics license application (BLA) for blood products.

Closed committee deliberations. On the afternoon of December 13, 1996, the committee may review trade secret and/or confidential commercial information relevant to current and pending products. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. December 20, 1996, 9 a.m., Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 800-228-9200 or 301-590-0044 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Michelle Healy, KRA Corp. 301-495-1591. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Closed committee deliberations, 9 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 1 p.m.; closed presentation of data, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; Cornelia B. Rooks, Center for Devices and Radiological Health (HFD-440) Food and Drug Administration, 2096 Gaither Rd., Rockville, MD 20850, 301-594-1243, or FDA Advisory Committee Information Hotline, 1-800-741-8138, (301-443-0572, in the Washington, DC area), Clinical Chemistry and Clinical Toxicology Devices Panel, code 12514. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make

formal presentations should notify the contact person before December 1, 1996, to submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will consider a premarket approval application (PMA) for a device which calculates a composite index from currently available serum-based clinical laboratory tests to provide additional information, which can assist in identifying osteoporosis in women with three or more National Osteoporosis Foundation Risk Factors.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed presentation of data. The sponsor of the PMA will present to the committee trade secret and/or confidential information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing; (2) an open committee discussion; (3) a closed presentation of data; and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly

frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10 (a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 15, 1996.

Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 96-29830 Filed 11-21-96; 8:45 am]
BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which

interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Neurological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. December 3, 1996, 9:30 a.m., Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 800-228-9290 or 301-590-0044 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Sue Bae, KRA Corp., at 301-495-1591, ext. 227. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 3:30 p.m.; G. Levering Keely, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8517, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Neurological Devices Panel, code 12513. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates

data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 25, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss and vote on a premarket approval application (PMA) for a cranial electrotherapy stimulator for the management of anxiety disorders and short term relief of symptoms of anxiety.

FDA regrets that it was unable to publish this notice 15 days prior to the December 3, 1996, Neurological Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Neurological Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. December 10 and 11, 1996, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 10, 1996, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5 p.m.; open public hearing, December 11, 1996, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5 p.m.; Kathleen R. Reedy or LeNise S. Giles, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536. Please call the

hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 4, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 10, 1996, the committee will hear presentations and discuss data submitted regarding new drug application (NDA) 20-856, Nutropin® (somatropin [rDNA origin] for injection, Genentech, Inc.) and NDA 19-640/S-018, Humatrope® (somatropin [rDNA origin] for injection, Eli Lilly and Co.) for the treatment of Turner's Syndrome. On December 11, 1996, the committee will hear presentations and discuss data submitted regarding NDA 20-720, Rezulin™ (troglidizone, Parke Davis Pharmaceutical Research, a Division of Warner-Lambert) and NDA 20-719, Prelay™ (troglidizone, Sankyo U.S.A.) for the treatment of type II diabetes inadequately controlled with insulin therapy.

Drug Abuse Advisory Committee

Date, time, and place. December 12 and 13, 1996, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 12, 1996, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5:30 p.m.; open public hearing, December 13, 1996, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 5:30 p.m.; Tracy Riley, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Drug Abuse Advisory Committee, code 12535. Please call the hotline for

information concerning any possible changes.

General function of committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 28, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 12, 1996, the committee will discuss NDA 20-711, bupropion hydrochloride sustained release tablets, Glaxo Wellcome Inc., as an aid for smoking cessation. On December 13, 1996, the committee will discuss NDA 20-724, Nicotrol® Inhaler (nicotine inhalation system), Pharmacia and Upjohn, Inc., as an aid for smoking cessation.

Oncologic Drugs Advisory Committee

Date, time, and place. December 16, 1996, 8:30 a.m., DoubleTree Hotel, Plazas II and III, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 1 p.m.; open public hearing, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 4:30 p.m.; Jannette O'Neill-Gonzalez, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Oncologic Drugs Advisory Committee, code 12542. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 2, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) NDA 20-726 Femara™ Tablets (letrozole, CGS 20267, Ciba-Geigy Corp.), for the treatment of advanced breast cancer in women with natural or artificially induced postmenopausal status, following antiestrogen therapy; and (2) product license application (PLA) 92-0308 TICE® (BCG Vaccine, Organon Teknika Corp.), for intravesical installation for prophylaxis against recurrent papillary carcinoma of the urinary bladder.

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. December 16 and 17, 1996, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 16, 1996, 8:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; open public hearing, December 17, 1996, 8:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; Robert L. Sherman or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301-827-2294, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel

reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before December 1, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open subcommittee discussion. On December 16, 1996, the subcommittee will discuss xylitol, C31G—Therasol, and the effectiveness of menthol, thymol, methyl salicylate, and eucalyptol. On December 17, 1996, the subcommittee will discuss microdent, and continue its discussion of sodium lauryl sulfate. In addition, the subcommittee will continue its discussion and vote on cetylpyridinium chloride, stannous fluoride, hydrogen peroxide, and sodium bicarbonate. If necessary, the subcommittee will continue its discussion of the effectiveness of menthol, thymol, methyl salicylate, and eucalyptol.

Subcommittee Meeting of the Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. December 18, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Kimberly L. Topper, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Anesthetic and Life Support Drugs Advisory Committee, code 12529. Please call the

hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 4, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss labeling for NDA 18-654, Versed® (midazolam HCl), Hoffmann La-Roche, for pediatric sedation.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 15, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96-29831 Filed 11-21-96; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration (HCFA-R-100, HCFA-R-96)

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration

(HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: New collection; **Title of Information Collection:** Hospital Standard for Potentially HIV Infectious Blood and Blood Products, 42 CFR 482.27; **Form No.:** HCFA-R-190; **Use:** Hospitals must establish policies/procedures and document patient notification efforts if they have administered potentially HIV infectious blood and blood products. **Frequency:** On occasion; **Affected Public:** Business or other for-profit and Not-for-profit institutions; **Number of Respondents:** 16; **Total Annual Responses:** 16; **Total Annual Hours Requested:** 16.

2. Type of Information Collection Request: Extension of currently approved collection; **Title of Information Collection:** Emergency and Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims and Supporting Regulation 42 CFR 424.123; **Form No.:** HCFA-R-96; **Use:** This form is completed by beneficiaries, representative, or assignees to support claims for payments for Medicare covered emergency services provided in Canada. 42 CFR 424.123 is the regulation supporting this collection of information; **Frequency:** On occasion; **Affected Public:** Individuals or households; **Number of Respondents:** 1,100; **Total Annual Responses:** 1,100; **Total Annual Hours:** 275.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov>, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed

within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 15, 1996.

Edwin J. Glatzel,
Director, Management Analysis and Planning
Staff, Office of Financial and Human
Resources, Health Care Financing
Administration.

[FR Doc. 96-29848 Filed 11-21-96; 8:45 am]

BILLING CODE 4150-06-F

National Institutes of Health

National Cancer Institute and the Food and Drug Administration

Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Soluble Tat Peptide Analogs for the Inhibition of HIV Transcription and Viral Replication.

AGENCY: National Institutes of Health and the Food and Drug Administration, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) and the Food and Drug Administration (FDA), wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues, seek a company that can collaboratively pursue the pre-clinical and clinical development of Soluble Tat Peptide Analogs for the Inhibition of HIV Transcription and Viral Replication. The National Cancer Institute, Laboratory of Molecular Virology (LMV) and the Food and Drug Administration, Center for Biologics, Laboratory of Immunochimistry, have established that particular Soluble Tat Peptide Analogs can inhibit the transcription and replication of the Human Immunodeficiency Virus *in vitro*. The selected sponsor will be selected as a CRADA partner for the co-development of this agent with the National Cancer Institute and the Food and Drug Administration for the co-development of this agent with the NCI and with the FDA, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues.

ADDRESSES: Questions about this opportunity may be addressed to Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd. MSC 7182, Bethesda, MD 20892-7182, Phone: (301) 496-

0477, Facsimile: (301) 402-2117, from whom further information may be obtained. The Government has filed a patent application related to this CRADA opportunity. For further information on licensing this patent application (DHHS ref. no. E-059-96/0) contact Cindy Fuchs, J.D., NIH Office of Technology Transfer, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, Phone: (301) 496-7735 (ext. 232); Facsimile: (301) 40002-0220.

DATES: In view of the important priority of developing new agents for the treatment of infectious disease and related malignancies, interested parties should notify this office in writing no later than January 21, 1997. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: "Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and amendments (including 104 Pub. L. 133) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of agents in which the Government has taken an active role in developing (37 CFR 404.8), can further develop the subject compounds through Federal Food and Drug Administration approval and to a commercially available status to meet the needs of the public and with the best terms for the Government. The government has applied for a patent application directed to Inhibition of HIV Transcription and Viral Replication Using Soluble Tat Peptide Analogs. Licenses to intellectual property rights related to this opportunity are available from the National Institutes of Health, Office of Technology Transfer and may be necessary to continue development of the technology.

The *tat* gene encodes an 86 amino acid protein with a number of identified domains including an N-terminus, a cysteine rich, a core domain and a basic domain. Tat, through the core region, has been shown to interact with and stabilize the TFIID basal transcription factor and TFIIA preinitiation complex. Mutations within the core domain of Tat significantly decrease both gene expression and viral replication. National Cancer Institute ("NCI") and Food and Drug Administration ("FDA") studies have been directed at synthesis

of Tat peptide analogs to compete with wild-type Tat *in vivo*. The NCI and FDA synthesized soluble peptide analogs of the HIV-1 Tat protein. These peptide analogs inhibit transactivation of HIV, viral replication and formation of viral particles. The peptide analogs compete with Tat in down-regulating Tat transactivation and induce a ninety percent reduction of viral particles from infected cells *in vitro*. The inhibitory peptide analogs are not toxic *in vitro*.

The Laboratory of Molecular Virology, Division of Basic Sciences, NCI and the Laboratory of Immunochimistry, Division of Transfusion and Transmitted Diseases, FDA are interested in establishing a CRADA with a company to assist in the continuing development of these peptide analogs, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues. The Government will provide all available expertise and information to date and will jointly pursue pre-clinical and clinical studies as required, giving the company full access to existing data and data developed pursuant to the CRADA. The successful company will provide the necessary scientific, financial and organizational support to establish clinical efficacy and possible commercial status of the subject compounds.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute and Food and Drug Administration, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues, includes the following:

1. Determine the stability, half-life, and distribution of the Tat peptides upon delivery into cells.
2. Determine the mechanism of the Tat peptide inhibition.
3. Determine the inhibitory effect of peptides on human "primary" T-lymphocytic and monocytic cells infected with various HIV-1 clades (subtypes A, G, O, M).
4. Determine the inhibitory effect of peptide derivatives on Kaposi's sarcoma primary cells.
5. Determine the effective dose of Tat Peptide analogs in combination with other anti-retroviral drugs.
6. Conduct *in vivo* testing of appropriate compounds and/or peptide analogs.
7. Evaluate *in vivo* test results.
8. Prepare manuscripts for publication.

The role of the collaborator, includes the following:

1. Synthesize soluble organic compounds using peptide mimetics to

mimic the inhibitory activity of the soluble peptide analogs.

2. Determine the mechanism of the Tat peptide inhibition.

3. Establish a suitable non-invasive peptide delivery system for the preclinical and animal model studies.

4. Determine the effective dose of Tat peptide analogs in combination with other anti-retroviral drugs.

5. Determine the stability, half-life, and distribution of the Tat peptides upon delivery into cells.

6. Conduct *in vivo* testing of appropriate compounds and/or peptide analogs.

7. Evaluate *in vivo* test results.

8. Develop vehicle for delivery of compounds to patients.

9. Conduct pre-clinical and clinical trials of appropriate candidate compounds and/or peptide analogs.

10. Prepare manuscripts for publication.

Criteria for choosing the collaborator include its demonstrated experience and commitment to the following:

1. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.
2. Scientific expertise in and demonstrated commitment to the development of drug delivery systems.
3. Experience in preclinical and clinical drug development.
4. Experience and ability to produce, package, market and distribute pharmaceutical products.
5. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.
6. A willingness to cooperate with the NCI and FDA in the collection, evaluation, publication and maintaining of data from pre-clinical studies and clinical trials regarding the subject compounds.
7. Provision of defined financial and personnel support for the CRADA to be mutually agreed upon.
8. An agreement to be bound by the DHHS rules involving human and animal subjects.
9. Scientific expertise in and demonstrated commitment to the treatment of HIV infection and related disorders.
10. Provisions for equitable distribution of patent rights to any CRADA inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government and (2) an option for the collaborator to elect an exclusive or

nonexclusive license to Government owned rights under terms that comply with the appropriate licensing statutes and regulations.

Dated: November 12, 1996.

Kathleen Sybert,

Deputy Director, Office of Technology
Development, OD, NCI.

[FR Doc. 96-29892 Filed 11-21-96; 8:45 am]

BILLING CODE 4140-01-M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent applications referenced below may be obtained by contacting Joseph Contrera, M.S., J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804 (telephone 301/496-7056 ext 244; fax 301/402-0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent applications.

A Novel Vector for Polynucleotide Vaccines

EL Nelson, PJ Nelson (NCI)

Serial No. 60/023,931 filed 14 Aug 96

This invention is directed to a "humanized" polynucleotide vector vaccine which uses covalent closed circular (CCC) plasmid DNA, "naked DNA," to express target antigens. The vector contains the necessary elements to express mRNA for a target antigen. The plasmids are non-replicating but are capable of extended stable expression of the target sequences in skeletal muscle and professional antigen presenting cells generating an immune response to the target antigen in immunized individuals. The polynucleotide vector is particularly useful in accommodating monomeric and polymorphic tumor antigens via PCR technology. This invention could be useful in constructing polynucleotide vector cancer vaccines or "naked DNA" vaccines containing one or more tumor antigens.

Heterologous Boosting Immunizations for the Generation of CTL and Anti-Tumor Responses

RS Chamberlain, KR Irvine, SA Rosenberg, NP Restifo (NCI)

Serial No. 60/015,893 filed 22 Apr 96

A number of recombinant and synthetic vectors expressing tumor associated antigens have been developed which each induce powerful cellular and humoral immune responses that correlated with anti-tumor immunity in murine tumor model systems. Examples of these vectors include (1) recombinant viruses, such as vaccinia, fowlpox and adenovirus, (2) recombinant plasmid DNA, and (3) minimal determinant peptides. This invention involves the use of more than one of these vectors expressing a particular antigen for priming and boosting immunization regimens with the goal of enhancing anti-tumor immunity. Boosting with heterologous vectors induced more powerful primary antigen-specific cytotoxic T lymphocyte responses than boosting with the same vector. These more powerful immune responses induced by subsequent immunization with a different vector than the priming agent also resulted in a significant prolongation in survival of tumor-bearing mice as compared to mice that received two vaccinations with the same vector. Specifically, the combinations that were most efficacious were recombinant vaccinia virus followed by recombinant fowlpox and vice versa and recombinant DNA immunization followed by either recombinant fowlpox or vaccinia virus and vice versa.

The invention is significant because these heterologous boosting strategies may provide for increased therapeutic potential in the design and development of immunotherapies for cancer treatment. This approach may also be useful in the development of treatments for infectious bacterial and viral disease.

Point Mutated ras Peptides for the Generation of CD8+ Cytotoxic T Lymphocytes

J. Schlom, S Abrams (NCI)

Serial No. 08/635,344 filed 19 Apr 96

This invention is directed to a method of inducing a cytotoxic T cell response where the cytotoxic T cells are CD8+ T cells. The CD8+ cytotoxic T cell response is induced by peptides which contain a mutation in the K-ras oncogene at codon 12. The invention discloses 13 mer K-ras peptides spanning position 5-17 of the K-ras gene and which contain a mutation at codon 12. In addition, 9 mer and 10 mer K-ras peptides are also described in

which they both span codon 12 and in which codon 12 is mutated. This invention could be useful in cancer vaccines and adoptive immunotherapy.

Dated: November 13, 1996.

Barbara M. McGarry,
Deputy Director, Office of Technology
Transfer.
[FR Doc. 96-29893 Filed 11-21-96; 8:45 am]
BILLING CODE 4140-01-46

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health,
HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804 (telephone 301/496-7057; fax 301/402-0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Production of Infectious Respiratory Syncytial Virus From Cloned Nucleotide Sequences

PL Collins (NIAID)
Serial No. 08/720,132 filed 27 Sep 96
(claiming priority date of 27 Sep 95)
Licensing Contact: Robert Benson, 301/
496-7056 ext 267

This invention is a method of producing infectious RSV from cDNA encoding the RSV replicative intermediate RNA and cDNA encoding the N, P, L and M2(ORF1) proteins of RSV, which are used to transfect a cell. Claimed are cells or cell lysates comprising these cDNA molecules, recombinant RSV and methods of producing the recombinant RSV. The invention is particularly useful for producing mutant RSV as attenuated RSV vaccine candidates. Mutations in the RSV genome known to have an attenuated phenotype can be placed together in the RSV genome using known techniques and made into

infections in the RSV genome using known techniques and made into infectious RSV using the invention. Vaccine candidates can be stably stored as cDNA molecules and modified as needed, for example to accommodate genetic drift in circulating RSV. The invention is described in P.N.A.S. 92, 11563-11567, 1995. This patent application has been foreign filed. (portfolio: Infectious Diseases-Vaccines, viral, non-AIDS; Infectious Diseases-Research Materials)

Glycoprotein Hormone Superagonists

MW Skudlinski, BD Weintraub, M
Grossman (NIDDK)
OTT Reference No. E-015-96/0 filed 08
May 96
Licensing Contact: J. Peter Kim, 301/
496-7056 ext 264

The glycoprotein hormones, which include thyroid-stimulating hormone, follicle-stimulating hormone, luteinizing hormone, and chorionic gonadotropin, are involved in the development and regulation of the ovary, testes, and thyroid. These hormones are heterodimers, each consisting of a non-covalently linked alpha and beta subunit. While the amino acid sequence of the beta subunit is hormone-specific, that of the alpha subunit is identical in all hormones within the same species. Embodied in the current invention are human glycoprotein hormones which contain specific amino acid substitutions within the alpha as well as beta subunits. These substitutions result in glycoprotein hormone analogs, or "superagonists," which exhibit a significant increase in in vitro and in vivo bioactivity over the wild-type hormone. These superagonists, therefore, appear to represent potential agents for use in the treatment of a variety of conditions, including various forms of male and female infertility and thyroid carcinoma. (portfolios: Internal Medicine-Therapeutics, contraceptives; Internal Medicine-Other)

Inhibitory and Non-Inhibitory Antigen Binding Polypeptides Against Human P450 Enzymes

HV Gelboin, FJ Gonzalez (NCI)
Serial No. 08/559, 808 filed 17 Nov 95
Licensing Contact: Leopold J. Luberecki,
Jr., 301/496-7735 ext 223

This invention concerns monoclonal antibodies (MAbs) specific for particular members of the cytochrome P450 family of enzymes. The cytochrome P450s are the metabolic interface between xenobiotics and their metabolism in human and other species as well as for the metabolism of endobiotics. A large

array of drugs, mutagens, carcinogens, pesticides, environmental chemicals, fatty acids, bile acids, and steroids are metabolized by individual forms of cytochrome P450. The invention involves the construction, isolation, and production of MAbs that specifically bind to human cytochrome P450 3A3, 3A4, 3A5, and 2E1 and that specifically inhibit the enzyme activity of human cytochrome P450 3A3, 3A4, and 3A5, and 2E1 (inhibitory MAbs) and MAbs that specifically bind to cytochrome P450 3A3, 3A4, 3A5, and 2E1, without inhibiting enzyme activity (non-inhibitory MAbs). Novel inhibitory MAbs to human P450 have been in development for some time. These MAbs can be used to assess adverse reactions in patients to compounds and to identify populations that would exhibit different sensitivities to the therapeutic or toxic effects of compounds. Cytochrome P450 3A4 and 3A3 are very important members of the P450 family of enzymes. The human P450 3A4 and 3A3 metabolize a large variety of drugs, steroids, and carcinogens. Cytochromes P450 3A3 and 3A4 are considered the most important P450s for a wide range of high molecular weight substrates which include many of the known clinically useful drugs, such as tranquilizers, antidepressants, immunosuppressants, and anticancer drugs. Cytochrome P450 2E1 is important because it metabolizes low molecular weight compounds susceptible to environmental hazards and carcinogens. The human P450 2E1 also metabolizes clinically useful drugs such as the anesthetic chlorzoxazone and the analgesic acetaminophen as well as caffeine. Issuance of a patent for this invention is currently pending. (portfolio: Internal Medicine-Miscellaneous; Cancer-Research Reagents, MAb based; Internal Medicine-Diagnostics; Cancer-Diagnostics, in vitro, MAb based)

Prevention of Progression in Vascular Disease

GE Striker, LJ Striker, FP Sherman
(NIDDK)
Serial No. 08/478,347 filed 07 Jun 95
Licensing Contact: Carol Lavrich, 301/
496-7056 ext 287

This invention relates to efficacious methods and pharmaceutical compositions in the treatment of chronic progressive vascular diseases (CPVD) characterized by scarring and/or fibrosis to halt and reverse the disease process by resolving scar and fibrotic lesions. These methods consist of the administration to patients of an effective amount of Elmiron. The oral route of administration is preferred, with total

daily dosage of Elmiron ranging from about 50 to 1200 mg per day. This method of treatment utilizes a commercially available pharmaceutical agent which may be administered by conventional means, while remaining non-toxic and efficacious in the treatment of CPVD. (portfolio: Internal Medicine-Therapeutics, cardiology)

Circularly Permuted Ligands and Circularly Permuted Fusion Proteins

IH Pastan, RJ Kreitman (NCI)
Serial No. 08/255,224 filed 08 Apr 94
Licensing Contact: Larry Tiffeny, 301/
496-7056 ext 206

Circularly permuted proteins are ligands wherein the amino and carboxy ends have been joined together and new amino and carboxy ends are formed at a different location in the ligand. The modified ligands are as fully active as the original. The circularly permuted ligands are especially useful when employed as a component in a fusion protein of interest. Fusion proteins are polypeptide chains of two or more proteins fused together in a single polypeptide chain. A fusion protein may act as a potent cell-killing agent or as a linker to bind and enhance the interaction between cells or cellular components to which the protein binds, depending on the nature of the proteins being fused. Therefore, fusion proteins have functional utility as a specific targeting moiety to either kill or direct an immune response to cancer cells. While some targeting moieties have shown lower specificity and affinity for their targets when incorporated into fusion proteins, the use of circularly permuted ligands improves the binding affinity of certain fusion proteins. This invention provides novel ligands and ligand fusion proteins that have a binding specificity and affinity comparable to or greater than native ligand fusion proteins. (portfolio: Cancer-Therapeutics, immunoconjugates, toxins; Cancer-Therapeutics, immunoconjugates, MAb)

Dated: November 14, 1996.

Barbara M. McGarry,
Deputy Director, Office of Technology
Transfer.
[FR Doc. 96-29894 Filed 11-21-96; 8:45 am]
BILLING CODE 4140-01-46

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4124-N-13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-1226; TDD Number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies and each agency has transmitted to HUD: (1) its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless

assistance provider interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B-41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2285. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable. For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Navy: Mr. John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stoval Street, Alexandria, VA 22332-2300; (703) 325-0474; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501-0052; (These are not toll-free numbers).

Dated: November 15, 1996.

Jacques M. Lawing,
Deputy Assistant Secretary for Economic
Development.

**TITLE V, FEDERAL SURPLUS PROPERTY
PROGRAM FEDERAL REGISTER REPORT
FOR 11/22/96**

Unsuitable Properties

Buildings (by State)

Arizona

Clifton Administrative Site
Clifton Co: Greenlee AZ 85533-
Landholding Agency: GSA
Property Number: 549640006
Status: Excess
Reason: Floodway
GSA Number: 9-A-AZ-0797.

California

Bldgs. 100-110
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640021
Status: Unutilized
Reason: Secured Area.

Bldgs. 111-120
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640022
Status: Unutilized
Reason: Secured Area.

Bldgs. 121-130
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640023
Status: Unutilized
Reason: Secured Area.

Bldgs. 131-140
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640024
Status: Unutilized
Reason: Secured Area.

Bldgs. 141-147, 149
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640025
Status: Unutilized
Reason: Secured Area.

Bldgs. 151-160
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640026
Status: Unutilized
Reason: Secured Area.

Bldgs. 161-170
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640027
Status: Unutilized
Reason: Secured Area.

Bldgs. 171-180
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy

Property Number: 779640028
Status: Unutilized
Reason: Secured Area.
Bldgs. 181-187, 893
Naval Air Weapons Station
China Lake Co: Kern CA 93555-6001
Landholding Agency: Navy
Property Number: 779640029
Status: Unutilized
Reason: Secured Area.

Delaware

Delaware Breakwater Light
Lewes Co: Sussex DE 19958-
Landholding Agency: GSA
Property Number: 549640007
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 4-U-DE-460.

Maryland

Fishing Battery Lighthouse
Harford Co: Havre De Grace MD 21078-
Landholding Agency: GSA
Property Number: 549640008
Status: Excess
Reason: Extensive deterioration
GSA Number: 4-U-MD-589.

Michigan

Paint Locker
St. Martins Island/Lake Michigan Co: Delta
MI 49829-
Landholding Agency: GSA
Property Number: 549640009
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 1-U-MI-760.

Dwelling/Light Tower
St. Martins Island/Lake Michigan Co: Delta
MI 49829-
Landholding Agency: GSA
Property Number: 549640010
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 1-U-MI-760.

Land (by State)

Hawaii

TMK 1-9-1-10-11, 1-9-1-01-1
Land, NAVMAG Lualualei
Honolulu Co: Honolulu HI 96706-
Landholding Agency: Navy
Property Number: 779640020
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material.

[FR Doc. 96-29710 Filed 11-21-96; 6:45 am]

BILLING CODE 4310-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**Notice of Availability of a Final
Environmental Impact Statement for
the Proposed El Rancho Electric
Substation, Santa Fe County, New
Mexico**

AGENCY: Bureau of Indian Affairs,
Interior.
ACTION: Notice.

SUMMARY: The Final Environmental
Impact Statement (FEIS) for the
proposed approval by the Bureau of
Indian Affairs (BIA) of a one acre
easement on Indian trust land of the
Pueblo of San Ildefonso for the Jemez
Mountain Electric Cooperative, Inc.
(Cooperative) is now available for public
review. The FEIS also covers the
proposed approval by the Rural Utilities
Service (RUS), Department of
Agriculture, for the advance of loan
funds to the Cooperative for the
construction of electrical distribution
facilities on the site. The BIA as the lead
agency, and the RUS as a cooperating
agency are furnishing this notice in
accordance with Council on
Environmental Quality Regulations, 40
CFR 1503 and 1506.9.

DATES: The Record of Decision will be
issued on or after December 16, 1996.

ADDRESSES: Comments may be
addressed to Mr. Curtis Canard, Bureau
of Indian Affairs, Albuquerque Area
Office, Branch of Natural Resources,
P.O. Box 26567, Albuquerque, New
Mexico 87125-6567. Copies of the FEIS
are also available at this address.
FOR FURTHER INFORMATION CONTACT: Mr.
Curtis Canard at the above address, or
at (505) 766-3374.

SUPPLEMENTARY INFORMATION: The
Proposed Action would permit the
Cooperative to construct a new 69/12.47
kV electric distribution substation and
related facilities on 1.0 acre of land in
the community of El Rancho, Santa Fe
County, New Mexico. The substation
includes terminal and switching
equipment for a 69 kV transmission
line. The related facilities consist of the
69 kV transmission line and four
underground distribution tie lines.

The action is needed in order to meet
the increasing demand for electrical
power in the El Rancho service area.
Service is now being supplied by a
temporary substation, located
approximately one and one-half miles
from the proposed project site, whose
capacity is no longer sufficient to
deliver reliable electric power.
Moreover, a higher capacity substation
is needed in the El Rancho area to serve

as a backup source of power for a wider
region.

The FEIS includes seven alternatives
to the proposed action: no action,
upgrading either the existing temporary
substation or the Nambé substation
feeder, or constructing a new substation
at one of five alternate locations. The no
action alternative would deny approval
of the easement. This would not
necessarily prevent the Cooperative
from upgrading its service, but would
certainly result in higher costs to
consumers. The proposed substation
site is optimal for the distribution of
power within its load area. For all of the
other alternatives, operating costs
increase according to distance from this
central point.

The significant issues identified and
analyzed in the FEIS include cultural
resources, aesthetic qualities, and land
use.

The BIA has afforded the public the
opportunity to participate in the
preparation of this FEIS. The Notice of
Intent to prepare an EIS was published
in the Federal Register on March 25,
1993. One public scoping meeting was
held on April 22, 1993, at the Pojoaque
High School gymnasium in Pojoaque,
New Mexico. Additional information for
scoping was drawn from a public
meeting held during the environmental
assessment process, and from written
comments submitted on the
Environmental Assessment.

The Notice of Availability for the
Draft EIS was published in the Federal
Register on March 8, 1996, with a 60
day public comment period ending on
May 7, 1996. On April 11, 1996, a
public meeting was held to inform the
public about the Draft EIS and provide
an opportunity for public comment. As
a result of comments received at this
meeting, the public comment period
was officially extended to May 31, 1996.
Additional notices to the public were
published in the Santa Fe New Mexican
and the Rio Grande Sun.

Dated: November 19, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-29985 Filed 11-21-96; 8:45 am]

BILLING CODE 4310-107-P

Bureau of Land Management

[WY-030-1620-01; WYW139975]

**Environmental Impact Statement;
Notice of Intent**

ACTION: Notice of Intent to Conduct a
Planning Review and Prepare an
Environmental Impact Statement (EIS)
on the Carbon Basin Tract coal lease

application, WYW 139975, and call for
coal resource and other resource
information 43 CFR 3420.1-2.

SUMMARY: Ark Land Company has filed
an application with the Bureau of Land
Management (BLM) to obtain a Federal
coal lease on 4145.15 acres of Federal
coal lands located in Carbon County,
Wyoming. The BLM has determined
that an EIS must be prepared to evaluate
the environmental impacts of coal
mining which could result from the
issuance of this lease. The application
will be processed according to the coal
lease-by-application (LBA) regulations
at 43 CFR 3425. The Carbon Basin coal
tract has not been identified in the Great
Divide Resource Management Plan
(RMP)(1990) as an area available for
further coal leasing consideration. As a
result, a planning review of the
proposed coal lease project area will be
conducted concurrently with the
preparation of the coal lease EIS.

The Federal Coal Management
Program established four major steps,
collectively called "the coal screening/
planning process" (43 CFR 3420.1-4), to
be used in the identification of Federal
coal areas that are acceptable for further
leasing consideration. During the
planning review, the coal screening
process, including application of the
coal unsuitability criteria (43 CFR 3461),
will be conducted on the proposed
project area. If the area is found
acceptable for further consideration for
coal leasing, it will result in an
amendment to the Great Divide RMP.

In accordance with 43 CFR 3420.1-2,
this notice also serves to fulfill the
required call for coal and other resource
information. This request for resource
information is to formally solicit
indications of interest and information
on coal resource development potential
and on other resources which may be
affected by coal development for lands
in the planning review/proposed project
area. Industry, State and local
governments, and the general public
may submit information on lands that
should or should not be considered for
coal leasing, including statements
describing why the lands should or
should not be considered for leasing.

DATES: As part of this process, three
public scoping meetings have been
scheduled. On December 3, 1996, at
6:30 p.m., a meeting will be held at the
Town of Hanna Administration Office,
301 S. Adams, Hanna, Wyoming. The
second scoping meeting will take place
in Laramie, Wyoming, at 6:30 p.m.,
December 4, 1996, at the Albany County
Library, 310 S. Eighth Street. The final
scoping meeting is scheduled for
December 10, 1996, 6:30 p.m., at the

Jeffrey Memorial Community Center,
Third and Spruce, Rawlins, Wyoming.
ADDRESSES: Questions, comments, or
concerns should be addressed in writing
to the Great Divide Resource Area,
Bureau of Land Management, Attn:
Karla Swanson, Area Manager, 1300
North Third Street, Rawlins, Wyoming
82301. In order to insure that comments
will be considered in the draft EIS, they
should be received by the BLM at the
above address by January 3, 1997.

FOR FURTHER INFORMATION CONTACT:
Interested parties may obtain further
information or request to be placed on
the Rawlins BLM District mailing list by
contacting Brenda Vosika Neuman or
John Spehar, (307-328-4200) or write to
the above address.

SUPPLEMENTARY INFORMATION: Ark Land
Company, St. Louis, Missouri, filed a
coal lease application on September 20,
1996, with the BLM, pursuant to
provisions of 43 CFR 3425.1 for the
following lands in Carbon County,
Wyoming:

Sixth Principal Meridian, Wyoming

T. 20 N., R. 79 W.
Sec. 6, lot 5.
T. 20 N., R. 80 W.
Sec. 4, lots 1, 2, 3;
Sec. 6, lots 1, 2, and SE¼;
Sec. 12, N½NW¼, NW¼NE¼.
T. 21 N., R. 79 W.
Sec. 20, N½, SW¼;
Sec. 28, NW¼;
Sec. 30, lots 1, 2, 3, 4, E½, E½W½;
Sec. 32, NW¼.
T. 21 N., R. 80 W.
Sec. 26, all;
Sec. 28, W½, SE¼;
Sec. 32, E½, SE¼SW¼;
Sec. 34, all.

The area described contains approximately
4145.15 acres.

The coal lease application area is
located in the Carbon Basin,
approximately 40 miles east of the town
of Rawlins, 5 miles northwest of the
town of Elk Mountain, 13 miles
southwest of the town of Medicine Bow,
and 12 miles southeast of the town of
Hanna, all located in Carbon County,
Wyoming. If successful in obtaining a
Federal coal lease for the proposed
project area, the coal mining would be
conducted by Arch of Wyoming, Inc., an
affiliate of Ark Land Company. Arch of
Wyoming has operated coal mines in
the Hanna Basin Region of Carbon
County, Wyoming since 1972.

The primary coal mining operation
would utilize conventional dragline,
surface or strip mining methods to
expose the coal resource, including the
drilling and blasting of overburden
material and coal. Once the stripping
operation reaches its economic cutoff,
coal exposed in the final highwall

would be extracted using a continuous highwall mining machine.

Mined coal would be transported by haul trucks approximately 14 miles to a loadout facility at Arch of Wyoming's Seminoe No. 2 Mine, 2 miles north of Hanna. Existing facilities at the Seminoe No. 2 Mine would be used to crush, store, and ship coal produced from the proposed Carbon Basin Mine.

Mining is proposed to begin in the year 2000. The anticipated rate of production is about 2,000,000 tons of coal per year. It is predicted that surface minable reserves could be depleted in 8 to 10 years. Potential for underground mining exists, but will not be evaluated until after the completion of surface mining.

Upon completion of mining activities, disturbed lands within the project area would be reclaimed and recontoured to approximate original contours and would be revegetated to accommodate pre-mining uses.

The Office of Surface Mining will be a cooperating agency in the preparation of the EIS because it is the Federal agency that administers surface coal mining under the Surface Mining Control and Reclamation Act of 1977.

Land and resource management issues and concerns specific to surface coal mining, development, operation, and reclamation in the proposed project area, adjacent State and private lands within the project area, and the transporting of mined coal to a remote facility that will be analyzed in the EIS include: air quality, hydrology, soils, vegetation, agriculture, transportation and public safety, conflicts with oil and gas leases, Native American concerns, threatened and endangered species, impacts to raptor/sage grouse breeding and nesting areas, visual resources, recreation, social and economic effects on local communities, and cumulative impacts. Integral to the consideration and analyses of these issues and concerns and the preparation of the EIS, will be conducting the four steps of the coal screening/planning process (i.e., identifying the occurrence and development potential of coal resources in the project area, applying the coal unsuitability criteria, identifying other multiple use conflicts and impacts associated with the proposed coal mining, and surface owner consultation).

Dated: November 18, 1996.

Ruth G. Daniels,

Acting State Director.

[FR Doc. 96-29869 Filed 11-21-96; 8:45 am]

BILLING CODE 4310-22-P

[D-990-1020-01]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes discussions on the Bennett Hills Resource Management Plan Supplemental Draft, historical/cultural issues, Off Road Vehicle issues and healthy rangeland standards and guidelines. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P. O. Box 2-B, Shoshone, ID, 83352, (208) 886-7201.

DATE AND TIME: Date is December 10, 1996, starts at 8:30 a.m. at the KMTV Building at 1100 Blue Lakes Blvd N in Twin Falls, Idaho. Public comments from 9:00 a.m.-9:30 a.m. on December 10, 1996.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: Contact Debra Kovar, Shoshone Resource Area Office, P. O. Box 2-B, Shoshone, ID 83352, (208) 886-7201.

Dated: November 18, 1996.

Gary Bliss,

Acting District Manager.

[FR Doc. 96-29870 Filed 11-21-96; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: New Collection; Comment Request

AGENCY: Notice of information collection under review; application for cancellation of removal.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 21, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, 703-305-0470, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) **Type of Information Collection:** New Collection

(2) **Title of the Form/Collection:** Application for Cancellation of Removal.

(3) **Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:** Form EOIR-42, Executive Office for Immigration Review, U.S. Department of Justice.

(4) **Affected public who will be asked to respond, as well as a brief abstract:** Individual aliens determined to be removable from the United States. This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion in their case.

(5) **An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:** 10,000 responses per year at 5 hours, 45 minutes per response.

(6) **An estimate of the total public burden (in hours) associated with the collection:** 57,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 19, 1996.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 96-29878 Filed 11-21-96; 8:45 am]

BILLING CODE 4310-19-M

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that a proposed Consent Decree in *United States v. American Locker Group, Inc. et al.*, Civ. No. 92-CV-0700 (CGC), was lodged in the United States District Court for the Northern District of New York on November 5, 1996. The proposed Consent Decree resolves the United States' claims against American Locker Group, Incorporated, Bristol-Myers Squibb Company, Inc., General Electric Company, Inc., International Business Machines Corporation, and Pass & Seymour Corp. under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9607(a), for past response costs incurred in connection with response actions at the Solvent

Savers Superfund Site in Lincklaen, New York.

Under the terms of the Consent Decree, the Settling Defendants will pay \$1,665,885.80 to the Superfund in reimbursement of past response costs. Also, the United States, on behalf of the U.S. Air Force, will pay \$125,374.20 to the Superfund in reimbursement of past response costs. In return, the United States covenants not to sue Settling Defendants for past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. American Locker Group, Inc. et al.*, Civ. No. 92-CV-0700 (CGC), DOJ, #90-11-3-704.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, James Foley U.S. Courthouse, 445 Broadway, Room 231, Albany, New York 12207; at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of \$6.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division, [FR Doc. 96-29843 Filed 11-21-96; 8:45 am]

BILLING CODE 4310-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. CITO Asphalt Refining Company*, Civil Action No. 96-5420 (SSB) was lodged on November 7, 1996, in the United States District Court of the District of New Jersey. The consent decree settles an action commenced in a complaint filed November 7, 1996, under the Clean Air Act, 42 U.S.C. § 7401 et seq., arising out of operations at the CITO Asphalt Refining Company refinery in Paulsboro, New Jersey. The

refinery's primary finished petroleum product is asphalt. The asphalt processes at the refinery also yield several useful byproducts, including marine diesel oil, vacuum gas oil and straight run gasoline.

The Complaint alleges that the CITO Asphalt Refining Company violated the Clean Air Act, the New Jersey State Implementation Plan, the New Source Performance Standards for petroleum refineries, 40 CFR Part 60, Subpart J, and the National Emissions Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart FF, by: (1) failing to install emissions monitoring equipment; (2) failing to submit emissions reports; (3) failing to conduct performance tests; (4) failing to comply with the sulfur oxide emissions limitation; (5) failing to submit a notification regarding benzene waste operations; (6) failing to obtain a permit for the construction and operation of a wastewater treatment plant; and (7) operating equipment in violation of permit restrictions.

Under the Consent Decree, the CITO Asphalt Refining Company will pay a civil penalty to the United States of \$1.23 million. The Consent Decree also provides for substantial injunctive relief to bring the refinery into compliance with the Clean Air Act. Under the agreement, the CITO Asphalt Refining Company will comply with the Clean Air Act's sulfur oxide emissions standard; conduct a performance test at the refinery; install a desulfurization unit at the refinery; install a continuous emissions monitoring system; and submit excess emissions and monitoring system reports.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. CITO Asphalt Refining Company*, DOJ Ref. #90-5-2-1-2010.

The proposed consent decree may be examined at the office of the United States Attorney, Mitchell H. Cohen Courthouse, Fourth Street and Cooper Street, Camden, New Jersey; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a

copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of \$6.50 (25 cents per page reproduction costs).

Joel M. Gross,
Section Chief, Environmental Enforcement
Section, Environment and Natural Resources
Division.
[FR Doc. 96-29844 Filed 11-21-96; 8:45 am]
BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, As Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States versus Peirce*, Civil Action No. 83-CV-1623, was lodged on November 6, 1996, with the United States District Court for the Northern District of New York. The United States has filed claims against eight direct defendants, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, seeking to recover the approximately \$5.3 million in past and future costs associated with the first operable unit at the York Oil Superfund Site ("Site"), located in Moira, New York, that will not be reimbursed pursuant to the consent decree that was entered by the United States District Court for the Northern District of New York on August 10, 1996. These eight direct defendants have filed third-party claims against about 40 third-party defendants. The United States has entered into a settlement with seven of the eight direct defendants and 17 of the 40 third-party defendants. Pursuant to the proposed settlement, the parties have agreed to pay to the EPA Hazardous Substance Superfund \$2,225,000, plus interest running from August 1, 1996.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States versus Peirce*, DOJ Ref. Number 90-5-2-1-585.

The proposed consent decree may be examined at EPA Region 2, (contact Doug Fischer, 212-637-3180); and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be

obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$13.25 (25 cents per page reproduction costs); payable to the Consent Decree Library.

Joel M. Gross,
Section Chief, Environmental Enforcement
Section, Environment and Natural Resources
Division.
[FR Doc. 96-29842 Filed 11-21-96; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 19, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219-5096 x 166). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219-470 between 9:00 a.m. and 1:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS/DM/ESA/ETA/MSHA/OSHA/PWBA/VETS, Office of Management and Budget, Room 1035, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the *Federal Register*.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.
Title: Job Corps Enrollee Allotment Determination.

OMB Number: 105-0030.

Agency Number: ETA 658.

Frequency: On occasion.

Affected Public: Individuals or households; Federal Government.

Number of Respondents: 7,200.

Estimated Time Per Respondent: 12 minutes.

Total Burden Hours: 1,440.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Job Corps enrollees may elect to have a portion of their readjustment allowance sent to a dependent monthly. This form provides the information necessary to administer those allotments.

Agency: Employment and Training Administration.

Title: Job Corps Health Questionnaire and Child Care Certification Form.

OMB Number: 1205-0033.

Agency Number: ETA 6-53, 6-82.

Frequency: One-time.

Affected Public: Individuals or households.

Number of Respondents: 103,000.

Estimated Time Per Respondent: 12 minutes.

Total Burden Hours: 20,600.

Total Annualized capital/startup costs: \$6,500.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The ETA 6-53 is used to obtain the health history of applicants for the program to determine medical eligibility. The applicant must not have a health condition which represents a potential serious hazard to the youth or others, results in a significant interference with the normal performance of duties, requires frequent, or expensive, or prolonged treatment. The ETA 6-82 is used to certify an applicant's child care arrangements.

Agency: Employment and Training Administration.

Title: Unemployment Insurance, Employment Taxes.

OMB Number: 105-0164.

Agency Number: ETA 204.

Frequency: Annually.
Affected Public: State, Local and Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 40 hours, 15 minutes.

Total Burden Hours: 2,134.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The ETA 204 provides data to ETA for the study of seasonality, employment or payroll fluctuations, and stabilization, expansion or contraction in operations on employment experience. The data are used to provide an indication of whether solvency problems exist in the State's Trust Fund accounts and in analyzing factors which give rise to solvency problems.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96-29915 Filed 11-21-96; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Goodyear Tire and Rubber Company, Green, Ohio; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Goodyear Tire and Rubber Company, Green, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-32,587; Goodyear Tire and Rubber Company, Green, Ohio (November 6, 1996)

Signed at Washington, D.C. this 7th day of November, 1996.

Curtis K. Koeser,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29914 Filed 11-21-96; 8:45 am]

BILLING CODE 4510-30-M

Kingtree Knits, a Division of Texfi Industries, Incorporated; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a

Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 1996, applicable to all workers of Kingtree Knits, a Division of Texfi Industries, Incorporated located in Midway, Georgia. The notice was published in the *Federal Register* on October 1, 1996 (61 FR 51303).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Company officials report that worker separations will occur at the subject firm's production facilities in Lane, Olanta, and Andrews, South Carolina. The workers are engaged in employment related to the production of tee shirts for women, men and boys.

The intent of the Department's certification is to include all workers of Kingtree Knits adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the subject firms' production facilities in Lane, Olanta, and Andrews, South Carolina.

The amended notice applicable to TA-W-32,581 is hereby issued as follows:

"All workers at Kingtree Knits, a Division of Texfi Industries, Incorporated, Midway, Georgia (TA-W-32,581), and in Lane (TA-W-32,581A), Olanta (TA-W-32,581B) and Andrews (TA-W-32,581C) South Carolina, who became totally or partially separated from employment on or after July 11, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 8th day of November 1996.

Curtis K. Koeser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29911 Filed 11-21-96; 8:45 am]

BILLING CODE 4510-30-M

Mobile Exploration and Producing U.S., Inc. (MEPUS) Headquartered in Dallas, Texas, et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 2, 1996, applicable to all workers of Mobile Exploration and Producing U.S., Inc., and other upstream operations, headquartered in Dallas, Texas, and operating at various U.S. locations. The notice was published in the *Federal Register* on October 29, 1996 (61 FR 55821).

At the request of the company, the Department reviewed the certification

for workers of the subject firm. The company reports that workers of Mobile Natural Gas Inc. (MNGI), headquartered in Houston, Texas and operating at other sites in Oklahoma and Texas, were inadvertently excluded from the certification. The workers of Mobile Natural Gas Inc. were engaged in employment related to the marketing of crude oil and natural gas. Findings show that when the certification was issued, it was the Department's intent to include workers of MNGI. Accordingly, the Department is amending the certification to include workers of MNGI, headquartered in Houston, Texas, and operating at various sites in Texas and Oklahoma.

The amended notice applicable to TA-W-32,664 is hereby issued as follows:

"All workers of Mobile Exploration and Producing U.S. Inc. (MEPUS) headquartered in Dallas, Texas; and workers of Mobile Natural Gas Inc. (MNGI), headquartered in Houston, Texas (TA-W-32,664) and operating at other sites in Texas (TA-W-32,664A) and Oklahoma (TA-W-32,664H) engaged in employment related to the marketing of crude oil and natural gas who became totally or partially separated from employment on or after September 30, 1996 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C. this 13th day of November, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29906 Filed 11-21-96; 8:45 am]

BILLING CODE 4510-30-M

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 12, 1996, applicable to all workers of NordicTrack located in Chaska, Minnesota.

The notice was published in the *Federal Register* on October 1, 1996 (61 FR 51304).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred at the subject firm's St. Peter, Minnesota location. The workers provide support services related to the production of exercise equipment.

The intent of the Department's certification is to include all workers of NordicTrack who were adversely affected by imports.

Accordingly, the Department is amending the certification to cover the workers separated from NordicTrack, St. Peter, Minnesota.

The amended notice applicable to TA-W-32,707 is hereby issued as follows:

All workers of NordicTrack, Chaska, Minnesota (TA-W-32,707) and NordicTrack, St. Peter, Minnesota (TA-W-32,707C) who became totally or partially separated from employment on or after August 22, 1995 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29907 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-32-M

[TA-W-32,623]

Oakloom Clothes, Incorporated Baltimore, Maryland; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated October 7, 1996, a petitioner requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on October 1, 1996 and published in the Federal Register on October 16, 1996 (61 FR 53937).

The initial investigation findings showed that the workers produced men's tailored clothing, suits, coats and sportcoats. The Department's denial was based on the fact that all of the production workers were separated from the subject firm more than one year prior to the date of the petition and that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. In a follow-up conversation the petitioner, a former company official, indicated that the petition was filed only by managers who were laid off due to the fact that the company was sold. Managers were laid off by the new company and none of the production workers at the new company were affected.

Based on company official information the investigation revealed that criterion (1,2&3) of Section 223 of the Trade Act has not been met.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance under Section 223 of the Trade Act to workers and former workers of Oakloom Clothes, Incorporated, Baltimore, Maryland.

Signed at Washington, D.C. this 4th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29910 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-32-M

[TA-W-32,691, TA-W-32,691A California, TA-W-32,691B Connecticut, TA-W-32,691C Georgia, TA-W-32,691D Maryland, TA-W-32,691E New Jersey, TA-W-32,691F New York, TA-W-32,691G Puerto Rico and TA-W-32,691H Texas]

Smith Corona Corporation, Cortland, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 10, 1996, applicable to all workers of Smith Corona Corporation engaged in employment related to the production of typewriters and word processors in Cortland, New York. The notice soon will be published in the Federal Register.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information provided by Smith Corona Corporation reveals that support staff workers (sales, services and administrative) have been separated from employment at various field offices of the subject firm. Accordingly, the Department is amending the certification to include all of Smith Corona's support staff workers at various locations in the States of California, Connecticut, Georgia, Maryland, New Jersey, New York, Puerto Rico and Texas.

The intent of the Department's certification is to include all workers of Smith Corona Corporation who were adversely affected by increased imports.

The amended notice applicable to TA-W-32,691 is hereby issued as follows:

"All workers of Smith Corona Corporation, Cortland, New York and various field offices in California, Connecticut, Georgia, Maryland, New Jersey, New York, Puerto Rico and Texas engaged in employment related to the production of typewriters and word processors including support staff workers who became totally or partially separated from employment on or after October 6, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 4th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29909 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-32-M

Snyder Oil Corporation Headquartered in Fort Worth, Texas, Operating Throughout the State of Texas and Farmington, NM; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 2, 1996, applicable to all workers of Snyder Oil Corporation, headquartered in Fort Worth, Texas and operating throughout the State of Texas. The notice was published in the Federal Register on February 21, 1996 (61 FR 6660).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations will occur at Snyder Oil's operations in Farmington, New Mexico. The workers are engaged in employment related to the production of crude oil, natural gas and natural gas liquids.

The intent of the Department's certification is to include all workers of Snyder Oil Corporation adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the subject firm's Farmington, New Mexico location.

The amended notice applicable to TA-W-31,694 is hereby issued as follows:

"All workers at Snyder Oil Corporation, headquartered in Fort Worth, Texas, operating throughout the State of Texas (TA-W-31,694), and Farmington, New Mexico (TA-W-31,694B), who became totally or partially separated from employment on or after November 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 8th day of November 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29012 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-32-M

[TA-W-32,598, TA-W-32,598A, TA-W-32,598B, TA-W-32,598C, TA-W-32,598D]

Strick Corporation, Casa Grande, Arizona, Fairless Hills, Pennsylvania, Berwick, Pennsylvania, Hughesville, Pennsylvania, Danville, Pennsylvania; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 1996, applicable to all workers of Strick Corporation located in Casa Grande, Arizona. The notice was published in the Federal Register on September 25, 1996 (61 FR 50332).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the Strick Corporation production facilities in Fairless Hills, Berwick, Hughesville, and Danville, Pennsylvania. Workers at these plants produce truck trailers, trailer flooring and container chassis.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover all workers of Strick Corporation in Fairless Hills, Berwick, Hughesville, and Danville, Pennsylvania.

The amended notice applicable to TA-W-32,598 is hereby issued as follows:

All workers of Strick Corporation, Casa Grande, Arizona (TA-W-32,598) and the following locations in Pennsylvania: Fairless Hills (TA-W-32,598A), Berwick (TA-W-32,598B), Hughesville (TA-W-32,598C) and Danville (TA-W-32,598D), who became totally or partially separated from employment on or after July 18, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29908 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-32-M

[TA-W-32,515]

Westmoreland Plastics Latrobe, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Westmoreland Plastics, Latrobe, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-32,515; Westmoreland Plastics; Latrobe, Pennsylvania (November 5, 1996)

Signed at Washington, D.C. this 7th day of November, 1996.

Curtis K. Kooser,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29913 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-32-M

Proposed Collection of the ETA 5159, Claims and Payment Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the collection of the ETA

5159, Claims and Payment Activities. The proposed change is the addition of data which identifies workload connected with agent interstate initial claims as well as total agent interstate initial claims activity. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 21, 1997.

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and,
- minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Cynthia Ambler, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S-4231, 200 Constitution Ave., N.W., Washington, DC, 20210; telephone number (202) 219-9204; fax (202) 219-8506 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 5159 report contains information on claims activities including initial claims, weeks claimed, weeks compensated, and the amount of benefit payments. These data are used in budgetary and administrative planning, program evaluation, and reports to Congress and the public. The change being proposed concerns initial claims filed by interstate claimants. The current figure being reported represents all such claims. In the past, all claims were filed with the agent State and those States were reimbursed for the work associated with those claims. Several States have begun using the telephone for interstate claimants to file

directly with liable States, by-passing the agent State. In order to reimburse agent States only for work actually done, it is necessary to separately report the numbers of interstate agent initial claims which the agent State actually took. The request for a change adds that data item to the ETA 5159.

II. Current Actions

The ETA 5159 report continues to be needed for administrative, financing, program evaluation and public information.

Type of Review: Extension with change

Agency: Employment and Training Administration

Title: Claims and Payment Activities

OMB Number: 1205-0010

Agency Number: ETA 5159

Affected Public: State Government

Cite/Reference/Form/etc.: ETA 5159

Total Respondents: 53

Frequency: Monthly

Total Responses: 720

Average Time per Response: 2.6 hours

Estimated Total Burden Hours: 1359

Total Burden Cost (capital/start):

estimated at \$27,180 which is an allowable cost under the administrative grants awarded to States by the Federal Government.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 18, 1996.

Mary Ann Wyrick,

Director, Unemployment Insurance Service.

[FR Doc. 96-29903 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-30-M

Goodyear Tire and Rubber Company, et al., Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 9, 1996, applicable to all workers of Goodyear Tire and Rubber Company located in Topeka, Kansas. The notice soon will be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at Goodyear Tire and

Rubber Company Logistic Center. The workers produce tires.

The intent of the Department's certification is to include all workers of Goodyear Tire and Rubber Company who were adversely affected by imports from Mexico. Accordingly, the Department is amending the certification to cover the workers separated from Goodyear Tire and Rubber Company Logistic Center, Topeka, Kansas which were inadvertently excluded from the certification.

The amended notice applicable to NAFTA-01216 is hereby issued as follows:

"All workers of Goodyear Tire and Rubber Company, Topeka, Kansas (NAFTA-01216) and Goodyear Tire and Rubber Company Logistic Center, Topeka, Kansas (NAFTA-01216A) who became totally or partially separated from employment on or after August 28, 1995 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 4th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29905 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-30-M

Intercontinental Branded Apparel, Hialeah, Florida, et al.; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 18, 1996, applicable to all workers of Intercontinental Branded Apparel, located in Hialeah, Florida. The certification was published in the Federal Register February 6, 1996 (61 FR 4492).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at M.Wile and Company doing business as Intercontinental Branded Apparel plant in Dunkirk, New York. The workers produce men's pants.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers at the Dunkirk, New York production facility. The amended notice

applicable to NAFTA-00696 is hereby issued as follows:

"All workers of Intercontinental Branded Apparel, Hialeah, Florida (NAFTA-00696) and M.Wile and Company doing business as Intercontinental Branded Apparel, Dunkirk, New York (NAFTA-00696B) who became totally or partially separated from employment on or after November 15, 1994, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, D.C. this 4th day of November 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96-29904 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-30-M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 39 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment

procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

VOLUME I

New Hampshire

NH960001 (March 15, 1996)

NH960007 (March 15, 1996)

New Jersey

NJ960002 (March 15, 1996)

NJ960003 (March 15, 1996)

NJ960004 (March 15, 1996)

New York

NY960002 (March 15, 1996)

NY960003 (March 15, 1996)

NY960007 (March 15, 1996)

NY960008 (March 15, 1996)

NY960011 (March 15, 1996)

NY960013 (March 15, 1996)

NY960018 (March 15, 1996)

NY960021 (March 15, 1996)

NY960022 (March 15, 1996)

NY960026 (March 15, 1996)

NY960031 (March 15, 1996)

NY960032 (March 15, 1996)

NY960034 (March 15, 1996)

NY960037 (March 15, 1996)

NY960042 (March 15, 1996)

NY960044 (March 15, 1996)

NY960047 (March 15, 1996)

NY960049 (March 15, 1996)

NY960060 (March 15, 1996)

Vermont

VT960025 (March 15, 1996)

VOLUME II

Pennsylvania

PA960001 (March 15, 1996)

PA960002 (March 15, 1996)

PA960004 (March 15, 1996)

PA960005 (March 15, 1996)

PA960008 (March 15, 1996)

PA960017 (March 15, 1996)

PA960018 (March 15, 1996)

PA960020 (March 15, 1996)

PA960022 (March 15, 1996)

PA960027 (March 15, 1996)

PA960042 (March 15, 1996)

PA960065 (March 15, 1996)

West Virginia

WV960002 (March 15, 1996)

WV960006 (March 15, 1996)

VOLUME III

Florida

FL960017 (March 15, 1996)

Georgia

GA960003 (March 15, 1996)

GA960004 (March 15, 1996)

GA960023 (March 15, 1996)

GA960031 (March 15, 1996)

GA960032 (March 15, 1996)

GA960044 (March 15, 1996)

GA960050 (March 15, 1996)

GA960065 (March 15, 1996)

GA960073 (March 15, 1996)

GA960085 (March 15, 1996)

GA960086 (March 15, 1996)

GA960087 (March 15, 1996)

GA960088 (April 26, 1996)

Mississippi

MS960057 (March 15, 1996)

VOLUME IV

None

VOLUME V

New Mexico

NM960001 (March 15, 1996)

Texas

TX960011 (March 15, 1996)

TX960012 (March 15, 1996)

TX960014 (March 15, 1996)

TX960054 (March 15, 1996)

TX960069 (March 15, 1996)

VOLUME VI

California

CA960039 (March 15, 1996)

Washington

WA960001 (March 15, 1996)

WA960002 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4830.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 15th day of November 1996

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96-29646 Filed 11-21-96; 8:45 am]

BILLING CODE 4810-27-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96-85; Exemption Application No. D-10200, et al.]

Grant of Individual Exemptions; Chase Manhattan Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of

Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

The Chase Manhattan Bank Located in New York, New York; Exemption [Prohibited Transaction Exemption 96-85; Exemption Application No. D-10260]

Section I—Transactions

The restrictions of sections 408(a) of the Act and the sanctions resulting from the application of section 4975 of the

Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the following transactions, provided that the conditions set forth in Section II below are met:

- (a) Any acquisition or sale of "emerging market" securities (the Securities), and any repurchase agreement involving such Securities, which occurs between The Chase Manhattan Bank (Chase) or its Affiliates and the IBM Retirement Plan (the IBM Plan), to which Chase or an Affiliate is a party in interest under the Act at the time of the transaction; and
- (b) Certain repurchase agreements involving the Securities which occurred between the IBM Plan and Chemical Bank (Chemical) that were outstanding as of March 31, 1996, the date of the merger between the holding companies of Chemical and Chase. (The merger of the two banks themselves (the Merger) occurred later on July 14, 1996, and all references herein to Chase which refer to the time period after July 14, 1996 shall include Chemical.)

Section II—Conditions

(a) The assets of the IBM Plan involved in the transactions described in Section I(a) and I(b) above are managed by WP Emerging Markets Asset Management, L.P. (WP), as the independent, qualified fiduciary for the IBM Plan;

(b) WP, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, negotiates the terms of such transactions on behalf of the IBM Plan and makes the decision to have the IBM Plan enter into any such transactions with Chase;

(c) WP, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, monitors the investments made by the IBM Plan in such Securities and takes whatever actions are necessary to protect the interests of the IBM Plan;

(d) Neither Chase nor an Affiliate has discretionary authority or control with respect to the investment of the IBM Plan's assets involved in the transactions or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(e) In any transaction where the IBM Plan acquires a Security from Chase, the IBM Plan pays a price which is no greater than the fair market value of such Security, as determined by WP in accordance with either WP's internal valuation process or independent third party sources (such as independent broker-dealers and market-makers dealing in such Securities);

(f) In any transaction where the IBM Plan sells a Security to Chase, the IBM Plan receives a price which is no less than the fair market value of such Security, as determined by WP in accordance with either WP's internal valuation process or independent third party sources (such as independent broker-dealers and market-makers dealing in such Securities);

(g) The repurchase agreements between the IBM Plan and Chase are entered into pursuant to a written agreement between the parties which describes all of the material terms and conditions for such transactions, including the rights and obligations of each party, and is consistent with the specific guidelines established by the IBM Plan's named fiduciary for transactions involving the Securities;

(h) All repurchase agreements between the IBM Plan and Chase, and those between the IBM Plan and Chemical which were in place as of March 31, 1996, have terms and conditions which are set least as favorable to the IBM Plan as terms and conditions which would exist in a similar transaction with an unrelated party;

(i) All other terms of each transaction described above in Section I(a) are not less favorable to the IBM Plan than the terms available in an arm's-length transaction between unrelated parties;

(j) WP does not engage in, or commit to sell, any uncovered put or call options (including, but not exclusive to, "straddles" and "strangles") in transactions with Chase on behalf of the IBM Plan;

(k) Any transactions involving the use of leverage by WP, on behalf of the IBM Plan, do not exceed the specific guidelines established by the IBM Plan's named fiduciary under its investment management agreement with WP;

(l) No brokerage commission, sales commission, or similar compensation, other than the particular dealer mark-up for the Security, is paid to Chase by the IBM Plan with regard to such transactions; and

(m) The amount of the IBM Plan's assets involved in the transactions described in Section I(a) and I(b) represents no more than two (2) percent of the total assets of the IBM Plan.

Section III—Definitions

(a) The term "Chase" refers to The Chase Manhattan Bank and its Affiliates, as defined below, including, as of July 14, 1996, Chemical Bank, pursuant to the Merger described in Section I(b) above which occurred on such date.

(b) The term "Chemical" refers to Chemical Bank, as it existed prior to the Merger on July 14, 1996.

(c) The term "Affiliate" refers to affiliates of Chase, including entities controlling, controlled by, or under common control with Chase as well as successors to such entities.

(d) The term "control" for purposes of the above definition of "Affiliate" means the power to exercise a controlling influence over the management or policies of an entity.

(e) The term "emerging market" or "emerging markets" refers to capital markets in developing or less developed countries that are, with the exception of Mexico, not member countries of the Organization for Economic Cooperation and Development.

(f) The term "Security" refers to certain "emerging market" securities and instruments issued in, or on behalf of, an "emerging market" (including both corporate and sovereign issuers of debt securities as well as corporate issuers of equity securities). For purposes of the proposed exemption, such "Securities" would include publicly traded or privately placed debt, equity, or convertible securities, certain put and call options (as described herein), collateralized bonds, Brady Bonds and Eurobonds.

(g) The term "IBM Plan" refers to the IBM Retirement Plan, a defined benefit pension plan covering employees of the International Business Machines Corporation and its affiliates (IBM), which is an employee benefit plan covered by the Act.

(h) The term "WP" refers to WP Emerging Markets Asset Management, L.P. and its affiliates, including the Emerging Capital Markets Division of Wasserstein Perella Securities, Inc. **EFFECTIVE DATE:** The exemption is effective as of September 6, 1996 for all transactions described in Section I(a), and as of March 31, 1996, for the transactions described in Section I(b).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 6, 1996 at 61 FR 47195.

Written Comments

The Department received two written comments with respect to the notice of proposed exemption.

The first written comment was submitted by the Applicant, who wished to clarify the details of its merger with Chemical and the precise names of the banks involved. On March 31, 1996, a merger of the holding companies of the two banks occurred;

the merger of the banks themselves occurred on July 14, 1996. Specifically, on March 31, 1996, the Chase Manhattan Corporation was merged with and into Chemical Banking Corporation, which entity simultaneously changed its name to The Chase Manhattan Corporation. On July 14, 1996, the Chase Manhattan Bank (National Association) was merged with and into Chemical Bank, which entity simultaneously changed its name to The Chase Manhattan Bank. Accordingly, the words "National Association" are no longer part of the Applicant's name. The Applicant also notes that the Chemical Bank to which the notice of proposed exemption referred did not include "National Association" as part of its name. The Department has modified the language in this exemption to reflect the Applicant's corrections to the record.

The second written comment was submitted by WP and also concerns a clarification to the notice of proposed exemption. First, WP notes that its precise name is WP Emerging Markets Asset Management, L.P. Secondly, WP notes, in Paragraph 5 of the Summary of Facts and Representations (the Summary), that the second full sentence on page 47198 should be revised to read, "WP states that WPS's Emerging Capital Markets Division (not its equities division), has been a manager on [eliminate "significant"] syndicate transactions involving emerging market securities." Thirdly, WP notes, in paragraph 10 of the Summary, the final subparagraph therein on page 47199, which discusses WP's customary approach to REPO financing and negotiation, that a REPO is collateralized by a specific asset and the REPO does not provide the counterparty with a lien on the IBM Trust's general assets. Accordingly, the sentence beginning, "Because the credit-standing of the IBM Trust is excellent * * *" should be eliminated, as well as the phrase "of similar credit standing" in the following sentence. Finally, WP notes, in Paragraph 18 of the Summary, that the parenthetical at the beginning of page 47202 should be revised to begin "currently, 150 percent * * *" to reflect the fact that the Guidelines for the IBM Plan are subject to modification by IBM.*

* As previously noted in Footnote 9, on page 47200 of the notice of proposed exemption, the Department expresses no opinion as to whether WP's use of leverage would violate any of the provisions of Part 4 of Title I in the Act. The Department notes that WP is required, under section 404(a) of the Act, to make investment decisions on behalf of the IBM Plan prudently and solely in the interests of the participants and beneficiaries of such Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Acme 401(k) Retirement Savings Plan (the Plan) Located in Scottsdale, Arizona; Exemption

(Prohibited Transaction Exemption 96-86; Exemption Application No. D-10270)

The restrictions of sections 408(a), 408(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of a 2.86 percent interest (the Interest) in the Arizona Equities V Real Estate Investment Trust to RSC Holdings, Inc., the sponsor of the Plan and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

- (1) The sale is a one-time transaction for cash;
- (2) The Plan does not incur any expenses in connection with the Sale; and
- (3) The Plan receives as consideration from the sale the greater of: (a) the fair market value of the Interest as determined by a qualified independent appraiser at the time of the Sale; or (b) the Plan's total investment in the Interest in the amount of \$50,572.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on September 6, 1996 at 61 FR 47204.

FOR FURTHER INFORMATION CONTACT: Ms. Marianne H. Cole or Mr. Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

- (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of November, 1996.

Ivan Strassfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96-29901 Filed 11-21-96; 8:45 am]

BILLING CODE 4910-22-01

NATIONAL SCIENCE FOUNDATION

Proposed Collection; Comment Request

Title of Proposed Collection: An Evaluation of Design and Manufacturing Research Program Awards made in FY1986.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) is publishing this announcement of its intention to collect evaluation data from Principal Investigators receiving awards under the Design, Manufacture and Industrial Innovation (DMII) program for the fiscal year cited above. To request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, call Herman Fleming, NSF Clearance officer, at (703) 306-1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information from respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: An Evaluation of DMII Awards made in FY-1986. The ability of the National Science Foundation to continue a high level of support for university-based research is becoming increasingly dependent on the ability of the NSF and its research partners to explain the impact of funded research on the lives of the U.S. citizens who provide those funds. While NSF has anecdotal accounts of manufacturing-related NSF projects that ultimately led to major new technologies with a significant impact on commerce, the Foundation has no systematic evidence regarding the frequency of such events, nor the process by which these outcomes may have occurred. Therefore, the NSF Director has requested that a pilot project be initiated to perform an exhaustive study of the outcomes of design and manufacturing-related awards made in FY1986.

Some 200 Principal Investigators who were recipients of an award from DMII in FY1986 will be asked to provide a one-page narrative describing the impact of their work. They will need to consider their project in light of their knowledge of progress in the broad field in which it may have been applied. For instance, did their work provide key insights which led to important follow-on projects, in their lab or at other labs, carried out by the PI, by his or her students or industry engineers with whom they consulted? If so, they will be asked to describe the chain of discovery in their narrative.

The DMII is asking that PIs assist in this evaluation by providing the following information:

- (1) a brief one page narrative regarding the outcomes and impacts of the project;
- (2) citations to no more than 3 key journal articles, books or patents that resulted from the project, or in which the project played an important role;
- (3) the names, addresses and telephone numbers of between 3 and 5 other individuals who are familiar with the work carried out under the project, and who could provide additional insights as to its outcomes and impacts; and

- (4) one hard copy of each of the journal articles and patent(s) that are cited. With regard to the narrative materials, the following information will be requested:

- (A) Complete project title.
- (B) PI, Co-PI and institutional affiliations.
- (C) Time frame during which project was conducted.
- (D) Principal outputs or results of the project.

(E) Longer term outcomes and follow-on impacts of the project.

(F) The PI's best assessment of the impact of this NSF-funded research on the current (1996) state of design and manufacturing technology, including any known commercial implementations.

(G) Any other observations that the PI wishes to make (e.g., regarding the promotion of a significant discovery, creation of a significant research capability, promotion of new knowledge flowing to society).

The narratives, citations, and names of others knowledgeable about the project may be submitted using the Internet or regular mail.

The DMII will organize a panel of experts in the field who are knowledgeable about the types of projects funded, and the nature of innovations that have occurred over the past decades. The expert panel's first assignment will be to conduct a thorough review and assessment of the narratives submitted by the PIs. Once the narratives have been reviewed, a subset of 20 outstanding examples of awards with significant impacts will be chosen, and brief case studies will be prepared by the contractor in order to better understand the process by which the impacts occurred.

Under the final phase of this evaluation, the expert panel will then review the case studies and, based upon findings from both the project narratives and the individual case studies, prepare an overall assessment of the contributions made by these awards.

The DMII program staff will then review the findings and assess their implications for future program priorities and actions.

DMII has contracted with Abt Associates Inc. of Cambridge, Massachusetts, to assist it in the survey and reports preparation process.

Use of Information: The information collected will be used to assist the Foundation in the evaluation of this program, and in considering various program priorities and selection procedures for future projects in this area. NSF will also consider how best to satisfy the Government Performance and Results Act (GPRA) in reporting outcomes and impacts of programs of this type. Finally, NSF will determine how to improve future evaluation activities applied to subsequent awards made under this program.

Confidentiality: Copies of the narratives will be reviewed by a panel of experts selected by NSF. The subsequent case studies will also be reviewed by this expert panel. Some materials may be disseminated by NSF

as a part of the program evaluation process. No sensitive information is being requested in the survey.

Burden on the Public: The Foundation estimates that, on average, two hours will be required to prepare the narratives, or a total of 400 hours for all PIs. In addition, it anticipates 4 hours of interviews for each of 20 case studies, or 80 hours. Thus, total burden is estimated at 480 hours.

Send comments to Herman Fleming, Clearance Office, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 2220. Written comments should be received by January 22, 1997.

Dated: November 19, 1996.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 96-29876 Filed 11-21-96; 8:45 am]

BILLING CODE 7550-01-01

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483]

Callaway Plant, Unit 1, Union Electric Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80(a) of the application concerning the corporate merger agreement between Union Electric Company (the licensee), holder of Facility Operating License No. NPF-30, issued for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri, and CIPSCO Incorporated.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve the application concerning the merger agreement between Union Electric Company (UEC) and CIPSCO Incorporated (CIPSCO), which would provide for UEC to become a wholly-owned operating company of Ameren Corporation (Ameren), which is now owned equally by UEC and CIPSCO. Ameren would hold all common stock in UEC upon completion of the merger. UEC would continue to remain the owner/operator of Callaway Plant, Unit 1. The proposed action is in accordance with UEC's application dated February 23, 1996, as supplemented by letter dated April 24, 1996.

The Need for the Proposed Action

The proposed action is required to enable UEC to consummate the merger

agreement with CIPSCO as described above. UEC has submitted that the merger will enable UEC and CIPSCO to reduce the combined operating costs for UEC and CIPSCO, that both companies have been aggressively pursuing cost reductions to remain competitive, and have reached the practical limits of that strategy, and that by combining utility operations, both companies have an opportunity to achieve more cost efficiency than either company could achieve independently.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate merger and concludes that there will be no physical or operational changes to the Callaway Plant. The corporate merger will not affect the qualifications or organization affiliation of the personnel who operate the facility, as UEC will continue to be responsible for the operation of the Callaway Plant, Unit 1.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the merger, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the corporate merger would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the merger would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant, dated March 1975.

Agencies and Persons Contacted

In accordance with its stated policy, on October 30, 1996, the staff consulted with the Missouri State official, Tom Lange, for the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated February 23, 1996, as supplemented by letter dated April 24, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 18th day of November 1996.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96-29899 Filed 11-21-96; 8:45 am]

BILLING CODE 7550-01-01

[Dockets Nos. 50-335 and 50-387]

Florida Power & Light Co., St. Lucie, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 dated June 12, 1996, by Mr. Thomas J. Saporito, Jr. and on behalf of the National Litigation Consultants. The Petition pertains to St. Lucie, Units 1 and 2.

The Petitioners requested the Commission (1) to issue a confirmatory order requiring that the Florida Power and Light Company (Licensee) not operate the St. Lucie Nuclear Station, Unit 1 above 50% of its power level

capacity, (2) to require the licensee to specifically identify the "root cause" for the premature failure of the steam generator tubing, and (3) to require the licensee to specifically state what corrective measures will be implemented to prevent recurrence of steam generator tube failures in all the steam generators in Unit 1 and Unit 2.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-96-19), the complete text of which follows this notice, and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 18th day of November 1996.

For the Nuclear Regulatory Commission,
Frank J. Mireglio, Jr.,
Acting Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

On June 12, 1996, Mr. Thomas J. Saporito, Jr., on behalf of himself and the National Litigation Consultants (Petitioners), filed a Petition with the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR 2.206. The Petitioners requested the Commission (1) to issue a confirmatory order requiring that the Florida Power & Light Company (FPL or licensee) not operate St. Lucie Plant, Unit 1, above 50 percent of its power-level capacity, (2) to require the licensee to specifically identify the "root cause" for the premature failure of the steam generator tubing, and (3) to require the licensee to specifically state what corrective measures will be implemented to prevent recurrence of steam generator tube failures in all the steam generators in Unit 1 and Unit 2.

The Petitioners' requests are based on assertions that (1) the licensee's Unit 1 steam generator tubes have degraded to the extent that more than 2,500 of the tubes have been plugged, (2) the licensee has not identified the root cause for the premature failure of the

steam generator tubing, (3) the licensee will most likely experience similar tube ruptures on other steam generators at the station, and (4) the licensee's "FSAR's" (Final Safety Analysis Reports) and the NRC's CFR's (Code of Federal Regulations) require that the integrity of the primary systems on Unit 1 and Unit 2 not be breached.

The Petition has been referred to my office pursuant to 10 CFR 2.206 of the Commission's regulations. By letter dated July 8, 1996, an acknowledgement of receipt of the Petition was sent to the Petitioners. In that letter, the Petitioners were informed that the NRC would take appropriate action within a reasonable time. I have completed my evaluation of the matters raised by the Petitioners and have determined that, for the reasons stated below, the Petition is denied.

II. Discussion

The NRC staff's evaluation of the Petitioners' requests follows.

(a) Issue a confirmatory order requiring that the licensee not operate Unit 1 above 50 percent of its power-level capacity.

In a meeting held at NRC Headquarters on July 3, 1996, the licensee presented the inspection and repair history for the Unit 1 steam generator tubes.¹ The licensee has performed 15 inspections since commercial operation began in December 1976. For the most recent inspection, completed in June 1996, the licensee inspected the full length of all active tubes using a bobbin coil.² In addition, the licensee used a motorized rotating pancake coil³ (MRPC) to inspect all expansion transition joints and drilled support intersections in the hot and cold legs, all free-span locations having bobbin coil indications,⁴ and free-span tube regions in the upper two support areas in the hot legs. The inspection was based on the Electric Power Research Institute (EPRI) report "PWR Steam Generator Examination Guidelines," dated November 1992. Defective tubes having circumferential indications, axial indications, or volumetric indications⁵ were plugged and removed from service.

¹ NRC Meeting Summary, Subject: "Steam Generator Inspection, Repair and Operating Issues—St. Lucie Unit 1," dated July 10, 1996.

² The bobbin coil is used for a general screening of tubes for indications of possible defects, while the motorized rotating pancake coil (MRPC) probe is used to further characterize bobbin coil indications. The MRPC is also used to inspect regions susceptible to circumferentially orientated degradation.

³ See note 2.

⁴ See note 2.

⁵ Circumferential indications are crack-like indications orientated on the diameter of the tube.

Including tubes plugged during earlier outages, 2,159 of 8,519 tubes (25.3 percent) in the "A" steam generator and 1,834 of 8,519 tubes (21.5 percent) in the "B" steam generator have been plugged and removed from service. The licensee performed an evaluation that showed that the plant could be safely operated at full power with the reduced reactor coolant flow resulting from the increased number of plugged tubes.⁶ The NRC reviewed the licensee's evaluation and concluded that it was acceptable and that the units could be operated at full power. The staff's evaluation is documented in a safety evaluation dated July 9, 1996.

In the meeting on July 3, 1996, the licensee presented a preliminary run-time analysis for Unit 1, which was used to determine the length of steam generator operation before the need for further tube inspections to ensure adequate tube integrity. The licensee stated that the preliminary results of its analysis support a tube inspection interval of 15 months for the current Unit 1 cycle that started in July 1996. The licensee also stated that in situ pressure testing of the steam generator tubes during the spring 1996 outage indicated that the most severely degraded tubes had adequate structural integrity and satisfied the safety margins in NRC's Regulatory Guide 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes." On the basis of the results of the in situ pressure tests, the staff concluded that adequate assurance of tube integrity existed to allow operation pending completion of the licensee's run-time analysis. The NRC is currently reviewing the licensee's analysis, which was submitted October 24, 1996.

The plant Technical Specifications for each of the units specify leakage limits for the reactor coolant pressure boundary, including steam generator tube leakage. If a tube leaks beyond the allowed limits, the unit must be shut down. The plant off-normal operating procedures for St. Lucie Units 1 and 2 also include criteria for shutdown based on EPRI TR-104788, "PWR Primary to Secondary Leak Guidelines," dated May 1995, which are more conservative than the limits in the plant Technical Specifications. Finally, if a tube fails, the plant's Emergency Operating Procedures contain the specific actions necessary for the operators to shut down

Axial indications are crack-like indications orientated on the long axis of the tube. Volumetric indications are areas of general reduction in tube wall thickness with no specific orientation.

⁶ FPL letter, "Thermal Margin and RCS Flow Limits," dated June 1, 1996.

and cool down the plant to mitigate the consequences of the event.

Thus, as required, the licensee has implemented measures for both units to protect public health and safety in the unlikely event that tube integrity is compromised. These measures include a primary-to-secondary leakage monitoring program and emergency operating procedures. The leakage monitoring program provides early warning of tube leakage. The steam generator blowdown monitor and condenser air ejector monitor at each of the units continuously monitors the radioactivity level in the main steamline. A significant increase in the instrument readings, which would result from a relatively small tube leak, will cause an alarm to alert the operators to the change in radioactivity levels and potential tube leakage.

On the basis of the information submitted, the NRC staff has concluded that the operation of the Unit 1 steam generators at full power poses no undue risk to public health and safety.

(b) Require the licensee to specifically identify the "root cause" for the premature failure of the steam generator tubing.

It is not clear how the Petitioners define "premature failure"; however, since there have not been any steam generator tube ruptures at St. Lucie Units 1 or 2, it is assumed the reference is to tube degradation. Many of the tubes in the Unit 1 steam generators have degraded as a result of corrosion and/or mechanical conditions. The root cause of tube degradation in steam generators is the interaction of water chemistry, thermal-hydraulic design, materials selection, fabrication methods, and operating conditions. The causes of tube degradation are well understood by the industry and are documented in the public record. The root causes for the St. Lucie steam generator tube degradations were presented to the NRC staff in a meeting on August 27, 1986.⁷

The licensee has identified to the NRC modes of degradation that have affected the steam generator tubes in both St. Lucie Units 1 and 2 in its response of June 23, 1995, to NRC Generic Letter 95-03, "Circumferential Cracking of Steam Generator Tubes," and in the meeting of July 3, 1996. The degradation modes identified include intergranular attack, stress-corrosion cracking and denting. Intergranular attack refers to localized attack at and adjacent to grain boundaries of tube material, with

⁷ NRC Meeting Summary, Subject: "Summary of August 27, 1986 Meeting with FPL and NRC Staff Regarding Steam Generator Tube Degradation Mechanism," dated September 12, 1986.

relatively little corrosion of the grains. Intergranular stress-corrosion cracking refers to cracking caused by the simultaneous presence of stress and a specific corrosive medium. Denting is the accumulation of corrosion products at the tube-to-tube support plate that causes plastic deformation of the tube. The licensee has identified locations of these degradations in the tubes during the most recent steam generator inspection of St. Lucie Unit 1.⁸ They include egg crate and drilled tube support plates, free spans, expansion transition regions, and sludge pile areas. In every case, the root cause of tube degradation can be attributed to material selection, water chemistry, fabrication methods, or residual stresses at the affected location.

The staff concludes that the licensee understands and has identified the root cause of tube degradation at St. Lucie Units 1 and 2.

(c) Require the licensee to specifically state what corrective measures will be implemented to prevent recurrence of steam generator tube failures in all the steam generators in Unit 1 and Unit 2.

As previously discussed, degradation of the steam generator tubing is caused by the interaction of water chemistry, thermal-hydraulic design, materials selection, fabrication methods, and operating conditions. The licensee has applied corrective measures in order to reduce the rate of tube degradation. For example, the rate of tube degradation may be reduced through improvements in water chemistry. The licensee follows industry guidelines⁹ on secondary water chemistry for both units, and these guidelines represent a significant improvement over the guidelines followed when Unit 1 began operating. The guidelines have stringent requirements and limitations on specific types and amounts of chemicals in the primary and secondary water to mitigate corrosion. Replacement steam generators having improved design, for example, better material selection and tube support configuration, have had much better operating experience than the earlier steam generators, such as those at St. Lucie. The licensee plans to replace the Unit 1 steam generators in October 1997 with steam generators that incorporate these design improvements.

The NRC staff focuses on ensuring adequate tube integrity by requiring licensee compliance with applicable regulations and Technical Specification requirements. The staff uses its field inspections, meetings with the licensee,

⁸ See note 1.

⁹ FPL letter, "Generic Letter 95-03 Response," dated June 23, 1995.

and licensing reviews to ensure that the licensee satisfies the regulations¹⁰ and plant Technical Specifications as they apply to steam generator tube integrity and that appropriate inspection methods and repair criteria are used to address specific forms of degradation. Plant Technical Specifications define degraded and defective tubes, specify the scope of inspections and reporting requirements and set forth tube plugging criteria and limits for allowable leakage in the reactor coolant system. NRC regulations and plant Technical Specifications require that steam generator tube degradation be managed through a combination of inservice inspection, repair of tubes exceeding the plugging criteria in the plant Technical Specifications, primary-to-secondary leakage monitoring, and structural and run-time analyses to ensure that safety objectives are met. On the basis of the information provided by the licensee in the meeting on July 3, 1996, and the staff's onsite inspection, the staff has concluded that the licensee is in compliance with these requirements.

In summary, the licensee's corrective measures to reduce the rate of steam generator tube degradation and continued compliance with NRC regulations and plant Technical Specification requirements provide reasonable assurance that steam generator tube integrity at St. Lucie Units 1 and 2 will be maintained.

III. Conclusion

On the basis of the fact that (1) the licensee has performed adequate steam generator tube inspections that identified areas of degradation, (2) the licensee has completed analyses and repairs of degraded tubes, (3) the licensee's in situ pressure testing of degraded tubes indicated adequate structural integrity remains, (4) the licensee is monitoring primary-to-secondary leakage on a continuing basis, and (5) the licensee is complying with NRC regulations and plant Technical Specifications, I have concluded that a confirmatory order limiting St. Lucie Unit 1 to 50 percent of its power-level capacity is not warranted and that the

¹⁰ The NRC regulations that require steam generator tube integrity be maintained include 10 CFR Part 50, Appendix A, General Design Criteria for Nuclear Power Plants, Criterion 1—Quality Standards and Records, Criterion 14—Reactor Coolant Pressure Boundary, Criterion 30—Quality of Reactor Coolant Pressure Boundary, Criterion 31—Prevention of Reactor Coolant Pressure Boundary, and Criterion 32—Inspection of Reactor Coolant Pressure Boundary; 10 CFR Part 50, Appendix B, Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants; and 10 CFR Part 50.55a, which specifies codes and standards for nuclear power plants.

licensee has identified the root cause of tube degradation and implemented adequate corrective measures to provide reasonable assurance that steam generator tube integrity will be maintained at St. Lucie Units 1 and 2.

For the reasons previously discussed, no basis exists for taking any further action in response to the Petition. As provided in 10 CFR 2.206(c), a copy of the Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 18th day of November 1996.

For the Nuclear Regulatory Commission,
Frank J. Miraglia, Jr.,
Acting Director, Office of Nuclear Reactor Regulation.
[FR Doc. 96-29698 Filed 11-21-96; 8:45 am]
BILLING CODE 7000-01-P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Privacy Act; Systems of Records

AGENCY: Nuclear Waste Technical Review Board.

ACTION: Annual Notice of Systems of Records.

SUMMARY: Each Federal agency is required by Privacy Act of 1974, 5 U.S.C. 552a, to publish annually a description of the systems of records it maintains containing personal information. In this notice the Board provides the required information on two systems of records.

FOR FURTHER INFORMATION CONTACT: Michael Carroll, Director of Administration, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, VA 22209, (703) 235-4473.

SUPPLEMENTARY INFORMATION: The Board currently maintains two systems of records under the Privacy Act. Each system is described below.

NWTRB-1

SYSTEM NAME:

Administrative and Travel Files

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, VA 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the Board, including NWTRB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

- (1) Time and attendance;
- (2) Payroll actions and deduction information requests;
- (3) Authorizations for overtime and night differential;
- (4) Credit cards and telephone calling cards issued to individuals;
- (5) Destination, itinerary, mode and purpose of travel;
- (6) Date(s) of travel and all expenses;
- (7) Passport number;
- (8) Request for advance of funds and voucher with receipts;
- (9) Travel authorizations;
- (10) Name, address, social security number, and birth date; and,
- (11) Employee public transit subsidy applications and vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100-203, Part E.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house." Notwithstanding the above, access may also be gained under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a Federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer disk.

RETRIEVABILITY:

By type of document, then name.

SAFEGUARDING:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Federal guidelines or in password protected electronic databases.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within NWTRB are destroyed by shredding or purging.

SYSTEM MANAGER AND ADDRESS:

Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, VA 22209, Attention: Director of Administration.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if NWTRB-1 contains information about him/her should be directed to the system Manager listed above. Required identifying information: complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as notification procedures above, except individual must show official photo identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, travel officers, official personnel records, GSA for accounting and payroll, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PARTS OF THE ACT:

None.

NWTRB-2

SYSTEM NAME:

Mailing Lists.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, VA 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who receive reports in compliance with statutory authority and those individuals who have requested Board reports, newsletters, meeting transcripts and/or press releases.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of names, addresses and materials requested.

AUTHORITY FOR MAINTENANCE OF THE FILES:

Pub. L. 100-203, Part E.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Distribution of Board reports, newsletters, meeting transcripts, and press releases. Information is used "in house." Notwithstanding the above, access may also be gained under the following condition.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disk.

RETRIEVABILITY:

By name and type of information requested.

SAFEGUARDS:

Access is limited to employees having a need to know. Lists are kept in password protected electronic databases.

RETENTION AND DISPOSAL:

Requesters are sent periodic requests to update their records and/or remain on the mailing list. Nonrespondents and all asking to be deleted are purged from the list.

SYSTEM MANAGER(S) AND ADDRESS:

Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, VA 22209, Attention: Office of Administration.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if NWTRB-2 contains information about him/her should be directed to the System Manager (above). Required identifying information: complete name and address.

RECORD ACCESS PROCEDURE:

Same as notification procedure above, except individual must show official photo identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Statutory reporting authority and requests from individuals to be placed on a distribution.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: November 12, 1996

William Barnard,
Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 96-29645 Filed 11-21-96; 8:45 am]
BILLING CODE 9999-AM-M

UNITED STATES POSTAL SERVICE

Board of Governors; Notice of a Sunshine Act Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, December 2, 1996, and at 8:30 a.m. on Tuesday, December 3, 1996, in Washington, D.C.

The December 2 meeting is closed to the public (see 61 FR 58431, November 14, 1996). The December 3 meeting is open to the public and will be held at

U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268-4800.

Agenda

Monday Session

December 2—1:00 p.m. (Closed)

1. Consideration of a Proposed Filing with the Postal Rate Commission for Limited Changes in Mail Classification, Postal Rates, and Fees. (John H. Ward, Vice President, Marketing Systems)

Tuesday Session

December 3—8:30 a.m. (Open)

1. Minutes of the Previous Meetings, November 4-5, 1996.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Consideration of Semiannual Report of the Postal Inspection Service. (Kenneth J. Hunter, Chief Inspector)
4. Consideration of the Fiscal Year 1996 Audited Financial Statements. (Governor Einar V. Dyhrkopp, Chairman, Audit Committee; and Michael J. Riley, Chief Financial Officer)
5. Final Fiscal Year 1996 Appropriations Request. (Michael J. Riley, Chief Financial Officer)
6. Capital Investments.
 - a. Multiline Optical Character Reader (MOCR) Co-Processor. (William J. Dowling, Vice President, Engineering)
 - b. 240 Flat Sorting Machines 1000 (FSM 1000). (William J. Dowling, Vice President, Engineering)
 - c. Computerized On-Site Data Entry System (CODES) Replacement Project. (Michael J. Riley, Chief Financial Officer)
7. Briefing on 1997 Stamp Program. (Aasealy Jaffer, Manager, Stamp Services)
8. Tentative Agenda for the January 6-7, 1997, meeting in Washington, D.C.

Thomas J. Koerber,

Secretary.

[FR Doc. 96-30072 Filed 11-20-96; 3:03 pm]
BILLING CODE 7710-12-M

THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

The Thirteenth Meeting of the President's Council on Sustainable Development (PCSD) in Washington, DC

Summary: The President's Council on Sustainable Development (PCSD), a partnership of industry, government, and environmental, labor, and Native American organizations, will convene its thirteenth meeting in Washington,

D.C. on December 11, 1996. The Council transmitted its report, entitled *Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future*, to President Clinton on March 7, 1996. The text of the Council's report can be found on the Internet at <http://www.whitehouse.gov/PCSD>. The Council met on October 16, 1996 to discuss the progress of activities underway to implement recommendations contained in its report. It is due to report in December to the President on the progress of these implementation efforts.

During the upcoming meeting, the Council will discuss this report and the future role of the PCSD.

The discussion will be guided by the following agenda items:

- I. Discussion PCSD Council report to the President.
- II. Discussion of the future role of the PCSD.
- III. Public comment period.

Dates/Times: Wednesday, December 11, 1996, 2:00-4:30 p.m.

Place: The Ballroom at The Hotel Washington, Pennsylvania Avenue at 15th Street, N.W., Washington, D.C. 20004; 202/535-5000.

Status: Open to the Public: Public comments are welcome. Comments may be submitted orally on December 11 or in writing any time prior to or during the December 11 meeting. Please submit written comments prior to meeting to: PCSD, Public Comments, 730 Jackson Place, N.W., Washington, D.C. 20503, or fax to: 202/406-5839.

Contact: Patricia Sinicropi, Administrative Officer, 202/406-5296.

Sign Language Interpreter: Please call the contact if you will need a sign language interpreter.

Keith Laughlin,

Executive Director, President's Council on Sustainable Development.

[PR Doc. 96-29873 Filed 11-21-96; 8:45 am]

BILLING CODE 3125-01-P

SECURITIES AND EXCHANGE COMMISSION

[Vol. No. IC-22340; 512-10125]

**Fremont Mutual Funds, Inc., et al.;
Notice of Application**

November 18, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Fremont Mutual Funds, Inc. ("Company") and Fremont Investment Advisors, Inc. ("Advisor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from section 15(a) of the Act and rule 18f-2 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting subadvisors approved by the Company's board of directors to serve as portfolio managers ("Managers") for the Company's series of shares without obtaining shareholder approval of the agreements with the Managers.

FILING DATES: The application was filed on May 8, 1996, and amended on November 12, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 13, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 333 Market Street, Suite 2600, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenless, Senior Counsel, at (202) 942-0581 or Mary Kay Frech, Branch Chief, at (202) 942-0584 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end, diversified management investment company. The Advisor is investment adviser to the Company and is a registered investment adviser. The Company currently offers nine portfolios ("Funds"), each with distinct investment objectives, policies, and restrictions. The Company's board of directors ("Board of Directors") has the authority to create additional Funds and may do so from time to time.¹

¹ Applicants also request relief with respect to (a) any additional Fund organized in the future and (b)

2. General management of the Company's investment operations is provided by the Advisor pursuant to investment advisory agreements with the Company, which have been approved by the shareholders of the Funds. Specific portfolio management for the Company is provided by the Advisor and/or a Manager for each Fund. The Managers are recommended to the Board of Directors by the Advisor. Each Manager performs services pursuant to a written portfolio management agreement ("Portfolio Management Agreement"). For Funds managed by the Advisor and a Manager, the Advisor is responsible for the allocation, and reallocation from time to time, of a Fund's assets among the Advisor and the Manager. More than one Manager could be engaged for a Fund, but this has not been done to date. The Advisor also is responsible for recommending to the Board of Directors the termination of a Manager when deemed in the best interests of a Fund.

3. Each Fund pays an investment advisory fee to the Advisor, payable monthly based on a average daily net assets. The Advisor, out of these fees, pays the fees of the Managers at no additional cost to the Funds. Administrative services for the Company are provided by the Advisor and various unaffiliated third-party service providers.

4. The specific investment decisions for five Funds are presently made by different Managers, each of which has discretionary authority to invest all or a portion of the assets of a particular Fund, subject to general supervision by the Advisor and the Board of Directors. Each Manager is an "investment adviser," as defined in section 2(a)(20) of the Act. Applicants currently do not anticipate that the overall number of Managers will be reduced, although some Managers may in the future be terminated and replaced. The overall number of Managers may be increased if more Managers are added for existing Funds and if new Funds are created and Managers are engaged for those Funds.

5. The Advisor currently seeks to enhance performance and reduce market risk by allocating the Fund's assets among itself and a Manager for one of the Funds (a "Multiple Manager Arrangement"). Under a Multiple Manager Arrangement, which may be

any other open-end management investment company ("Future Company") advised by the Advisor, or a person controlling, controlled by or under common control with the Advisor, in the future, provided that such Future Company operates in substantially the same manner as the Funds and complies with the conditions of the requested order.

employed with other Funds, the Advisor may allocate portions of a Fund's assets among multiple Managers, including itself, with dissimilar investment styles and security selection disciplines.

6. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 thereunder to permit applicants to enter into and amend, and Managers to act pursuant to, written advisory contracts without approval by a majority of the outstanding voting securities of each Fund.

Applicants' Legal Analysis

1. Section 15(a) of the Act and rule 18f-2 thereunder provide, together and in substance, that it is unlawful for any person to act as an investment adviser to one of the Funds except pursuant to a written contract, which has been submitted to and approved by the vote of a majority of the outstanding voting securities of the Fund.

2. Applicants assert that the Company's structure is different from that of most registered investment companies. A Fund using a Multiple Manager Arrangement has its assets divided among two (or more) Managers (which may include the Advisor). The Advisor has overall oversight and allocation responsibility as to portfolio management. The Advisor may allocate and reallocate the proportion of a Fund's assets subject to particular Manager styles (or may hire new Managers in response to changing market conditions or Manager performance), in an attempt to improve the Fund's overall performance.

3. Applicants believe that investors in a Fund are, in effect, electing to have the Advisor select one or more Managers, including the Advisor, best suited to achieve that Fund's investment objectives. Part of such investor's investment decision is a decision to have those selections made by the Advisor, a professional management organization with substantial experience in making such evaluations, selections, and terminations. Applicants state that Managers are engaged solely for selection of portfolio investments in accordance with a Fund's investment objectives and policies, and do not have broader supervisory, management, or administrative responsibilities with respect to a Fund or the Company. Applicants assert, therefore, that there are no policy reasons which require investors in the Company to approve the relationship, and terms of the relationship, with a Manager, any more than shareholders of a registered investment company should be required to approve its advisor's internal change

of a portfolio manager or revision of the portfolio manager's salary or conditions of employment.

4. Applicants believe that relief from the Act's shareholder approval requirements with respect to the Portfolio Management Agreements is appropriate because such requirements in this case do not serve the purposes intended by the Act and place costs and burdens on the Company and its shareholders that do not materially advance their interests. Applicants argue that requiring shareholder approval of the Portfolio Management Agreements only serves to increase the Company's expenses and delay the prompt implementation of actions deemed advisable by the Advisor and the Board of Directors, both of which results are disadvantageous to shareholders. Applicants state that, without the requested relief, the Company has been (and would be) required to call a meeting of shareholders whenever it decides to employ new or additional Managers, or to approve a new Portfolio Management Agreement after an "assignment," or due to a material change in terms. Applicants believe that, given the nature of the Company's operations and investors' reasons for investing in various of the Funds, such expenses provide little, if any, benefit to the Company's shareholders.

5. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction or any class or classes of persons or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the section 6(c) standards for exemption have been met.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Advisor will not enter into a Portfolio Management Agreement with any Manager that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Company or the Advisor other than by reason of serving as a Manager to one or more of the Funds (an "Affiliated Manager") without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

2. At all times, a majority of the Company's directors will be persons each of whom is not an "interested

person" of the Company as defined in section 2(a)(19) of the Act ("Independent Directors"), and the nomination of new or additional Independent Directors will be placed with the discretion of the then existing Independent Directors.

3. When a Manager change is proposed for a Fund with an Affiliated Manager, the Company's directors, including a majority of the Independent Directors, will make a separate finding, reflected in the Company's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Manager derives an inappropriate advantage.

4. The Advisor will provide general management services to the Company and the Funds and, subject to review and approval by the Board of Directors, will: (i) set the Funds' overall investment strategies; (ii) select Managers; (iii) allocate and, when appropriate, reallocate a Fund's assets among the Advisor and one or more Managers; (iv) monitor and evaluate the performance of Managers; and (v) seek to ensure that the Managers comply with the Funds' investment objectives, policies, and restrictions.

5. Within 60 days of the hiring of any new Manager or the implementation of any proposed material change in a Portfolio Management Agreement, the Advisor will furnish shareholders all information about the new Manager or Portfolio Management Agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Manager or any proposed material change in a Portfolio Management Agreement. The Advisor will meet this condition by providing shareholders with an information statement which meets the requirements of Regulation 14C and Schedule 14C under the 1934 Act. The information statement will also meet the requirements of item 22 of Schedule 14A.

6. The Company, and any Future Company, will disclose in their respective Prospectuses the existence, substance, and effect of any order granted pursuant to this application.

7. Before a Fund may rely on the order requested by applicants, the operations of the Fund in the manner described in the application will be approved by a majority of each Fund's outstanding voting securities, as defined in the Act, or, in the case of a Future Company whose public shareholders purchase shares on the basis of a prospectus containing the disclosure

contemplated by condition 6 above, by the sole shareholder before offering shares of the Future Company to the public.

8. No director or officer of the Company or the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Manager except for: (i) ownership of interest in the Advisor or any entity that controls, is controlled by or is under common control with the Advisor; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-29934 Filed 11-21-96; 8:45 am]
BILLING CODE 8010-01-M

Agency Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 25, 1996.

A closed meeting will be held on Tuesday, November 26, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 26, 1996, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: November 20, 1996.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-30065 Filed 11-20-96; 3:52 pm]
BILLING CODE 8010-01-M

[File No. 500-1]

Omnigene Diagnostics, Inc., Order of Suspension of Trading

November 19, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OmniGene Diagnostics, Inc. ("ODI"), because of questions regarding the accuracy of assertions by ODI, and by others, in documents sent to, and statements made to, market-makers of the stock of ODI, other broker-dealers, and to investors concerning, among other things, ODI's alleged ownership and other rights as to certain patents and trademarks, ODI's sales, past and projected, ODI's operations and facilities, and the number of freely traded shares of ODI common stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, November 20, 1996 through 11:59 p.m. EST, on December 4, 1996.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-30023 Filed 11-20-96; 12:41 pm]
BILLING CODE 8010-01-M

[Release No. 34-37958; File No. SR-Amex-96-42]

November 15, 1996.

Self-Regulatory Organizations; Notice of Filing of, and Order Granting Accelerated Approval to, Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Specialists' Liquidating Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on November 12, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange submitted Amendment No. 1 on November 15, 1996.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing permanent approval of the pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick,³ in the case of a "long" position, or a zero plus tick,⁴ when covering a "short" position, without Floor Official approval. The pilot program also amended Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions. In the alternative, the Exchange is requesting a three-month extension of the pilot program.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78e(b)(1).

² See letter from Claudia Crowley, Special Counsel, Amex, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated November 15, 1996. Amendment No. 1 removed a footnote detailing the Amex's perception of how this rule is supposed to be enforced.

³ A zero minus tick is a price equal to the last sale where the last preceding transaction at a different price was at a higher price.

⁴ A zero plus tick is a price equal to the last sale where the last preceding transaction at a different price was at a lower price.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 19, 1996, the Commission approved an extension until November 15, 1996 of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a "long" position, or a zero plus tick, when covering a "short" position, without Floor Official approval.⁵ The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the exchange has monitored compliance with the requirements of the Rule, and its findings in this regard have been forwarded to the Commission under separate cover. The Amex believes the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as a dealer on the opposite side of the market after a liquidating transaction has been strengthened.

The Exchange is therefore proposing permanent approval of the amendments to Rule 170 or, in the alternative, a three-month extension of the pilot program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(5)⁷ in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 11(b) of the Act⁸ which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

⁵ Securities Exchange Act Release No. 37704 (Sept. 19, 1996), 61 FR 50525 (approving File No. SR-Amex-96-33) ("September 1996 Approval Order").

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-42 and should be submitted by December 13, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval to the Proposed Rule Change

The Commission finds that the Exchange's proposal to extend its pilot program concerning the execution of specialists' liquidating transactions until February 14, 1997, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also believes the proposal is consistent with Section 11(b) of the

⁹ 15 U.S.C. 78f(b)(5).

Act¹⁰ and Rule 11b-1¹¹ thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

The Exchange originally proposed to amend Amex Rule 170 in File No. SR-Amex-92-26.¹² The proposed rule change, filed as a one-year pilot program, amended Amex Rule 170 to permit specialists to "reliquidate" a dealer position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick, but only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Under the pilot program, a specialist also may sell "long" on a zero minus tick, or by purchasing on a zero plus tick to cover a "short" position, without Floor Official approval. Although liquidations on a zero minus or on a zero plus tick can be effected under the pilot procedures without a Floor Official's prior approval, such liquidations are still subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, the specialist is required to reenter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In the 1994 Approval Order, the Commission requested that the Amex submit a report setting forth the criteria developed by the Exchange to determine whether any reliquidation by specialists

¹⁰ 15 U.S.C. 78k(b).

¹¹ 17 CFR 240.11b-1.

¹² See Securities Exchange Act Release No. 33937 (Apr. 22, 1994), 59 FR 22186 ("1994 Approval Order") (approving File No. SR-Amex-92-26). See also Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780 ("April 1995 Approval Order") (approving File No. SR-Amex-95-11); Securities Exchange Act Release No. 39014 (July 21, 1995), 60 FR 38870 ("July 1995 Approval Order") (approving File No. SR-Amex-95-19); Securities Exchange Act Release No. 37448 (July 17, 1996), 61 FR 30487 (approving File No. SR-Amex-96-19) ("July 1996 Approval Order"); September 1996 Approval Order, *supra* note 5.

were necessary and appropriate in connection with fair and orderly markets.¹³ The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In both of the 1995 approval orders, the Commission requested that the Amex continue to monitor the pilot and update its report where appropriate.¹⁴ In particular, the Commission asked the Amex to report any noncompliance with the Rule and the action the Amex took as a result of such noncompliance.

The Amex submitted its reports concerning the pilot program to the Commission in May 1995 and April 1996. As noted above, the Amex believes the pilot procedures appear to be working well in enabling specialists to reliquidate appropriately to meet the needs of the market. After reviewing the data, the Commission agrees with the Exchange that the pilot program generally is working well. In particular, the Commission believes the report indicates that specialists generally are entering the aftermarket after effecting liquidating transactions when appropriate.

Nevertheless, the Commission believes certain issues concerning the pilot program need to be revisited before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of Amex Rule 170, including the necessity for Floor Official approval of specialists' purchases and sales on direct plus or minus ticks and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.¹⁵ Finally, the Amex should prepare an additional report as described above and submit the data to the Commission for its consideration of whether the pilot program should be granted permanent approval.¹⁶

¹³ See 1994 Approval Order, *supra* note 12.

¹⁴ See April 1995 Approval Order and July 1995 Approval Order, *supra* note 12.

¹⁵ All technical violations of this rule (e.g., failure to obtain the required Floor Official approval when such approval, if sought, would have been granted) should be referred to the Minor Floor Violation Disciplinary Committee, as required by Amex Rule 590. Also, as the Amex has indicated previously, all substantive violations of this rule (e.g., failure to properly reenter the market or failure to obtain the required Floor Official approval when such approval, if sought, would not have been granted) will be dealt with according to the Exchange's formal disciplinary procedures.

¹⁶ The Commission request that this report be submitted by January 7, 1997, along with any

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. These procedures have been published in the Federal Register on several occasions for the full comment period,¹⁷ and no comments have been received. Furthermore, the Commission approve a similar rule change for the NYSE also without receiving comments on the proposal.¹⁸ For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 19(b)(2) of the Act.¹⁹ Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should include an update on the disciplinary actions taken for violations of these procedures.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-Amex-96-42), as amended, is approved for a pilot period ending on February 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-29933 Filed 11-21-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-37899; File No. SR-NSCC-96-16]

November 15, 1996.

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Fund/Serv Service

On August 15, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission")

requests for extension or permanent approval of the pilot.

¹⁷ See 1994 Approval Order, *supra* note 12; April 1995 Approval Order, *supra* note 12; July 1995 Approval Order, *supra* note 12; July 1996 Approval Order, *supra* note 12; September 1996 Approval Order, *supra* note 5.

¹⁸ See Securities Exchange Act Release No. 31797 (Jan. 24, 1993), 58 FR 7277 (approving File No. SR-NYSE-92-20).

¹⁹ 15 U.S.C. 78b(b)(2).

²⁰ *Id.*

²¹ 17 CFR 200.30-3(a)(12).

a proposed rule change (File No. SR-NSCC-96-16) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ seeking to allow members to transfer assets within an individual retirement account ("IRA") to another mutual fund through NSCC's Fund/Serv.² On September 10, 1996, and on September 30, 1996, NSCC filed amendments to the proposed rule change.³ Notice of the proposal was published in the Federal Register on October 24, 1996.⁴ The Commission received one comment letter in response to the filing.⁵ On November 13, 1996, NSCC filed a third amendment to the proposed rule change.⁶ For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change will enable NSCC settling members and fund members to transfer between each other the value of mutual fund shares held in IRAs on an automated basis.⁷ Pursuant to this rule change, the member to whom the value of IRA mutual funds shares is to be transferred ("Receiving Fund Member") will initiate a transfer by submitting a transfer request to NSCC indicating the member from whom the value of IRA mutual fund shares is to be transferred ("Delivering Fund Member"). The transfer request should contain the CUSIP number, the customer Tax ID number, the customer account number, the customer account registration, and the plan type (e.g., IRA, IRA rollover, or Simplified Employee Pension IRA) as established at the Receiving Fund Member.

Upon receipt of the information from NSCC, the Delivering Fund Member

¹ 15 U.S.C. § 78b(b)(1) (1988).

² Fund/Serv, which is part of NSCC's Mutual Fund Services, is an NSCC service that permits NSCC members to process and to settle on an automated basis mutual fund purchase and redemption orders and to transmit registration instructions.

³ Letters from Anthony H. Davidson, Associate Counsel, NSCC, to Christine Sibille, Special Counsel, Division of Market Regulation, Commission (September 8, 1996, and September 27, 1996).

⁴ Securities Exchange Act Release No. 37841 (October 18, 1996), 61 FR 55178.

⁵ Letter from Donald J. Botsler, Vice President, Operations and Training, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission (November 1, 1996).

⁶ Letter from Anthony H. Davidson, Associate Counsel, NSCC, to Christine Sibille, Special Counsel, Division of Market Regulation, Commission (November 8, 1996). This amendment was a technical amendment that did not require republication of notice.

⁷ Currently, the mutual fund industry relies on telephonic and paper communications to process these transfers.

must either acknowledge or reject the transfer within two days. An acknowledgment must contain the customer account information as the information appears on the records of the Delivering Fund Member. The acknowledgment must also contain the customer's current dollar and share balance at the time of the acknowledgment. A rejection must indicate the reason(s) (e.g., stop code on account, invalid plan type, or invalid percentage rate) why the Delivering Fund Member is rejecting the transfer request. A transfer request that is not responded to within two days by a Delivering Fund Member will be deleted from Fund/Serv.

In order for a transfer to be scheduled for settlement after a transfer request has been acknowledged, the Delivering Fund Member must submit a confirmation to NSCC no earlier than two days and no later than sixty days after the submission of the acknowledgment. Such confirmation will provide information on the price at which the position is liquidated. An acknowledged transfer request that is not confirmed by a Delivering Fund Member within sixty days from the submission of the acknowledgment will be deleted from Fund/Serv. If a Delivering Fund Member wants to change any information contained in the confirmation it will be permitted to submit a reconfirmation prior to 11 a.m. on the day of settlement. Similarly, a Receiving Fund Member may cancel a transfer request by submitting an exit instruction to NSCC prior to 11 a.m. on the day of settlement.

A transfer request that has been confirmed or reconfirmed and not exited will settle on the next settlement cycle after such confirmation or reconfirmation.⁸ On the settlement date, NSCC will debit the Delivering Fund Member's account and credit the Receiving Fund Member's account for the dollar value of the liquidated mutual fund shares.

Members may also need to make adjustments after the transfer to account for items such as dividend and commission payments. A member may make such adjustments with another member in the same fashion as with other Fund/Serv orders. NSCC will charge members the same fee for these transfer requests as it charges for other Fund/Serv orders.⁹

⁸ The settlement cycle occurs at 11:00 a.m. each business day.

⁹ The proposed rule change modifies Addendum A of NSCC's rules to reflect a fee of \$.35 per side per transfer request.

II. Comment Letter

The Commission received one comment letter in response to the proposed rule change.¹⁰ The commenter believes that the proposal provides for a timelier and more efficient processing of IRA account transfers through the exchange of electronic records. The commenter notes that such electronic transfers should result in a streamlined processing cycle during which customer proceeds should be uninvested for a maximum of one night. The commenter compares this electronic efficiency with the current, cumbersome manual transfer procedure which is subject to varied, idiosyncratic processing requirements and practices as well as a reliance on the U.S. Postal Service. The commenter believes that the movement of this transfer process to a paperless, automated system can only improve the timeliness and accuracy of IRA account transfers.

III. Discussion

The Commission believes that NSCC's proposal is consistent with Section 17A of the Act¹¹ and specifically with Sections 17A(b)(3) (A) and (F) thereunder.¹² Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

Under NSCC's proposed rule change, an electronic transfer of the value of mutual fund shares held in IRAs can be used in place of a manual transfer.¹³ The proposal should help alleviate the inefficiencies associated with the physical exchange of hardcopy documentation and should make account transfers more efficient and expeditious. By processing the transfers of IRAs in a more efficient manner, the proposal should promote the prompt and accurate clearance and settlement of securities transactions. Furthermore, the Commission believes that by requiring the Delivering Fund Member to

¹⁰ *Supra* note 5.

¹¹ 15 U.S.C. § 78q-1 (1988).

¹² 15 U.S.C. §§ 78q-1(b)(3) (A) and (F) (1988).

¹³ Currently, the transfer of an IRA account from one mutual fund company to another requires the exchange of hardcopy documentation. Specifically, the receiving fund mails the letter of acceptance to the delivering fund. If the delivering fund finds the letter of acceptance in good order, it sends the proceeds, typically via U.S. mail to the receiving fund. However, if the letter of acceptance is not in good order, the delivering fund sends a letter to the receiving fund with a description of the elements required to bring the letter of acceptance in accordance with good order standards.

acknowledge and to confirm the transfer request and by providing the Delivering Firm Member with the ability to edit information contained in the confirmation and the Receiving Fund Member with the ability to cancel a request, the proposal reduces the possibility of errors. This system provides more safeguards than the current system where the delivering firm delivers funds after the receipt of the transfer request. Thus, it is consistent with the goal of safeguarding securities and funds contained in Section 17A.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication because this will allow NSCC to begin implementing the Fund/Serv IRA transfer service in order that NSCC and its members can take advantage in a more timely fashion of the benefits of the service.

IV. Conclusion

The Commission finds that NSCC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-96-16) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-29860 Filed 11-21-96; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 0272-0570]

Notice of Issuance of a Small Business Investment Company License; Penny Lane Partners, L.P.

On June 14, 1994, an application was filed by Penny Lane Partners, L.P., One Palmer Square—Suite 510, Princeton, New Jersey, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1996)) for a license to

¹⁴ 17 CFR 200.30-3(a)(12) (1996).

operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72-0570 on November 1, 1996, to Penny Lane Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 18, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96-29880 Filed 11-21-96; 8:45 am]

BILLING CODE 5010-01-P

DEPARTMENT OF STATE

[Public Notice 2477]

Bureau of Oceans and International Environmental and Scientific Affairs; Evaluation and Assessment of the U.S. Initiative on Joint Implementation

ACTION: Request for public comments.

SUMMARY: The U.S. Climate Change Action Plan, announced by President Clinton on October 19, 1993, set forth a series of measures designed to return U.S. greenhouse gas emissions to 1990 levels by the year 2000 largely through voluntary domestic actions. Recognizing the enormous potential for cost-effective greenhouse gas emission reductions in other countries, the Administration also called for a pilot program—the U.S. Initiative on Joint Implementation (USIJI)—to help establish an empirical basis for considering approaches to joint implementation internationally and thus help realize the potential of joint implementation both to combat the threat of global climate change and to promote sustainable development.

Department of State Public Notice 1918 (58 FR 66057-66059, December 17, 1993) set forth the draft Groundrules for the U.S. Initiative on Joint Implementation as directed by the President in the U.S. Climate Change Action Plan, to provide for the operation of a pilot program. In this notice, interested parties were invited to provide comment on the draft Groundrules. Following the public comment period, Department of State Public Notice 2015 (59 FR 28442-28446, June 1, 1994) published the revised final Groundrules for the United States Initiative on Joint Implementation, together with a summary of the response to comments on the draft Groundrules.

USIJI is the first and currently most developed joint implementation pilot program worldwide. Through fiscal year 1996, USIJI had received 51 proposals from 23 countries for projects which were designed to reduce, avoid, or sequester greenhouse gases utilizing a diverse set of technologies, including renewable, fuel switching, energy, efficiency, methane recovery, and land-use related technologies. Of these, the eight-member federal agency Evaluation Panel has approved 15 projects representing a diverse set of innovative technologies and practices in six countries, including developing renewable energy sources such as solar, biomass, and hydroelectric, and land-use change projects leading to better forest management, reforestation, and afforestation. Project developers estimate that these projects will cumulatively reduce nearly 30 million metric tons of carbon equivalent. Presently, USIJI activities focus on the expansion of the geographic and technological diversity of its project portfolio to reinforce further to the international community that joint implementation projects can produce real, measurable greenhouse gas reductions that provide global environmental benefits while providing economic, social, and development benefits to the project participants in both the host country and the United States.

As required by Section II of the Groundrules, an assessment of the program has been initiated, including consideration of the criteria with which a project must comply to be accepted into the U.S. Initiative on Joint Implementation. In support of this assessment, interested parties are invited to provide their comments on any aspect of the pilot program, e.g., suggestions to improve certain elements of the program, identification of those elements of the program which parties have been found to be of value, and areas which should possibly be strengthened. Comments will be made available to the public.

PUBLIC COMMENT: Written comments on any aspect of the pilot program, including the criteria, are invited. Comments should be submitted to the Department of State no later than January 24, 1997. Comments or questions should be directed to: Mr. Daniel A. Reifsnnyder, Director, Office of Global Change, OES/EGC, Room 4330, Department of State, 2201 C Street, N.W., Washington, D.C. 20520-7818, (202) 649-4069, facsimile (202) 647-0191. Comments may also be submitted

via electronic mail using the following address: camt@igc.apc.org.

SUPPLEMENTARY INFORMATION: For the convenience of the reader, the final Groundrules as published in the Federal Register on June 1, 1994, are reprinted below.

Groundrules

The following describes the U.S. Initiative on Joint Implementation (USIJI), which shall be established as a pilot program.

Section I—Purpose

The purpose of the pilot program shall be to:

- (1) Encourage the rapid development and implementation of cooperative, mutually voluntary, cost-effective projects between U.S. and foreign partners aimed at reducing or sequestering emissions of greenhouse gases, particularly projects promoting technology cooperation with and sustainable development in developing countries and countries with economies in transition to market economies;
- (2) Promote a broad range of cooperative, mutually voluntary projects to test and evaluate methodologies for measuring, tracking and verifying costs and benefits;
- (3) Establish an empirical basis to contribute to the formulation of international criteria for joint implementation;
- (4) Encourage private sector investment and innovation in the development and dissemination of technologies for reducing or sequestering emissions of greenhouse gases; and
- (5) Encourage participating countries to adopt more complete climate action programs, including national inventories, baselines, policies and measures, and appropriate specific commitments.

Section II—Evaluation and Reassessment of Pilot Program

The pilot program shall be evaluated and reassessed within two years of its inception or within six months of adoption of international criteria for joint implementation by the Conference of the Parties to the United Nations Framework Convention on Climate Change, whichever is earlier.

Section III—Eligible Participants

- A. Domestic.
 - (1) Any U.S. citizen or resident alien;
 - (2) Any company, organization or entity incorporated under or recognized by the laws of the United States, or group thereof; or
 - (3) Any U.S. federal, state or local government entity.

B. Foreign.

- (1) Any country that has signed, ratified or acceded to the United Nations Framework Convention on Climate Change;
- (2) Any citizen or resident alien of a country identified in B(1) of this section;
- (3) Any company, organization or entity incorporated under or recognized by the laws of a country identified in B(1) of this section, or group thereof; or
- (4) Any national, provincial, state, or local government entity of a country identified in B(1) of this section.

Section IV—Evaluation Panel

A. An Evaluation Panel is hereby established.

B. The Evaluation Panel shall consist of eight members, of whom:

- (1) One shall be an employee of the Department of Energy, who shall serve as Co-Chair;
- (2) One shall be an employee of the Environmental Protection Agency, who shall serve as Co-Chair;
- (3) One shall be an employee of the Agency for International Development;
- (4) One shall be an employee of the Department of Agriculture;
- (5) One shall be an employee of the Department of Commerce;
- (6) One shall be an employee of the Department of Interior;
- (7) One shall be an employee of the Department of State; and
- (8) One shall be an employee of the Department of the Treasury.

C. The Panel shall be responsible for:

- (1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;
- (2) Accepting project submissions from eligible U.S. participants and their foreign partners;
- (3) Reviewing and evaluating project submissions, including baseline projections;
- (4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V;
- (5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;
- (6) Certifying emissions reduced or sequestered estimated to result from projects;
- (7) Developing operational modalities for the implementation of the Program; and
- (8) Preparing an annual report of its activities, including a summary of approved projects.

D. The Panel shall be responsible for:

- (1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;
- (2) Accepting project submissions from eligible U.S. participants and their foreign partners;
- (3) Reviewing and evaluating project submissions, including baseline projections;
- (4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V;
- (5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;
- (6) Certifying emissions reduced or sequestered estimated to result from projects;
- (7) Developing operational modalities for the implementation of the Program; and
- (8) Preparing an annual report of its activities, including a summary of approved projects.

E. The Panel shall be responsible for:

- (1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;
- (2) Accepting project submissions from eligible U.S. participants and their foreign partners;
- (3) Reviewing and evaluating project submissions, including baseline projections;
- (4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V;
- (5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;
- (6) Certifying emissions reduced or sequestered estimated to result from projects;
- (7) Developing operational modalities for the implementation of the Program; and
- (8) Preparing an annual report of its activities, including a summary of approved projects.

F. The Panel shall be responsible for:

- (1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;
- (2) Accepting project submissions from eligible U.S. participants and their foreign partners;
- (3) Reviewing and evaluating project submissions, including baseline projections;
- (4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V;
- (5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;
- (6) Certifying emissions reduced or sequestered estimated to result from projects;
- (7) Developing operational modalities for the implementation of the Program; and
- (8) Preparing an annual report of its activities, including a summary of approved projects.

G. The Panel shall be responsible for:

- (1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;
- (2) Accepting project submissions from eligible U.S. participants and their foreign partners;
- (3) Reviewing and evaluating project submissions, including baseline projections;
- (4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V;
- (5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;
- (6) Certifying emissions reduced or sequestered estimated to result from projects;
- (7) Developing operational modalities for the implementation of the Program; and
- (8) Preparing an annual report of its activities, including a summary of approved projects.

H. The Panel shall be responsible for:

- (1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;
- (2) Accepting project submissions from eligible U.S. participants and their foreign partners;
- (3) Reviewing and evaluating project submissions, including baseline projections;
- (4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V;
- (5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;
- (6) Certifying emissions reduced or sequestered estimated to result from projects;
- (7) Developing operational modalities for the implementation of the Program; and
- (8) Preparing an annual report of its activities, including a summary of approved projects.

(1) Is acceptable to the government of the host country;

(2) Involves specific measures to reduce or sequester greenhouse gas emissions initiated as the result of the U.S. Initiative on Joint Implementation, or in reasonable anticipation thereof;

(3) Provides data and methodological information sufficient to establish a baseline of current and future greenhouse gas emissions.

(1) In the absence of the specific measures referred to in A.(2) of this section;

(b) As the result of the specific measures referred to in A.(2) of this section;

(4) Will reduce or sequester greenhouse gas emissions beyond those referred to in A.(3)(a) of this section, and if federally funded, is or will be undertaken with funds in excess of those available for such activities in fiscal year 1993;

(5) Contains adequate provisions for tracking the greenhouse gas emissions reduced or sequestered resulting from the project, and on a periodic basis, for modifying such estimates and for comparing actual results with those originally projected;

(6) Contains adequate provisions for external verification of the greenhouse gas emissions reduced or sequestered by the project;

(7) Identifies any associated non-greenhouse gas environmental impacts/benefits;

(8) Provides adequate assurance that greenhouse gas emissions reduced or sequestered over time will not be lost or reversed; and

(9) Provides for annual reports to the Evaluation Panel on the emissions reduced or sequestered, and on the share of such emissions attributed to each of the participants, domestic and foreign, pursuant to the terms of voluntary agreements among project participants.

B. In determining whether to include projects under the USIJI, the Evaluation Panel shall also consider:

(1) The potential for the project to lead to changes in greenhouse gas emissions elsewhere;

(2) The potential positive and negative effects of the project apart from its effect on greenhouse gas emissions reduced or sequestered;

(3) Whether the U.S. participants are emitters of greenhouse gases within the United States and, if so, whether they are taking measures to reduce or sequester such emissions; and

(4) Whether efforts are underway within the host country to ratify or accede to the United Nations Framework Convention on Climate Change, to develop a national inventory

and/or baseline of greenhouse gas emissions by sources and removals by sinks, and whether the host country is taking measures to reduce its emissions and enhance its sinks and reservoirs of greenhouse gases.

Michael Metelitz,

Acting Deputy Assistant Secretary of State for the Environment and Development, Bureau of Ocean and International Environmental and Scientific Affairs.

[FR Doc. 96-29838 Filed 11-21-96; 8:45 am]

BILLING CODE 4710-09-01

[Public Notice No. 2477]

Defense Trade Advisory Group; Notice of Upcoming Partially Closed Meeting

The Defense Trade Advisory Group (DTAG) will meet beginning at 9:00 a.m. on Thursday, December 5, 1996 in the Dean Acheson Auditorium, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520. This advisory committee consists of private sector defense trade specialists who advise the Department on policies, regulations, and technical issues affecting defense trade.

The DTAG will first meet in open session. The open session will include a presentation by representatives of the Department of State and the Department of Defense. Reports on DTAG Working Group progress, accomplishments, and future projects will also be presented.

Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Monday, November 25, 1996. If you notify the DTAG Secretariat after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary background checks required for you to attend the December 5 plenary.

Each person should provide his/her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647-4231 or fax number (202) 647-4232 (Attention: Catherine Shelton). A list will be made up for Diplomatic Security and the Reception Desk at the C-Street Diplomatic entrance. Attendees must carry a valid photo ID with them. They should enter the building through the C-

Street diplomatic entrance (22nd and C Streets, N.W.) where Department personnel will direct them to the Dean Acheson auditorium.

Following the open portion of the meeting, a working lunch and briefings that the Department of State will arrange for DTAG members will involve discussions of classified and/or proprietary information pursuant to Executive Order 12958. The disclosure of classified and/or proprietary information essential to formulating U.S. defense trade policies would substantially undermine U.S. defense trade relations with foreign competitors. Therefore, those segments of the meeting will be closed to the public, pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix and 5 U.S.C. 552b(c)(1), and 5 U.S.C. 552b(c)(9)(B).

For further information, contact Catherine Shelton of the DTAG Secretariat, U.S. Department of State, Office of Arms Transfer and Export Control Policy (PM/ATEC), Room 2422 Main State, Washington, D.C. 20520-2422. She may be reached at telephone number (202) 647-4231 or fax number (202) 647-4232.

Dated: November 15, 1996.

Martha C. Harrie,
Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

Determination for a Partially Closed Meeting of the Defense Trade Advisory Group

In accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92-463), as amended, I hereby determine that the afternoon portions of the meeting of the Defense Trade Advisory Group (DTAG) on Thursday, December 5, 1996 in the Department of States Dean Acheson Auditorium, 2201 C Street, N.W., Washington, D.C. 20520 will be devoted to discussion of matters recognized as not subject to public disclosure pursuant to P.L. 92-463 and 5 U.S.C. 552b(c)(1), and 5 U.S.C. 552b(c)(9)(B), and in accordance with Section 10(d) of the Federal Advisory Committee Act, and that the public interest requires such discussion to be withheld from public disclosure.

The reasons supporting this determination are:

- (1) Documents classified in accordance with Executive Order 12958 will be discussed; and
- (2) Discussions will include classified and/or proprietary information concerning defense trade issues, the public disclosure of which would adversely affect future actions of the Department.

Other matters not requiring such protection may be discussed during the initial open portion of the meeting.

(FR Doc. 96-29828 Filed 11-21-96; 8:45 am)
BILLING CODE 4710-25-01

Bureau of Oceans and International Environmental and Scientific Affairs, [Public Notice 2485]

Certifications Pursuant to Section 609 of Public Law 101-162

SUMMARY: On April 30, 1995, the Department of State certified, pursuant to Section 609 of Public Law 101-162, that 36 countries with commercial shrimp trawl fisheries have adopted programs to reduce the incidental capture of sea turtles in such fisheries comparable to the program in effect in the United States, or that the fishing environment in the countries does not pose a threat of the incidental taking of species of sea turtles protected under U.S. law and regulations. The Department also certified Honduras on August 1, 1996. The Department was unable to issue a certification on April 30 for Thailand and, as a result, imports of shrimp harvested in Thailand in a manner harmful to sea turtles were prohibited effective May 1, 1996. The Department of State subsequently issued a certification for Thailand on November 8, 1996 and, as a result, the ban on shrimp imports that had been in effect since May 1, 1996, was lifted. **EFFECTIVE DATE:** November 22, 1996.

FOR FURTHER INFORMATION CONTACT: Hollis Summers, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520-7818; telephone: (202) 647-3940.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101-162 prohibits imports of shrimp unless the President certifies to the Congress by May 1 of each year either: (1) that the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the Federal Register on April 19, 1996 (61 FR 17342).

On April 30, 1996, the Department of State certified that 36 shrimp harvesting nations have met, for the current year, the requirements of the law. The Department of State was unable to certify Thailand at that time. As a result, imports of shrimp from Thailand that were harvested in ways harmful to sea turtles were prohibited pursuant to Public Law 101-162 effective May 1, 1996.

The Department did not previously certify Thailand because the Government of Thailand had not required all commercial shrimp trawl vessels subject to its jurisdiction that operated in waters where there is a likelihood of intercepting sea turtles to use turtle excluder devices at all times. The Department of State has determined that Thailand has now instituted such a requirement. Shrimp trawl vessels in Thailand are now required to use turtle excluder devices comparable in effectiveness to those used in the United States. The requirement to use them is being enforced. The Department of State, therefore, was able to certify to Congress that Thailand is in accordance with the provisions of Section 609 of Public Law 101-162.

Dated: November 8, 1996.

Larry L. Speed,
Deputy Assistant Secretary for Oceans.
(FR Doc. 96-29847 Filed 11-21-96; 8:45 am)
BILLING CODE 4710-25-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

(CGDS-94-080)

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 11 a.m. on Tuesday, December 17, 1996.

ADDRESSES: The meeting will be held in the basement GSA conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Administrator, Lower Mississippi River Waterway Safety Advisory Committee, c/o

Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone (504) 589-4886.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

- (1) Presentation of the minutes from the September 17, 1996 full Committee meeting.
- (2) Subcommittee Reports.
- (3) New Business.
- (4) Adjournment.

INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: October 22, 1996.

T.W. Josiah,
RADM USCG.
(FR Doc. 96-29950 Filed 11-21-96; 8:45 am)
BILLING CODE 4710-14-01

Federal Highway Administration

(FHWA Docket No. MC-96-48)

Notice of Request for Extension of Currently Approved Information Collection; Hours of Service (HOS)

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, 3506(c)(2)(A)), the FHWA solicits comments on its intent to request the Office of Management and Budget (OMB) to extend information collections that require motor carriers and drivers to accurately track their HOS and prove that they operate in compliance with the HOS regulations. **DATES:** Comments must be submitted on or before January 21, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to: Docket Clerk, Attn: FHWA Docket No. MC-96-48, Federal Highway Administration, Department of Transportation, Room 4232, Office of Chief Counsel, 400 Seventh Street, SW.,

Washington, DC 20590. Persons who require acknowledgment of the receipt of their comments must enclose a stamped, self-addressed postcard. Comments may be reviewed at the above address from 8:30 a.m. through 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Miller, Office of Motor Carrier Research and Standards, (202) 366-4000, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Electronic Availability. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register electronic bulletin board service (telephone number: 202-512-1861). Internet users may reach the Federal Register's web page at: http://www.access.gpo.gov/su_docs.

Title: Time Records.

OMB Number: 2125-0196.

Background: Title 49 U.S.C. 31502 authorizes the Secretary of Transportation to promulgate regulations that establish maximum HOS for employees of motor carriers. The Secretary has adopted regulations that establish HOS limitations for commercial motor vehicle (CMV) drivers. Time records generally used by motor carriers are time cards or time sheets. Time records may be used in lieu of records of duty status by drivers who operate within a 100 air-mile radius of their normal work reporting location, 49 CFR 395.1(e). Time records must show: (1) The time the driver reports for duty each day; (2) The total number of hours the driver is on duty each day; (3) The time the driver is released from duty each day; and (4) The total time on duty for the preceding 7 days (for drivers used intermittently or for the first time).

The time record is used by the FHWA and its State and local partners in the Motor Carrier Safety Assistance Program to determine whether CMV drivers have violated the HOS limitations. The regulations allow motor carriers to prepare electronic time records, in lieu of preparing paper time records.

Respondents: Approximately 632,000 CMV drivers.

Average Burden per Response: Because the necessary HOS information is contained in time records that are created and kept by the covered motor carriers in the ordinary course of business, there is no burden attributable to this recordkeeping requirement.

Estimated Total Annual Burden: No annual burden.

Frequency: Time records are required to be prepared for every day of work.

Interested parties are invited to send comments regarding any aspect of this collection of information, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information will have practical utility; (2) The accuracy of the estimated burden; (3) Ways to enhance the quality, utility, and clarity of the collected information; and (4) Ways to minimize the collection burden without reducing the quality of the collected information.

Authority: 23 U.S.C. 315 and 49 CFR 1.48.
Issued on: November 12, 1996.

G. Moore,
Associate Administrator for Administration.
(FR Doc. 96-29850 Filed 11-21-96; 8:45 am)
BILLING CODE 4910-22-P

(FHWA Docket No. 97-2)

Notice of Request for Extension of Currently Approved Information Collection; Federal-Aid Highway Construction Equal Employment Opportunity

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to extend the approval of the information collection for FHWA's Federal-aid Highway Construction Equal Employment Opportunity.

DATES: Comments must be submitted on or before January 21, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC-10, Room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope. **FOR FURTHER INFORMATION CONTACT:** Ms. Aretha Carr, Office of Civil Rights,

Program Operations Division; (202) 366-1585, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Room 4132, Washington, DC 20590. Office hours are from 8:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal-Aid Highway Construction Equal Employment Opportunity.

OMB Number: 2125-0019.

Background: Public comment is requested regarding the burden associated with collection of Federal-Aid project workforce statistics. This data is collected under authority of 23 U.S.C. 140, which places the responsibility on the Secretary of Transportation for ensuring nondiscrimination and equal opportunity employment in all States benefiting from the use of Federal funds.

23 CFR 230.121 provides the FHWA with the authority to request employment reports in conjunction with monitoring and administering the Federal-Aid Highway Program. Data collected from contractors and State Departments of Transportation is extracted and analyzed by FHWA to determine overall percentages of minorities and females, based upon the total project workforce in each State. By comparing yearly reports, FHWA is able to: (1) Monitor the progress; (2) Evaluate employment trends; and (3) Ensure commitment to the provisions of Title VI of the Civil Rights Act of 1964 and the PR-1273 (Federal-aid contract) agreement between FHWA and prime contractors awarded Federal-aid projects.

Interested parties are invited to send comments regarding any aspect of the collection of this data, including, but not limited to: Ways to improve the accuracy of data currently being collected, amendments or inclusions to the existing form, other options in reporting methods.

Respondents: Federal-aid Prime Contractors and State Highway Administration (SHA) in the 50 States, the District of Columbia, and Puerto Rico.

Estimated Total Annual Burden: The estimated burden hours for this information collection is 6,580 hours.

Frequency: The data is collected by the respondents and submitted to FHWA annually.

Authority: 23 U.S.C. 140; 23 CFR 230.121; sec. 3506(c)(2)(A) of Pub. L. 104-13; 49 CFR 1.48.

Issued on: November 12, 1996.

G. Moore,
Associate Administrator for Administration.
[FR Doc. 96-29851 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-22-P

[FHWA Docket No. MC-96-35]

Notice of Request for Extension of Currently Approved Information Collection; Transportation of Hazardous Materials; Highway Routing

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, 3506(c)(2)(A)), the FHWA solicits comment on its intent to request the Office of Management and Budget (OMB) to extend the information collection for FHWA's Transportation of Hazardous Materials, Highway Routing. **DATES:** Comments must be submitted on or before January 21, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC-10, Room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Toth, Safety and Hazardous Materials Division, Office of Motor Carriers (202) 366-6121, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Transportation of Hazardous Materials; Highway Routing.
OMB Number: 2125-0554.

Background: Public comment is requested regarding the burden associated with this collection of information. The data for the Transportation of Hazardous Materials; Highway Routing designations are collected under authority of 49 U.S.C. 5112 and 5125, which places the responsibility on the Secretary of Transportation to specify and regulate standards for establishing, maintaining,

and enforcing routing designations. The Federal Highway Administration has the authority, as required in 49 CFR 397.73, to request that each State and Indian tribe, through its routing agency, provide information identifying hazardous materials routing designations within their respective jurisdictions. This information will be consolidated by the FHWA and published annually in whole or as updates in the Federal Register.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) Ways to enhance the quality, utility, and clarity of the collected information; (2) the accuracy of the estimated burden; and (3) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for an OMB extension of this information collection.

Respondents: The reporting burden is shared by the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas, and the Virgin Islands.

Estimated Total Annual Burden: The annual reporting burden is estimated to be 63 hours.

Frequency: The data is collected by the respondents and submitted to FHWA initially and 60 days thereafter if any changes occur.

Authority: 49 U.S.C. 5112 and 5125; Section 3506 (c)(2)(A) of Pub. L. 104-13; 49 CFR 1.48.

Issued on: November 12, 1996.

G. Moore,
Associate Administrator for Administration.
[FR Doc. 96-29852 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-22-P

[FHWA Docket No. MC-97-6]

Notice of Request for Extension of Currently Approved Information Collection; Controlled Substances and Alcohol Testing

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, 3506(c)(2)(A)), the FHWA solicits comments on its intent to request the Office of Management and Budget (OMB) to extend information collections that require motor carriers to test their commercial motor vehicle (CMV) drivers to show that they operate

in compliance with the alcohol and controlled substances testing regulations.

DATES: Comments submitted to the FHWA must be received on or before January 21, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to: Docket Clerk, Attn: FHWA Docket No. MC-97-6, Federal Highway Administration, Department of Transportation, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. Persons who require acknowledgment of the receipt of their comments must enclose a stamped, self-addressed postcard. Comments may be reviewed at the above address from 8:30 a.m. through 3:30 p.m. Monday through Friday, except Federal holidays.

A copy of the comments may be sent to: Attention: Desk Officer for Federal Highway Administration/DOT, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Miller, Office of Motor Carrier Research and Standards, (202) 366-4009, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Electronic Availability. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register electronic bulletin board service (telephone number: 202-512-1861).

Internet users may reach the Federal Register's web page at: http://www.access.gpo.gov/su_docs.
Title: Controlled Substances and Alcohol Testing.

OMB Number: 2125-0543.
Background: Title 49 U.S.C. 31306 requires the Secretary of Transportation to promulgate regulations that require motor carriers to test their drivers for the use of alcohol and controlled substances. The Secretary has adopted regulations that require commercial motor vehicle (CMV) drivers to submit to testing by motor carriers.

The information collection is required for motor carriers to document compliance with the controlled substances and alcohol testing regulations, show driver's Constitutional rights and privacy are sufficiently protected, show that drug-positive drivers and drivers with any alcohol concentration of 0.02 or greater in their body, are not being used to

operate CMVs on public roads, and show that drivers who have tested positive have received necessary assistance in resolving their use problem. The records are used by the FHWA, and its State and local partners in the Motor Carrier Safety Assistance Program, to determine whether drivers have driven CMVs while using alcohol and drugs in violation of the law.

Respondents: 553,238 motor carriers.
Average Burden per Response: The FHWA estimates that each carrier will be subject to approximately 5 hours of burden annually.

Estimated Total Annual Burden: The FHWA estimates a total annual burden of 2,309,703 hours.

Frequency: Records are required to be prepared and maintained at: Program start-up, quarterly, annually, before driver's first safety-sensitive function for new motor carriers, certain CMV accidents, supervisor's reasonable suspicion of use, random selections, professional assessment, returning to duty after verified use, and follow-up test episodes.

Interested parties are invited to send comments regarding any aspect of this collection of information, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information will have practical utility; (2) The accuracy of the estimated burden; (3) Ways to enhance the quality, utility, and clarity of the collected information; and (4) Ways to minimize the collection burden without reducing the quality of the collected information.

Authority: 23 U.S.C. and 49 CFR 1.48
Issued on: November 12, 1996.

G. Moore,
Associate Administrator for Administration.
[FR Doc. 96-29853 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-22-P

FEDERAL RAILROAD ADMINISTRATION

Custom Software for Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability of Custom Software for Railroad Accident Reporting.

SUMMARY: The Federal Railroad Administration (FRA) is preparing custom software for reporting railroad accidents/incidents pursuant to 49 CFR

part 225. The software will facilitate production of all the monthly reports and logs required by the accident reporting rules, as amended in 61 FR 30940 (June 18, 1996). The FRA will also have an electronic bulletin board for submission of reports.

This software will permit complete editing of reports and logs, have tables with all the applicable codes, and have help screens. This software will be ready for use by January 1, 1997. The software will be available to all reporting railroads at no cost. The minimum configuration is 8 megabytes of random access memory (RAM), 30 megabytes of available hard disk space, a modem, and Windows 3.1x or Windows 95. An application to register for the software will be available. Requests should be submitted by facsimile to (301) 587-0442. Software will be provided only to railroads that provide accident/incident reports to the FRA.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-632-3386).

Issued in Washington, D.C., on November 18, 1996.

Bruce M. Fine,
Associate Administrator for Safety.
[FR Doc. 96-29887 Filed 11-12-96; 8:45 am]
BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the 27th Avenue Project, Dade County, Florida

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA), the Florida Department of Transportation (FDOT), and the Metro-Dade Transit Agency (MDTA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on the proposed 27th Avenue transit project in Dade County, Florida.

The EIS will evaluate the following alternatives: a no-build alternative; a Transportation Systems Management alternative defined as low cost, operationally oriented improvements to address the identified transportation problems in the corridor; an exclusive

buslane alternative; a transit system alternative in the median of 27th Avenue; and a transit system alternative along side 27th Avenue. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, the general public, Federal, State and local agencies.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered should be sent to the Metro-Dade Transit Agency by January 6, 1997. See ADDRESSES below. **Scoping Meetings:** A joint FTA and Metro-Dade Transit Agency public scoping meeting will be held on Tuesday, December 11, 1996 at 7:00 p.m. at the North Dade Regional Library located at 2455 NW 183rd Street, Miami, Florida; and on December 12, 1996, 6:00 p.m. at the North Central Library located at 9590 NW 27th Avenue, Miami, Florida. See ADDRESSES below.

ADDRESSES: Written comments on the project scope should be sent to Mr. Wilson Fernandez, Metro-Dade Transit Agency, 111 NE First Street, Suite 910, Miami, Florida 33128-1970. Scoping meetings will be held at the following locations:

North Dade Regional Library, 2455 NW 183rd Street, Miami, Florida; and North Central Library, 9590 NW 27th Avenue, Miami, Florida

See DATES above.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Martin, Community Planner, Federal Transit Administration, Region 4, (404) 562-3509.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA, the Florida Department of Transportation, and MDTA invite written comments for a period of 45 days after publication of this notice (See DATES and ADDRESSES above.) During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or less environmentally damaging which achieve similar objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the comment period for the Draft EIS.

If you wish to be placed on the mailing list to receive further information as the project continues, contact Mr. Wilson Fernandez at the Metro-Dade Transit Agency (see ADDRESSES above).

II. Description of Study Area and Project Need

The proposed project corridor extends from Metrorail's Martin Luther King, Jr. station at NW 82nd Street north to the Dade/Broward County line at NW 215th Street. The corridor extends 9.5, covers an area one quarter mile east and west of NW 27th Avenue.

NW 27th Avenue is a major north-south thoroughfare with six lanes, a median, and left turn lanes. From NW 79th Street to NW 106th Street, where used car dealers are located, the curb lanes are used for parking, right turns, and bus stops, leaving two through lanes in each direction. The remainder of the avenue north of 106th Street has three through lanes in each direction. Land use along NW 27th Avenue is mostly commercial or institutional.

As South Florida has grown in recent years, streets and highways in northern Dade County have become increasingly congested. Suburban growth in southwestern Broward County has led to heavy through traffic bound for the employment centers in central Dade County. Moreover, this condition will grow steadily worse as the area continues to grow into the next century. In addition, there is increasing desire for transportation options in the North Corridor which offer convenient, rapid, and safe travel alternatives to the private automobile. Dade County has been identified as a moderate air quality attainment area (maintenance status). Project need is based on increasing travel in north Dade County, increasing through traffic from Broward County, and on providing attractive transportation options to North Corridor residents and visitors.

In response to this need, MDTA has completed a Major Investment Study (MIS) for the North Corridor. The results of the MIS study resulted in a recommended design concept and scope consisting of two heavy rail transit alternatives and one exclusive bus lane alternative to be studied in the EIS stage to provide the required mobility for the north Corridor.

III. Alternatives

The alternatives proposed for evaluation include: (1) No-Build, which involves no change to transportation services or facilities in the corridor beyond already committed projects; (2) A Transportation Systems Management (TSM) Alternative is defined as low cost, operationally oriented improvements to address the identified transportation problems in the corridor, and provides a baseline against which all of the "Build" alternatives are

evaluated. It includes additional Metrorail service along Stage I and the Palmetto station; (3) A single-lane, reversible busway in the median of NW 27th Avenue from NW 79th Street to NW 190th Street. Express, limited-stop buses would operate southbound on the busway in the AM peak period and northbound in the PM peak period. Local buses and buses operating in the opposite direction during those periods would continue to operate in mixed traffic on NW 27th Avenue. Buses would connect with Metrorail at the Martin Luther King Jr. station; (4) An extension of the Metrorail line north over the median of NW 27th Avenue to NW 215th Street, at the existing Stage I structure north of Dr. Martin Luther King Jr. station. Stations are located over the middle of streets, except for the Miami Dade Community College (MDCC) station located west of NW 27th Avenue, and the Pro Player Stadium station located east of NW 27th Avenue in the stadium parking lot area. This alternative would leave four through lanes on NW 27th Avenue in most areas; (5) An extension of the Metrorail line elevated along side NW 27th Avenue to NW 215th Street, right-of-way is purchased alongside NW 27th Avenue, and the Metrorail structure is constructed in the new right-of-way. For the majority of the alignment, the new right-of-way would lie immediately adjacent and to the west of the existing NW 27th Avenue right-of-way, occupying a strip approximately 50 feet wide (except at station areas, where somewhat more land would be required). North of the intersection of NW 183rd Street, however, the alignment swings across to the east side of NW 27th Avenue, and continues further east to preserve as much of the street frontage of the large undeveloped tract lying east of NW 27th Avenue between NW 185th Street (approximately) and NW 199th Street. The alignment continues across NW 199th Street and returns to the median of NW 27th Avenue north of Pro Player Stadium. It then remains in the median to the county line. This alternative preserves six through lanes for the entire length of NW 27th Avenue in the project area.

IV. Probable Effects

FTA, FDOT, and the MDTA will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: neighborhood protection, aesthetics, bicycle facilities, trails, recreational greenways, alternative modes of transportation, hydrology and

stormwater management, archaeological and historic resources, ecological issues. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater and potentially contaminated sites will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate any significant adverse impact will be developed.

Issued on: November 19, 1996.

Susan E. Schrueth,
Regional Administrator.
[FR Doc. 96-29948 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-57-P

National Highway Traffic Safety Administration

[Docket No. 96-119; Notice 1]

Michelin North America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) of Greenville, South Carolina, has determined that some of its tires fail to comply with the labeling requirements of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Michelin has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 119, Paragraph S6.5, Tire markings, requires that tires be marked on each sidewall with specific information. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the

markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall.

Michelin's description of non-compliance follows: "During the period of the 48th week of 1995 through the 1st week of 1996, the Opelika, Alabama, plant of Uniroyal Goodrich Tire Manufacturing, a division of Michelin North America, Inc., produced tires with the markings required by 49 CFR § 571.119 S6.5 (f) and (g) marked only on one side of the tire. Additionally, on the same side of the tire as the missing information, the word "Radial" as required by S6.5(i) appears above the maximum section width instead of between the maximum section width and the bead. However, all marking on the opposite side of the tire meets the requirements of S6.5. Furthermore, all performance requirements of FMVSS #119 are met or exceeded.

"Approximately 1,041 LT245/75R16 Uniroyal Laredo LTL LR E tires were produced without the aforementioned information on one sidewall of the tire. Of this total, as many as 559 were shipped to an Original Equipment Vehicle Manufacturer or to the replacement market. The remaining 482 tires have been isolated in our warehouses and will be brought into full compliance with the marking requirements of FMVSS #119 or scrapped."

Michelin supported its application for inconsequential noncompliance with the following:

"[Michelin] does not believe that this minor error on the one tire sidewall will impact motor vehicle safety:

"1. The marking of number and composition of ply cord material required by S6.5(f) is contained on one side of the tire instead of both sides. When previously granting a petition for inconsequential noncompliance (see e.g., Bridgestone, IP82-8, 47 FR 51269, November 12, 1982) NHTSA has concluded that "...the number of plies, and the composition of the ply material had an inconsequential relationship to motor vehicle safety..." and has stated that "...the failure to state the number of plies and composition of ply material is an informational failure and does not affect the ability of the tires to meet the performance requirements...."

"2. The absence of the word "tubeless" on one tire sidewall (as required by S6.5(g) for both sidewalls) will not impact motor vehicle safety since it is merely an informational failure on one sidewall and does not impact tire performance. The tires in question are only produced in a "tubeless" configuration. However,

should these tires be mounted with a tube, performance of the tires would be perfectly satisfactory.

"3. The word "radial" on one sidewall of the tire appears above the maximum section width instead of between the bead and maximum section width. Again, this does not affect the ability of the tire to perform. Additionally, the "R" located in the size designation LT245/75R16 which is marked between the bead and sidewall is recognized by the International Standards Organization, the Tire and Rim Association, the Rubber Manufacturers Association and others, including the general public, as being the standard designation for a radial tire. Thus it would be obvious to anyone looking at either sidewall of this tire that it was indeed a radial tire."

Interested persons are invited to submit written data, views, and arguments on the application of Michelin, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below. Comment closing date: December 23, 1996.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 18, 1996.

L. Robert Shelton,
Associate Administrator for Safety Performance Standards.
[FR Doc. 96-29949 Filed 11-21-96; 8:45 am]
BILLING CODE 4910-57-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Women Veterans will be held December 3-5, 1996, at the Department of Veterans Affairs, in Washington, DC. The purpose of the Advisory Committee on Women

Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The sessions will convene on December 3, 10:15 a.m. to 5:00 p.m.; December 4, 9:00 a.m. to 5:00 p.m.; and conclude on December 5, 9:00 a.m. to 3:00 p.m. The Committee will meet in conference room 630, VA Central Office Building, 810 Vermont Avenue, NW,

Washington, DC. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Maryanne Carson, Department of Veterans Affairs prior to November 20, 1996, by letter or phone on 202/273-6193.

Tentative Agenda

December 3, 1996, Tuesday

10:15 a.m.—Welcome and remarks from Deputy Secretary
10:30 a.m.—Briefings from VA organizations
12 noon—lunch
1:00 p.m.—Briefings from VA organizations Department of Labor

5:00 p.m.—Adjourn
December 4, 1996, Wednesday
9:00 a.m.—Briefings on: Summit on Women Veterans, Women veterans activities, Legislative initiatives, Site visit reports, 1996 Advisory Committee Report, Site visit to Los Angeles, CA
1:00 p.m.—Lunch
2:15 p.m.—Briefings continue
5:00 p.m.—Adjourn
December 5, 1996, Thursday
9:00 a.m.—Executive Session
Dated: November 15, 1996.
By Direction of the Secretary.

Eugene A. Brickhouse,
Committee Management Office.
[FR Doc. 96-29839 Filed 11-21-96; 8:45 am]
BILLING CODE 3220-01-M

federal register

Friday
November 22, 1996

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 and 415
Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1997, Final Rule; Physician Fee Schedule Update for Calendar Year 1997 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1997, Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 415

[BPD-852-FC]

RIN 0938-AM40

Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Final rule with comment period.

SUMMARY: This final rule makes several policy changes affecting Medicare payment for physician services, including payment for diagnostic services and transportation in connection with furnishing diagnostic tests. The final rule also makes changes in geographic payment areas (localities) and changes in the procedure status codes for a variety of services. Since we established the physician fee schedule on January 1, 1992, our experience indicates that some of our policies may need to be reconsidered. This final rule is intended to correct several inequities in physician payment.

This final rule also makes changes to work relative value units (RVUs) affecting payment for physician services. Section 1848(c)(2)(B)(i) of the Social Security Act requires that we review all work RVUs no less often than every 5 years. Since we implemented the physician fee schedule effective for services furnished beginning January 1, 1992, we have completed the 5-year review of work RVUs that will be effective for services furnished beginning January 1, 1997. In addition, we are finalizing the 1996 interim RVUs and are issuing interim RVUs for new and revised procedure codes for 1997. **DATES:** *Effective Date:* This rule is effective January 1, 1997, as provided by the Medicare statute. Ordinarily, 5 U.S.C. section 801 requires that agencies submit major rules to Congress 60 days before the rules are scheduled to become effective. However, the 104th Congress adjourned on October 4, 1996, and the 105th Congress is not scheduled to convene until January 7, 1997. The Department has concluded that, in this instance, a further delay in this rule's effective date in order to satisfy section 801 would not serve the law's intent, since Congress will not be in session during this period, and such delay in

the effective date established by the Medicare statute is unnecessary and contrary to the public interest. The Department finds, on this basis, that there is good cause for establishing this effective date pursuant to 5 U.S.C. section 808(2).

Comment Date: We will accept comments on interim RVUs for selected procedure codes identified in Addendum C. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 1997. **ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-852-FC, P.O. Box 26688, Baltimore, MD 21207-0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments may also be submitted electronically to the following e-mail address: BPD852FC@hcf.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-852-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify stock number 069-001-00097-1 and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration

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Copies of the source files for this document can also be purchased on high density 3.5 inch personal computer diskettes for \$20. Send your request to: Superintendent of Documents, Attention: Electronic Products, P.O. Box 37082, Washington, DC 20013-7082. Enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders for the diskettes can also be placed by calling (202) 512-1530 or by faxing to (202) 512-1262. The file formats on the diskettes are EXCEL and WordPerfect 6.1.

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FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (410) 786-4498. **SUPPLEMENTARY INFORMATION:** In this final rule, we provide background on the statutory authority for and development of the physician fee schedule. We also explain in detail the process by which certain interim work relative value units (RVUs) are reviewed and, in some cases, revised.

Section 1848(c)(2)(B) of the Social Security Act (the Act) provides that adjustments in RVUs resulting from an annual review of those RVUs may not cause total physician fee schedule payments to differ by more than \$20 million from what they would have been had the adjustments not been made. Thus, the statute allows a \$20 million tolerance for increasing or reducing total expenditures under the

physician fee schedule. This year we are making the budget neutrality adjustment required by changes in payment policy and CPT through the conversion factors (CFs) and the adjustment required by the 5-year review through a separate adjuster to the work RVUs. We have determined that net increases because of changes to the physician fee schedule would have added to projected expenditures in calendar year 1997 by approximately \$2.7 billion. Therefore, it is necessary to make budget-neutrality adjustments.

We have made the two adjustments in such a manner as to achieve budget neutrality as we were best able to estimate. As a result, the total projected expenditures from the revised fee schedule are estimated to be the same as they would have been had we not changed the RVUs for any individual codes or added new codes to the fee schedule. We have adjusted all CFs by a uniform adjustment factor of 0.985, which results in a uniform reduction of 1.5 percent to the CFs for all services. The new work adjuster factor is 0.917, which results in a reduction of -8.3 percent to all work RVUs.

A CF is a national value that converts RVUs into payment amounts. There are three separate CFs: one for surgical services, one for primary care services, and one for nonsurgical services other than primary care. The CFs are updated annually.

Addenda to this rule provide the following information:

Addendum A—Explanation and Use of Addenda B through D.

Addendum B—1997 Relative Value Units and Related Information Used in Determining Medicare Payments for 1997.

Addendum C—Codes with Interim Relative Value Units.

Addendum D—1997 Geographic Practice Cost Indices by Medicare Carrier and Locality.

The RVUs and revisions to payment policies in this final rule apply to physicians' services furnished on or after January 1, 1997.

To assist readers in referencing sections contained in this final rule, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations.

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- A. Summary of Issues Discussed Related to the Adjustment of Relative Value Units
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- A. Regulatory Flexibility Act
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- K. Effects of Changes Resulting from the Five-Year Review of Work Relative Value Units
- L. Net Impact of Changes on Medicare Specialties
1. Impact Estimation Methodology
 2. Overall Fee Schedule Impact
 3. Specialty Level Effect (Includes Table 4—Five-Year Review Impact on Medicare Payments by Specialty)
- M. Rural Hospital Impact Statement

Addendum A—Explanation and Use of Addenda B through D.

Addendum B—1997 Relative Value Units and Related Information Used in Determining Medicare Payments for 1997.

Addendum C—Codes with Interim Relative Value Units.

Addendum D—1997 Geographic Practice Cost Indices by Medicare Carrier and Locality

In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA—American Medical Association
CF—Conversion factor
CFR—Code of Federal Regulations
CPT—[Physicians'] Current Procedural Terminology [4th Edition, 1996, copyrighted by the American Medical Association]
CY—Calendar year
EKG—Electrocardiogram
FSA—Fee Schedule Area
FY—Fiscal year
GAF—Geographic adjustment factor
GPCI—Geographic practice cost index
HCFA—Health Care Financing Administration
HCPAC—Health Care Professionals Advisory Committee
HCPCS—HCFA Common Procedure Coding System
HHS—[Department of] Health and Human Services
MSA—Metropolitan Statistical Area
MVPS—Medicare Volume Performance Standards
OBRA—Omnibus Budget Reconciliation Act
OMB—Office of Management and Budget
PC—Professional component
RUC—[American Medical Association Specialty Society] Relative [Value] Update Committee
RVU—Relative value unit
TC—Technical component

I. Background

A. Legislative History

Since January 1, 1992, Medicare has paid for physician services under section 1848 of the Act, "Payment for Physicians' Services." This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a Medicare volume performance standard for the rates of increase in Medicare expenditures for physician services; and (3) limits on the

amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than \$20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to preserve budget neutrality.

B. Published Changes to the Fee Schedule

In the May 3, 1996 and July 2, 1996 proposed rules (61 FR 19993 and 61 FR 34615, respectively), we listed all of the final rules published through December 8, 1995 relating to the updates to the RVUs and revisions to payment policies under the physician fee schedule. In the May 3, 1996 proposed notice (61 FR 19992), we discussed proposed changes to work RVUs affecting payment for physician services in keeping with the requirement under section 1848(c)(2)(B)(i) of the Act that we review all work RVUs no less often than every 5 years. Since we implemented the physician fee schedule effective for services furnished beginning January 1, 1992, we have completed the 5-year review of work RVUs that will be effective for services furnished beginning January 1, 1997. In the July 1996 proposed rule (61 FR 34614), we discussed several policy changes affecting Medicare payment for physician services including payment for diagnostic services and transportation in connection with furnishing diagnostic tests. The proposed rule also discussed comprehensive locality changes and changes in the procedure status codes for a variety of services.

This final rule with comment period affects the regulations set forth at 42 CFR part 410, which consists of regulations on supplementary medical insurance benefits and part 415, which contains regulations on services of physicians in provider settings, supervising physicians in teaching settings, and residents in certain settings. It also discusses changes to work RVUs affecting payment for physician services. The information in this final rule updates information in

the final Federal Register documents listed in the May 1996 and July 1996 proposed rules (61 FR 19993 and 61 FR 34615, respectively).

C. Components of the Fee Schedule Payment Amounts

Under the formula set forth in section 1848(b)(1) of the Act, the payment amount for each service paid for under the physician fee schedule is the product of three factors: (1) A nationally uniform relative value for the service; (2) a geographic adjustment factor (GAF) for each physician fee schedule area; and (3) a nationally uniform conversion factor (CF) for the service. There are three CFs—one for surgical services, one for nonsurgical services, and one for primary care services. The CFs convert the relative values into payment amounts.

For each physician fee schedule service, there are three relative values: (1) An RVU for physician work; (2) an RVU for practice expense; and (3) an RVU for malpractice expense. For each of these components of the fee schedule there is a geographic practice cost index (GPCI) for each fee schedule area. The GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average for each component. In addition, for 1997, there is an added adjustment for budget neutrality to work reflecting the results of the 5-year review of work RVUs. The work adjuster is explained in section IV.C.1. of this final rule.

The general formula for calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as:

$$\text{Payment} = ((\text{RVU}_{\text{work}} \times \text{work adjuster} \times \text{GPCI}_{\text{work}}) + (\text{RVU}_{\text{practice expense}} \times \text{GPCI}_{\text{practice expense}}) + (\text{RVU}_{\text{malpractice}} \times \text{GPCI}_{\text{malpractice}})) \times \text{CF}$$

The CFs for calendar year 1997 appear in Addendum A. The RVUs for calendar year 1997 are in Addendum B. The GPCIs are in Addendum D.

Section 1848(e) of the Act requires the Secretary to develop GAFs for all physician fee schedule areas. The total GAF for a fee schedule area is equal to a weighted average of the individual GPCIs for each of the three components of the service. Thus, the GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average. In accordance with the law, however, the GAF for the physician's work reflects one-quarter of the relative cost of physician's work compared to the national average.

For the first year of the fee schedule, the law required a base-year CF that was budget-neutral relative to 1991 estimated expenditures. The Secretary is required to recommend to the Congress updates to the CFs by April 15 of each year as part of the Medicare volume performance standards and annual fee schedule update process. The Congress may choose to enact the Secretary's recommendation, enact another update amount, or not act at all. If the Congress does not act, the annual fee schedule update is set according to a "default" mechanism in the law. Under this mechanism, the update will equal the Medicare Economic Index adjusted by the amount actual expenditures for the second previous fiscal year (FY) were greater or less than the performance standard rate of increase for that FY. (The Medicare Economic Index is a physician input price index, in which the annual percent changes for the direct-labor price component are adjusted by an annual percent change in a 10-year moving average index of labor productivity in the nonfarm business sector.) The Medicare volume performance standard for FY 1997 and the physician fee schedule update for calendar year (CY) 1997 are published elsewhere in this Federal Register issue as a final notice (BPD-853-FN).

D. Summary of the Development of the Relative Value Units

1. Work Relative Value Units

Approximately 7,500 codes represent services included in the physician fee schedule. The work RVUs established for the implementation of the fee schedule in January 1992 were developed with extensive input from the physician community. The original work RVUs for most codes were developed by a research team at the Harvard School of Public Health in a cooperative agreement with us. In constructing the vignettes for the original RVUs, Harvard worked with panels of expert physicians and obtained input from physicians from numerous specialties.

The RVUs for radiology services are based on the American College of Radiology (ACR) relative value scale, which we integrated into the overall physician fee schedule. The RVUs for anesthesia services are based on RVUs from a uniform relative value guide. We established a separate CF for anesthesia services while we continue to recognize time as a factor in determining payment for these services. As a result, there is a separate payment system for anesthesia services.

Proposed RVUs for services were published in a proposed rule in the Federal Register on June 5, 1991 (56 FR 25792). We responded to the comments in the November 25, 1991 final rule. Since many of the RVUs were published for the first time in the final rule, we considered the RVUs to be interim during the first year of the fee schedule and gave the public 120 days to comment on all work RVUs. In response to the final rule, we received comments on approximately 1,000 services. We responded to those comments and listed the new RVUs in the November 25, 1992 notice for the 1993 fee schedule for physicians' services. We considered these RVUs to be final and did not request comments on them.

The November 25, 1992 notice (57 FR 55914) also discussed the process used to establish work RVUs for codes that were new or revised in 1993. The RVUs for these codes, which were listed in Addendum C of the November 25, 1992 notice, were considered interim in 1993 and open to comment through January 26, 1993.

We responded to comments received on RVUs listed in Addendum C of the November 25, 1992 notice (57 FR 56152) in the December 2, 1993 final rule (58 FR 63647) for the 1994 physician fee schedule. The December 2, 1993 final rule discussed the process used to establish RVUs for codes that were new or revised for 1994. The RVUs for these codes, which are listed in Addendum C of the December 2, 1993 final rule (58 FR 63842), were considered interim in 1994 and open to comment through January 31, 1994. We proposed RVUs for some non-Medicare and carrier-priced codes in our June 24, 1994 proposed rule (59 FR 32760). Codes listed in Table 1 of the June 1994 proposed rule were open to comment. These comments, in addition to comments on RVUs published as interim in the December 2, 1993 final rule were addressed in the December 8, 1994 final rule (59 FR 83432). In addition, the December 8, 1994 final rule discussed the process used to establish RVUs for codes that were new or revised for 1995. Interim RVUs for new or revised procedure codes were open to comment. Comments were also accepted on all RVUs considered under the 5-year refinement process. The comment period closed on February 6, 1995.

2. Practice Expense and Malpractice Expense Relative Value Units

Section 1848(c)(2)(C) of the Act requires that the practice expense and malpractice expense RVUs equal the product of the base allowed charges and

the practice expense and malpractice percentages for the service. Base allowed charges are defined as the national average allowed charges for the service furnished during 1991, as estimated using the most recent data available. For most services, we used 1989 charge data "aged" to reflect the 1991 payment rules, since those were the most recent data available for the 1992 fee schedule.

If charge data were unavailable or insufficient, we imputed the practice expense and malpractice expense RVUs from the work RVUs. For example, if a procedure has work RVUs of 6.00, and the specialty practice cost percentages for the specialty furnishing the service is 60 percent work, 30 percent practice expense, and 10 percent malpractice expense, then the total RVUs would be 10.00 (6.00/.60), the practice expense RVUs would be 3.00 (10 x .30), and the malpractice expense RVUs would be 1.00 (10 x .10).

II. Specific Proposals for Calendar Year 1997 and Responses to Public Comments

In response to the publication of the July 1996 proposed rule, we received approximately 3,000 comments. We received comments from individual physicians and health care workers and professional associations and societies. The majority of the comments addressed the proposals related to locality changes, transportation in connection with furnishing diagnostic tests, and diagnostic testing.

The proposed rule discussed policies that affect the number of RVUs on which payment for certain services would be based. Any changes implemented through this final rule are subject to the \$20 million limitation on annual adjustments as contained in section 1848(c)(2)(B) of the Act.

After reviewing the comments and determining the policies we will implement, we have estimated the costs and savings of these policies and added those costs and savings to the estimated costs associated with any other changes in RVUs for 1997. We discuss in detail the effects of these changes in the Regulatory Impact Analysis (section IX).

For the convenience of the reader, the headings for the policy issues in section II, for the most part, correspond to the headings used in the July 1996 proposed rule (61 FR 34614). More detailed background information for each issue can be found in the July 1996 proposed rule.

A. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes

Currently, there are 210 payment localities under the physician fee schedule. Twenty-two States have single statewide localities, while the number of localities in other States ranges from 2 to 32. The current localities were set by local Medicare carriers based on their knowledge of local physician charging patterns. Therefore, current localities have no consistent basis, and have generally changed little since the inception of Medicare in 1966.

Currently, we set physician fee schedule localities, and local Medicare carriers may not revise them. Over the years, we have received numerous complaints from physicians that, since the current localities were established, changing economic and demographic conditions warrant a comprehensive review and revision of payment localities.

We contracted with Health Economics Research, Inc. to conduct an analysis of options for realignment of payment localities. After analyzing the Health Economics Research report, we announced in the July 1996 proposed rule (61 FR 34618) that we were proposing Option 1i, 5-percent threshold, with subcounty payment area restructuring in certain States with subcounty localities.

Under this option, current localities are used as building blocks. The 22 existing statewide localities remain statewide localities. Our proposal sets new localities in the remaining 28 States by comparing the area cost differences as represented by the locality GAFs within a State. An area's GAF is a weighted composite of the area's work, practice expense, and malpractice GPCIs and allows a comparison of overall costs among areas. Briefly, a State's localities are ranked from the highest to the lowest GAF. The GAF of the highest-price locality is compared to the weighted average GAF of all lower-price localities. If the percentage difference exceeds 5-percent, the highest-price locality remains a distinct locality. If not, the State becomes a statewide locality. If the highest-price locality remains a distinct locality, the process is repeated for the second highest-price locality. Its GAF is compared to the statewide average excluding the two highest-price localities. If this difference exceeds 5-percent, the second highest-price locality remains a distinct locality. This logic is repeated, moving down the ranking of localities by costliness, until the highest-price locality does not exceed the combined GAFs of all less costly localities by 5-percent and does

not remain a distinct locality. No further comparisons are made, and the remaining localities become a residual rest-of-State locality. The GAF of a locality always is compared to the average GAF of all lower-price localities. This ensures that the statewide or residual State locality has relatively homogeneous resource costs.

We combined Option 1i, 5-percent, with a restructuring of localities in the 11 States that currently contain subcounty localities. We proposed to use counties as the basic locality structure. The input price data used in computing the GPCIs is not available at the subcounty level. The use of subcounty localities creates unnecessary complexity and administrative burden. It requires laborious mapping of zip codes and city boundaries to localities for both claims processing and computing the GPCIs. Using counties as the basic locality unit provides a national uniform physician fee schedule structure. Option 1i, 5-percent threshold, automatically eliminates these subcounty areas in 8 States as it aggregates them into statewide or residual State localities. The remaining 3 subcounty States—Massachusetts, Missouri, and Pennsylvania—are more problematic. Currently, each of these States contain noncontiguous localities comprised of parts of counties with dissimilar costs. We proposed to fundamentally restructure localities in these States by examining county level costs as represented by county GAFs and creating new localities based on costs with some geographic consideration. A detailed discussion of this fundamental restructuring can be found in the July 1996 proposed rule (61 FR 34620).

Our proposed locality structure meets the major goal of simplifying payment areas and reducing payment differences among adjacent geographic areas while maintaining accuracy in tracking input prices among areas. It significantly reduces the number of payment localities from 210 to 89 and increases the number of statewide localities from 22 to 34, thereby simplifying program administration. It also provides a more rational and understandable basis for localities, reduces urban/rural payment differences, and maintains separate payment areas for relatively high-priced large and mid-sized cities in large States. It decreases the number of payment areas by almost 60 percent while at the same time reducing average county boundary differences, yet reduces average county input price accuracy by only 0.42 percent.

The GPCIs for the new localities were calculated to be budget neutral within

each State. That is, the same total physician fee schedule payment will be made within a State that would have been made if the current localities were retained. The effect on most localities will be minimal. Of the total localities in the 28 States currently having multiple localities, 82 percent of the GAFs change less than 3 percent, 93 percent change less than 4 percent, and 96 percent change less than 5 percent. Forty-three percent of the areas will experience increases in payments, 33 percent will experience decreases, and 24 percent will experience no change.

We proposed phasing in the new localities over a 2-year period in States containing a payment area estimated to lose more than 4 percent. We proposed that no locality be allowed to lose more than 4 percent in the first year. We selected a 4 percent threshold because it is about one-half of the largest estimated payment area decrease. This means phasing in the new localities over 2 years in Missouri and Pennsylvania because they are the only States containing a payment locality estimated to lose more than 4 percent. The payment locality changes would be fully effective in 1997 in all other States.

Comment: The single largest number of comments were from commenters supporting our proposal because it would reduce or eliminate urban/rural payment differences in their State. They believed that this would help in the recruitment and retention of physicians in underserved rural areas, thereby improving access. The commenters stated that increased Medicare payments are particularly needed in rural areas as these areas tend to have an unusually large percentage of the Medicare population.

Response: We agree that our proposal will reduce urban/rural payment differences under the Medicare physician fee schedule, and we are hopeful that this may help to improve access to care in rural areas.

Comment: Some commenters from localities estimated to experience payment decreases objected to what they termed the "proposed reduction" in their payment level under Medicare. They were concerned about the ripple effect on their payments from other sources, especially managed care, as these sources frequently base their payments on Medicare payment rates. They gave no rationale for objecting to our proposal, other than the payment reduction.

Response: Our proposal is not intended as a payment reduction policy. Rather, it is a restructuring of localities based on area costs wherein existing localities with costs that are

significantly higher than other localities within their State remain distinct localities while localities with similar costs within the State are collapsed into a residual State locality. Since this will be implemented on a budget-neutral basis within a State, some of the current localities comprising these newly collapsed localities will experience slight increases in payments while others will experience slight decreases. Our proposal to aggregate current localities is based on the application of statistical criteria comparing area costs. In the July 2, 1996 proposed rule (61 FR 34621), we stated that while we welcomed comments and would consider other suggested alternatives, these alternatives should be based on a statistical analysis demonstrating why the alternative is preferable. Merely objecting to reductions in payment without accompanying analysis is not a compelling reason for not implementing the proposed locality revisions.

Comment: Commenters from urban areas whose costs were not significantly higher than rural areas and, thus, were collapsed into statewide or State residual areas were opposed to our proposal, maintaining that their expenses such as labor, rent, and taxes are higher than in rural areas.

Response: We agree that our cost data generally show that costs are higher in urban than in rural areas. However, urban areas whose costs do not meet our statistical criteria, that is, are not more than 5 percent higher than the combined costs of all lower-price localities in their State, are combined with these lower-price localities into a new locality. We believe that, for all of the reasons stated in the introduction, our proposed locality structure has many advantages over the current structure while maintaining an acceptable degree of accuracy in tracking area cost differences.

Comment: Commenters in losing areas objected to our methodology on the basis that the GPCIs are based on proxy data that are outdated and are not an accurate reflection of area cost differences. Some commenters quoted other limited data sources or provided limited local data to demonstrate that their costs were higher relative to other areas than indicated by the GPCIs. Indeed, some commenters did not comment on our locality proposal, but commented on the construction of the GPCIs and how the GPCIs understate costs in their area.

Response: The accuracy of the GPCIs was initially addressed in the June 1991 proposed rule (56 FR 25815) and the November 1991 (56 FR 59511) final rule on the physician fee schedule. It was

addressed again in the June 24, 1994 proposed rule (59 FR 32756) and the December 1994 final rule (59 FR 63414) on the physician fee schedule discussing the first update of the GPCIs. Those rules discussed in depth the formulation of the GPCIs. Those proposed and final rules were the appropriate vehicles for commenting on the GPCIs. The next GPCI update is scheduled for 1998, and likely will be announced in a proposed rule published in 1997. This will provide another opportunity for commenting on the formulation of the GPCIs. Our July 2 proposed rule requested comments on the proposed locality reconfiguration, not the GPCI formulation.

The GPCIs are based on the best and most recent data available. The current GPCIs are based on 1990 census wage data, 1994 rental data, and 1990 through 1992 malpractice premium data. The current GPCIs were required by law to become effective in 1995. We began work on them in 1993. These data were the best and most recent data available at that time. Because of the time necessary to collect and evaluate the data, there will always be a time lag between data collection and implementation of the GPCIs. It is not possible to be absolutely current. The GPCIs have been examined in depth by government and private groups and there is general agreement that they are the best available measurement of area physician practice cost differences.

Since the GPCIs reflect practice costs among all areas across the country, national data sources that are widely available and are updated on a periodic basis are required. Using locally available data to demonstrate higher local costs is not acceptable in a national program with national indices.

Comment: Some commenters, while generally agreeing with the intent of our locality proposal, stated that we should make an exception to furnish the same payment amount for metropolitan areas that cross State lines as these areas tend to have relatively homogenous resource costs throughout the metropolitan area. Commenters believed that not doing this might have a negative impact on health care delivery in the part of the metropolitan area in the State with the lower GAF. One commenter cited an example of neighboring payment areas across State borders that currently have nearly identical GAFs but under our proposal will have a nearly 4-percent difference as one of the areas becomes part of a statewide locality while the other remains a distinct locality.

Response: We considered using metropolitan statistical areas as locality building blocks in one option for setting

localities. For the reasons discussed in the July 1996 proposed rule (61 FR 34618), we rejected this option as less promising than our proposed option. We agree that in many cases resource cost are similar across State lines. However, we currently have no localities that cross State lines and see no reason to begin establishing them. There are numerous situations under the current locality system when there are larger payment differences across State boundaries than the 4 percent cited by the commenter. We have no evidence that physicians are crossing State borders to secure higher Medicare payment. There are many differences among States that affect business decisions in addition to the elements reflected in our resource costs. For example, States have different physician licensing requirements, business licensing requirements, safety and health requirements, and different business, corporate, and personal income tax rates. We do not believe that a few percentage points difference in Medicare payments will cause physicians to relocate across State lines.

Comment: Some commenters in the 16 States that would remain multiple locality States under our proposal stated that they would prefer that we make their State a single statewide locality.

Response: Our proposal creates statewide localities except in States containing high-price localities whose costs exceed the combined costs of all lower-price localities by more than 5 percent. We stated in the July 1996 proposed rule (61 FR 34622) that we would consider requests to convert multiple locality States to statewide localities if there is overwhelming support for a statewide locality among both winning and losing physicians in the State. We will be glad to consider applications demonstrating such overwhelming support for a statewide locality from these States.

Comment: Some commenters supported our proposal but requested that all localities have the changes transitioned in over a 2-year period. Other commenters requested a 3- or 4-year transition.

Response: Transitions are operationally complex and can be very confusing to physicians. Most localities experience a negligible or minor change in payments under our proposal. We see no need to transition such areas. We believe that transitioning only to limit the larger losses is reasonable. We also believe that transitioning over 2 years in these areas is reasonable. The periodic GPCI revisions are required by law to be transitioned over 2 years. A longer transition will run into the next GPCI

update and the implementation of resource-based practice expenses. It would be very complex and difficult to explain the interaction of these simultaneous changes to physicians.

Comment: While generally supporting our concept of consolidating payment areas, some commenters requested that we allow more flexibility on a statewide basis. They requested that we accommodate their wishes if physicians within a State wish to have a slight modification to our proposal, for example, to select a lower threshold than 5 percent to allow certain areas that would be part of the State residual area to remain a distinct payment area.

Response: The fee schedule is a national program, with national RVUs and national CFs. The GPCIs are based on national data. Therefore, we applied the same statistical criteria, Option 11, 5-percent threshold, to all multiple locality States in our locality revision proposal. As announced in the proposed rule, we still plan to be responsive to the wishes of physicians in multiple locality States by accepting requests for a statewide payment area if overwhelmingly supported by physicians in both winning and losing areas within the State. While we prefer to be responsive to the wishes of physicians within a State, commenters failed to state what criteria would be applied to demonstrate that physicians within the State desired a modification of our proposal.

Our past experience with converting States to statewide payment areas has demonstrated that it is often difficult to develop a consensus among physicians for these changes because there are both winners and losers. Our criteria for such changes have been to require a resolution, passed by the State medical society requesting the change, that clearly states that there will be winners and losers, and also offers proof of overwhelming support for the change among physicians in both winning and losing areas. Then, even if such support is demonstrated among State medical society members, we will publish the proposed change in the *Federal Register* to give all physicians in the State, medical society members and nonmembers, an opportunity to comment because State medical societies usually represent only about 50 to 60 percent of all physicians in the State. Also, many nonphysician practitioners paid under the fee schedule and not represented by State medical associations are affected by fee schedule changes. In many cases, we have received letters of protest from losing, usually urban, physicians as

soon as a resolution is passed and before we have even proposed a change.

While we were willing to consider modifications to our proposed localities within a State, such modifications would have to be statistically based. For example, a request for a modification should state why we should use a lower threshold than our 5-percent threshold within that State, rather than merely saying that a large city, which becomes part of the State residual area under the proposal, should be a separate locality because it is similar in size or characteristics to other higher-cost cities. We would also need evidence that areas that would lose under this modification understood and supported the change.

Comment: A commenter from California, while generally supporting the proposal, requested to return to the designations in Los Angeles that existed under the reasonable charge system whereby more expensive areas of Los Angeles, namely Beverly Hills, West Los Angeles, and Santa Monica had higher prevailing charge allowances than other parts of Los Angeles County. The commenter believed that costs are not homogeneous across Los Angeles County and are higher in these areas.

Response: Los Angeles was divided into eight areas under the reasonable charge system. These eight areas have the same GPCIs and payment amounts under the fee schedule because the lowest level cost data we have are county cost data. Thus, combining these eight areas into one area under our proposal has no effect on payments in Los Angeles. Making Beverly Hills, West Los Angeles, and Santa Monica separate payment areas would not change their payments because we would still use the Los Angeles County cost data since we do not have subcounty cost data. As stated in the July 1996 proposed rule (61 FR 34618), we are using current counties as the basic locality building block and will have no subcounty payment areas under our proposal. We believe that limiting localities to at least the county level is reasonable. While an individual city, town, or individual physician might incur higher costs than the average in their payment locality, the choice to locate in high cost space is a business decision.

Comment: Some commenters in losing areas stated that we should not reduce payments in their locality because their locality contained numerous teaching hospitals, which have higher costs of providing services. Also, these large teaching facilities tend to serve as physicians' offices for many poor and indigent people.

Response: Under the law, physician fee schedule payments do not differ by type of provider. All physicians' services, whether furnished by solo practitioners, group practices, large multispecialty clinics, or hospital-based physicians, are paid at the same rate within a locality. The added costs of teaching hospitals are recognized through the added Medicare direct and indirect medical education payments made to teaching facilities. Likewise, hospitals furnishing a disproportionate share of services to indigent patients receive additional disproportionate share payments.

Comment: Some commenters requested we delay implementation of our proposal until we can perform a thorough study using more recent cost data.

Response: We see no reason for a delay. As mentioned earlier, in response to physicians' concerns, we stated that we would consider a comprehensive revision in localities once the transition was completed in 1996. We believe that the Health Economics Research, Inc. study was extremely comprehensive. The data used when the study was started in 1995 were the data that formed the basis for the newly revised 1995 GPCIs. As stated in the previous response about the accuracy of the GPCIs, there will always be some time lag because of data collection and analysis requirements. The GPCIs are based on the best currently available data.

Comment: Commenters from some losing, relatively low cost urban areas that were combined into a residual State area suggested we ameliorate the effects on these areas by taking a few percentage points away from the higher cost areas that remain distinct localities within the State and redistributing this to the residual State area. They believed that these higher paid areas can "afford" to give up these few percentage points, and stated that this is in keeping with our stated goal of reducing urban/rural payment differences.

Response: Our proposal is based strictly on the application of statistical methodology comparing area costs. Arbitrarily taking away money from a high cost area merely to redistribute it to other areas would violate our criteria and underpay the high cost area while overpaying the low cost areas. It is true that we generally favor statewide payment areas as they result in greater simplicity and ease of administration and reduce urban/rural payment differentials; we are hopeful that this will improve access in rural underserved areas. However, once a statewide area is established, it is given

the GPCIs justified by the GPCI cost data.

Comment: Commenters from losing areas that would be retained as distinct payment areas under a lower threshold believed that our selection of the 5-percent threshold is arbitrary.

Response: We disagree. We examined various thresholds with various options. As stated in the July 1996 proposed rule (61 FR 34619), Option 11, 5-percent threshold was selected because it provided the greatest simplification while reducing average boundary differences from the current structure at a virtually negligible increase in average county input price error of only 0.42 percent. This option provided the best combination of simplicity, reducing boundary payment differences, and maintaining accuracy in tracking area cost differences.

Comment: While understanding and generally agreeing with our statistical methodology, some commenters asked if we planned to change localities on a periodic basis to recognize future cost changes. Others requested that we commit to such future change as we update the GPCIs.

Response: There have been no comprehensive studies and revisions of physician payment localities in 30 years. We agreed with physicians that such a study and revision was necessary, especially since we changed from the local carrier pricing system to a national fee schedule. We have stated on numerous occasions that we favor statewide localities because of their understandability, simplicity, and ease of administration, and because they reduce urban/rural payment differences. We do not plan to break up statewide payment areas in the future. We also do not generally favor fragmenting existing payment areas into smaller areas. While we do not plan to routinely revise payment areas as we implement new GPCIs, we will review the areas in multiple locality States if the newer GPCI data indicates dramatic relative cost changes among areas.

Final decision: Effective January 1, 1997, we will proceed with the implementation of our proposed Option 11, 5-percent threshold, with restructuring of subcounty payment areas to reduce the number of physician fee schedule payment localities from 210 to 89 as indicated in the July 1996 proposed rule (61 FR 34619). A list of the new localities with their 1997 GPCIs can be found in Addendum D. These GPCIs will be fully effective in all States except Missouri and Pennsylvania in 1997. Because Missouri and Pennsylvania contain localities whose GPCIs decrease by more than 4 percent

under our proposal, these States will be phased in over a 2-year period. Because the losing areas will have their losses limited to 4 percent in 1997, the winning areas in these States will experience slightly less than their full expected increases in 1997.

This policy change does not require a change to the regulations set forth in § 414.4 ("Fee schedule areas").

B. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures

We proposed that, to be covered, diagnostic tests, including diagnostic radiologic procedures must be ordered by the physician who treats the patient. The physician who treats the patient is the physician responsible for the treatment of the patient and who orders the test or radiologic procedure to use the results in the management of the beneficiary's specific medical problem(s). (Physicians can order tests while they are consulting for another physician.) We believe this requirement is fundamental for coverage and payment of diagnostic tests and, therefore, are including it in the regulations at § 410.32 ("Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions").

However, a physician who orders the x-ray that is used by a chiropractor to demonstrate the subluxation of the spine in a beneficiary who is receiving manual manipulation treatments will be exempted from this rule. Because no payment can be made for a diagnostic test ordered by a chiropractor under § 410.22(b)(2), we will allow payment for the x-ray when ordered by a physician who will not be treating the patient for subluxation of the spine. Otherwise, beneficiaries would always have to pay out-of-pocket for these x-rays, which would frustrate their use of the benefit.

Further, certain nonphysician practitioners who provide services that would be physician services if furnished by a physician under a specific enumerated benefit in the statute would be treated the same way as the physician treating the beneficiary for the purpose of this section. Nonphysician practitioners who meet this definition are physician assistants (section 1861(s)(2)(K)(i) of the Act), nurse practitioners (section 1861(s)(2)(K)(ii) of the Act), clinical nurse specialists (section 1861(s)(2)(K)(iii) of the Act), nurse-midwives (sections 1861(s)(2)(L) and 1861(gg) of the Act), clinical psychologists (sections 1861(s)(2)(M) and 1861(ii) of the Act), and clinical social workers (sections 1861(s)(2)(N) and 1861(hh) of the Act) operating

within the scope of their statutory benefit and State licenses.

Comment: One commenter suggested that clinical psychologists and nurse midwife practitioners be added to the list of nonphysician practitioners permitted to order tests.

Response: The same policy would apply to these nonphysician practitioners when working within the scope of their statutory benefit. We have added provisions pertaining to these nonphysician practitioners to the regulations text.

Comment: Several primary care physicians were concerned that they would be precluded from ordering diagnostic tests if the results of the testing leads to referral to a specialist since the referring physician would not be the treating physician. Similarly, an ophthalmological organization expressed concern about ordering radiologic tests for a suspicious area of the eye because the ophthalmologist would not be the treating physician. In addition, several commenters indicated that radiologic imaging centers, pathological laboratories, and noninvasive vascular laboratories often are faced with situations in which the patient's physician has ordered one test when another is more appropriate or, as a result of the findings of the ordered tests, it may be necessary for the reading physician to order additional tests. The commenters suggested that the proposal be modified to allow for the interpreting physician to modify the order to meet the patient's needs.

Response: We had proposed that, to be covered, diagnostic tests must be ordered by the physician who treats the beneficiary. This policy is designed to assure that beneficiaries receive medically necessary services and to prevent patterns of abuse, such as the furnishing of diagnostic tests that are screening (noncovered) services rather than medically necessary services for the diagnosis of the individual patient's condition. For example, we have heard of situations in which a physician is employed for the sole purpose of ordering diagnostic tests (in nursing homes or mobile centers).

The discussion of our proposal should have indicated that an individual may have several treating physicians including a primary care physician and a specialist. We would also consider as a "treating physician" an "on call" physician who has been given responsibility for a patient's care during a period when the patient's physician is unavailable. Our intention was not to preclude the ordering of tests by a patient's primary care physician who refers the patient to a specialist, or by

a specialist who is managing only one aspect of the patient's care. Further, we do not want to prevent medically necessary testing that is a modification of the diagnostic work-up a treating physician orders for a specific patient. The intent of the policy is to assure that the physician who orders the test is responsible for the management of some aspect of the patient's care.

While we do not think it is necessary to change the language in the regulations, we agree that some provision should be made for the situations in question. We will publish our interpretations of the regulation in the implementing manual instructions.

Further, we believe that the physician interpreting the diagnostic tests has an obligation to discuss any changes in or additions to the original order with the patient's physician. In the ideal situation, this discussion should take place before the change in orders is implemented, but we realize there may be urgent situations when this is not possible.

Comment: A national medical specialty organization indicated its agreement with the concept of the proposal but suggested that another approach would be to preclude physicians, nurse practitioners, and physician assistants employed by home health agencies and skilled nursing facilities from independently ordering laboratory tests without the knowledge and consent of the patient's attending physician.

Response: We will keep this suggestion in mind in case additional action is needed in this area but believe it would be difficult to enforce this policy. In addition, the suggestion does not address the problem of unnecessary testing in nursing facilities and questionable testing offered to beneficiaries in public areas such as shopping malls.

Comment: An organization representing medical directors in the field of long-term care pointed out that medical directors of nursing facilities are responsible for providing oversight and supervision of physician services and the medical care of residents. In that capacity they may have to order tests to evaluate possible inadequate care.

Response: We believe that in these unusual cases the medical director of the nursing facility would contact the patient's physician about the testing and that the medical necessity of the test could be ascertained. The facility director should document the medical necessity of the testing in the facility's medical records. As indicated above, we established this policy to address

inappropriate patterns of ordering tests, such as the medical director of a nursing facility who orders screening diagnostic testing for many patients in the facility.

Comment: One commenter expressed concern about the effect of the policy on the ordering of tests by residents in teaching hospitals. The commenter also was concerned about tests ordered by one member of a group practice at the time a patient is admitted to a hospital when another member of the group is the patient's treating physician in the hospital.

Response: We do not intend for this policy to have a significant effect on diagnostic procedures furnished in hospitals. Residents may order tests without involving a teaching physician since the ordering of tests generally is not a billable service. In addition, we realize that, in group practices, different members of the group may treat the patient at different times. This policy is not intended to prevent the substitution of physicians within a group.

Comment: One commenter requested clarification of the interaction between the ordering of tests by nonphysician practitioners and the coverage requirement for direct physician supervision of the performance of x-rays and other diagnostic tests.

Response: While nonphysician practitioners are permitted to order diagnostic tests under certain conditions, this does not eliminate the requirement for physician supervision.

Comment: A commenter noted that the proposed rule addresses only physicians who order the x-ray used by a chiropractor to demonstrate subluxation of the spine. It does not address coverage for other diagnostic services that may be ordered by a physician on the referral from a chiropractor.

Response: The purpose of the July 1996 proposed rule was to address the x-ray required by section 1861(r)(5) of the Act that limits the services of a chiropractor to manual manipulation of the spine to correct a subluxation that is demonstrated by x-ray to exist. Because the statute requires the x-ray but § 410.22(b)(2) prohibits payment to chiropractors for ordering or furnishing the x-ray, beneficiaries, in some cases, have incurred the expense for the mandated x-ray. We have attempted to resolve this issue in a manner that would be equitable and, at the same time, maintain the intent of the Congress in establishing the original requirement. Therefore, we proposed an exception to the policy that requires the ordering physician to be the treating or consulting physician. Thus, we focused on easing the burden on the patient for

payment of the mandated x-ray: under the rule, the chiropractor may send the patient for the x-ray that the radiologist, as a physician, may order, even though the radiologist is not the treating physician.

Final Decision: We are adopting our proposal to cover diagnostic tests only if ordered by the physician or nonphysician practitioner who treats the patient, unless it is a physician who orders an x-ray to be used (by a chiropractor) to demonstrate subluxation of the spine that is the basis for a beneficiary to receive manual manipulation treatment even though the physician does not provide the manual manipulation.

C. Transportation in Connection With Furnishing Diagnostic Tests

We proposed allowing separate payment only for the transportation of x-ray equipment furnished by approved suppliers of portable x-ray services. As a result, we proposed not allowing separate payment for the transportation of electrocardiogram (EKG) equipment furnished by any supplier. Payment for the transportation would be bundled into our payment for the EKG service. We proposed this policy because, in our judgment, statutory authority existed for separate payments for only the transportation of x-ray equipment. Therefore, we proposed to eliminate HCFA Common Procedure Coding System (HCPCS) code R0076 (Transportation of portable EKG equipment and personnel to home or nursing home). Payment for CPT codes 93000 (Electrocardiogram, complete) and 93005 (Electrocardiogram, tracing) would not change.

This proposal is consistent with actions taken in our December 1995 final rule (60 FR 63149). In that rule, we noted that the general physician fee schedule policy is that travel is included in the practice expense RVUs for a service. However, until issuance of that regulation, Medicare carriers had the discretion to make separate or additional payments for the transportation of diagnostic equipment. As a result of the December 1995 final rule, effective January 1, 1996, we standardized our policy for the payment of the transportation costs. We precluded separate payment for these costs, except under certain circumstances. Those circumstances included paying separately for EKG transportation to approved portable x-ray suppliers and independent physiological laboratories. As noted above, after further review of this policy, we concluded that the statute authorized such separate transportation

payments for only portable x-ray services, and we are now bringing our policy into compliance with this interpretation effective January 1, 1997.

We believe there is no policy basis for paying for EKG transportation in a manner different from our payment for transportation of other diagnostic tests. The only exception would be portable x-ray transportation, for which, we believe, the Congress required separate payment.

Comment: We have received over a hundred comments from portable x-ray suppliers, officials of nursing facilities, and family members of residents of nursing facilities indicating that:

- These suppliers will have to close either their EKG operations or their entire business.

- We will pay 4 or 5 times as much in ambulance payments to take patients to hospitals to receive EKGs.

- Transporting patients to a hospital will cause them pain, discomfort, and confusion.

- We should discontinue transportation payments to independent physiological laboratories for EKGs but continue payment to portable x-ray suppliers.

Response: We believe that the premise that only two alternatives are available, that is, portable EKGs and ambulance transportation, is erroneous. Patients requiring ambulance transportation will exhibit symptoms and signs that require medical evaluation and treatment that would make furnishing an EKG alone as a portable test inappropriate. Nor can it be assumed that ambulance payments would be made in many of these situations since use of an ambulance is medically necessary only when other transportation is contraindicated. We regard the use of an ambulance simply as a means of transportation to receive a diagnostic procedure to be an abusive practice. Therefore, we believe that the portrayal of portable EKG and ambulance transportation as the only alternatives is not an accurate description of normal, acceptable medical practice.

We believe that, in the case of severe, potentially life threatening cardiac problems, a patient should be transported by ambulance to the hospital instead of waiting for a van with portable equipment to arrive. The comments do not describe the conditions under which EKG services should be provided to nursing facility patients on a mobile basis. The apparent rationale for such payment would be for services furnished in response to symptoms that are significant enough to make the procedure medically necessary but not serious enough for the patient to

be taken to a hospital or to require immediate attention by a physician.

We believe that there are sufficient alternatives to furnishing EKG services on a portable basis:

- EKG equipment is lightweight and often carried by physicians into nursing facilities.

- Nursing homes (particularly skilled nursing facilities) often have this equipment and staff who know how to do the test. (Our physicians have advised us that individuals can learn how to hook up these devices with on-the-job training and that the training required to do these procedures does not compare to that required for a radiologic technician). In addition, the results of the test may be sent by phone to the interpreting cardiologist or other physician.

- Patients may be transported by family members or others to medical facilities in the same way they receive other diagnostic or therapeutic services for which we do not make separate transportation payments.

Comment: One commenter described our proposal as "noncovering" transportation services for EKG equipment.

Response: That is not an accurate description of our proposed policy. The service will still be covered, but we will not pay separately for the transportation service. We will bundle payment for transportation services into the payment for EKG services.

Comment: One commenter indicated that the proposal was an unconstitutional "taking" of the equipment and investment of portable x-ray suppliers and independent physiological laboratories. The commenter went on to say we would be required to provide fair and adequate compensation to indemnify those persons who invested, with a reasonable expectation of return in such equipment, personnel, or businesses.

Response: The commenter's position would seem to be that, once Medicare makes a decision to pay for something, it is forever locked into continuing such payments. However, suppliers have no constitutional right to continued Medicare payment for particular services. In the case of a service, such as the transportation of EKG equipment, for which there is no explicit provision in the law, the responsibility to make needed program changes is delegated to us. We have exercised this discretion in the case of transportation of EKG equipment.

Comment: A few commenters indicated that the proposal to eliminate the transportation payment for EKG equipment was particularly harsh since

it follows so closely the recent decision by Medicare to disallow a set-up fee for EKGs.

Response: There never was a set-up fee for EKG equipment. HCPCS code Q0092 (Set-up portable x-ray equipment) was established in 1992 to be billed with radiologic procedures furnished by portable x-ray suppliers. It was designed to recognize the historical payment differential, on a national basis, between the technical component payments under the Medicare radiologist fee schedule for services furnished by portable suppliers and stationary entities. If payment was made under Q0092 for the set-up of EKG equipment by portable x-ray suppliers, it was an erroneous payment that was inconsistent with both the HCPCS code description and the instructions in section 15022 of the Medicare Carriers Manual.

Final Decision: We are assigning HCPCS code R0076 (Transportation of EKG equipment) a "B" or bundled status to indicate that, effective January 1, 1997, HCPCS code R0076 will be paid for within the practice expense RVUs of the EKG services. Separate payment will no longer be made for the transportation of EKG equipment. There are sufficient alternatives to provide patients with EKG services. Effective on or after January 1, 1997, Medicare payment under the physician fee schedule may be made only for the transportation of equipment used to perform x-rays and diagnostic mammograms furnished by approved suppliers of portable x-ray services.

This policy change does not require a change in the text of the regulations.

D. Bundled Services

1. Hot or Cold Packs

The results of a comprehensive analysis of Medicare claims data indicate that CPT code 97010 (the application of hot or cold packs to one or more areas) is being used extensively with a wide variety of services such as office visits and physical medicine and rehabilitative services. We proposed to bundle payment for CPT code 97010 into the payment for all other services including, but not limited to, those with which it historically has been billed with the greatest frequency (such as office visits and physical therapy).

We believe that bundling payment and, thus, precluding separate payment for the application of hot and cold packs is justified for three reasons:

- As a therapy, hot and cold packs are easily self-administered. Generally, we do not cover procedures that are basically self-administered; hot and cold

packs, by their nature, do not require the level of professional involvement as do the other physical medicine and rehabilitation modalities.

- Although we acknowledge that professional judgment is involved in the use of hot and cold packs, much less judgment is demanded for them than for other modalities. These packs are commonly used in the home, and, thus, require a minimal level of professional attention.

- The application of hot and cold packs is usually a precursor to other interventions and, as such, is appropriately used in combination with other procedures. Our data analysis supports this conclusion because the majority of claims for CPT code 97010 occurred in conjunction with claims for other services performed on the same day.

We proposed to change the status indicator for CPT code 97010 to "B" to indicate that the service is covered under Medicare but payment for it is bundled into the payment for other services. Separate payment for CPT code 97010 would not be permitted under this proposed change. This change would be implemented in a budget neutral manner across all other procedures. Because the RVUs for this procedure would be redistributed across all physician fee schedule services, there would be no measurable impact.

Comment: We received a limited number of comments in response to this proposal. Most of the commenters were opposed to our proposal. However, several commenters supported the concept of bundling CPT code 97010 conditionally and one commenter was fully supportive of the proposal. Those opposed to bundling stated that distribution of the RVUs for CPT code 97010 across all services will result in payment to all physicians performing services when, in fact, only very few physicians use hot and cold pack modalities. Furthermore, the commenters, in supporting the use of hot or cold packs outside of the home setting, stated that these modalities are not appropriate in the home since they are part of a rehabilitation program that is generally not provided in the home. They objected to the proposed bundling of hot or cold packs because they are separate and distinct services. Other physical modality and physical therapy codes are used without the application of hot or cold packs as well, and the packs can be applied independent of any other service.

Response: As indicated in our proposed rule, we analyzed data on the use of CPT code 97010. As a result, we identified the distribution of CPT code

97010 across specialties and occurrences with other procedures. Hot or cold packs were billed by physical therapists, occupational therapists, orthopedic surgeons, physical medicine and rehabilitation specialists, and many other specialties.

Our data indicate that the vast majority (approximately 95 percent) of hot or cold packs were administered in conjunction with other services. Thus, we continue to believe that our data justifies our proposal to bundle payment for CPT code 97010 with other services performed on the same patient on the same day.

Comment: Although some commenters supported the bundling of payment for CPT code 97010 with other services, they stated that the RVUs should be distributed only across other procedures in the CPT code 97000 series. They concluded that because the use of hot or cold packs was not considered in the original RVUs for physical medicine and rehabilitation, the value for CPT code 97010 should be included only with CPT codes 97012 through 97799.

Response: As noted above, our analysis indicates that the use of hot or cold packs is distributed across many other specialties and frequently occurs with a variety of other procedures. Therefore, we believe that the most equitable distribution of the RVUs assigned to CPT code 97010 is across all services. As we noted, the impact of the values for this procedure, distributed across all procedures, is minimal.

Comment: One commenter was concerned about compensating practitioners for the supply costs associated with the use of hot and cold packs.

Response: We believe the practice expense costs are very low for hot and cold packs. Further, the entire RVUs for CPT code 97010 were reallocated including the physician work and the practice expense components. Thus, the supply costs are included in the practice expense RVUs allocated to other codes.

Comment: One commenter opposed the inclusion of this modality with other codes because use of this modality requires the professional skill of a trained therapist.

Response: Other commenters did not express this concern. In many States, therapy assistants with considerably less training than therapists may administer these modalities. In institutional settings, health care workers other than trained professional therapists also administer these modalities. Also, both hot and cold packs are available to patients to use in

the home and are safely used in this setting.

Comment: One commenter stated that hydrocollator packs should be treated differently from self administered hot packs.

Response: Hydrocollator packs are a type of hot pack that typically contains silicon dioxide encased in a canvas covering. It is heated by immersion in very hot water. This type of heat pack is still considered to be a superficial heat modality and is generally therapeutically equivalent to other types of hot packs.

Comment: We received one comment with unequivocal support for bundling payment for CPT code 97010 with payment for other services. This commenter, representing a large professional organization, concurred based on the belief that these packs do not require the same level of professional involvement as do other physical therapy modalities, and they represent a precursor to other covered interventions.

Response: We appreciate the support for our proposed policy.

Final Decision: In response to the comments, we revisited the CPT code 97010 utilization data and found no new information to justify changing our proposal. Therefore, payment for procedure 97010 will be bundled into the payment for other services, and the status indicator will be changed to "B". This policy change does not require a change in the text of the regulations.

2. Dermatology Procedures

a. Bundling of Repair Codes into Excision Codes

Currently, the RVUs for the dermatology excision codes (CPT codes 11400 through 11446 and 11600 through 11646) include RVUs for services described by the simple repair codes (CPT codes 12001 through 12018). We proposed to cease paying separately for other types of repair codes when billed in conjunction with excision codes. We proposed to bundle the RVUs for the intermediate and complex repair codes (CPT codes 12031 through 12057 and 13100 through 13152, respectively) into both the benign and malignant skin lesion excision codes (CPT codes 11400 through 11446 and 11600 through 11646, respectively). Under our proposal, we would redistribute the RVUs for the repair codes across CPT codes 11400 through 11446 and 11600 through 11646. We would base the number of RVUs for redistribution on the frequency with which the repair codes are billed with the excision codes.

We did not propose to assign these repair codes a "B" status indicator

because we acknowledged that these codes are not used exclusively with excision services. Instead, we would implement this policy change by establishing edits in our claims processing systems that would deny payment for a repair code billed on the same date of service as a claim for payment for an excision of a skin lesion. This change would standardize our policy for payment for wound closure.

Comment: Commenters opposed the proposal to cease paying separately for the intermediate and complex repair codes when billed in conjunction with the excision codes. They argued that an average payment was not appropriate because the same payment would be made for services having substantial differences in physician work. In addition, some commenters noted that coding separately for the intermediate and complex repair codes corresponded to CPT definitions.

Response: As a result of our review of the comments on this issue, we have decided not to implement this proposal. We agree that there is an established hierarchy of work RVUs associated with the families of excision of skin lesion codes that would be disrupted by the bundling of RVUs for the intermediate and complex repair codes.

We believe, however, that the definitions of a simple and an intermediate repair code need clarification to reflect the differences in physician work for these procedures.

The CPT definitions of simple and intermediate repairs include the following:

Simple repair is used if the wound is superficial; for example, involving primarily epidermis or dermis, or subcutaneous tissues without significant involvement of deeper structures, and requires simple one layer closure/suturing.

Intermediate repair includes the repair of wounds that, in addition to the above, require layered closure of one or more of the deeper layers of subcutaneous tissue and superficial (non-muscle) fascia, in addition to the skin (epidermal and dermal) closure.

We do not believe these definitions appropriately distinguish simple repairs (which are not separately reported and paid when performed after the excision of a skin lesion) from intermediate repairs (which are separately reported and paid when performed after the excision of a skin lesion) because they allow the reporting of the intermediate repair codes for the placement of a single suture in the subcutaneous tissue. We do not believe such a suture involves significantly more work than a simple one layer closure. Therefore, we

do not believe the intermediate repairs should be reported in addition to the excision codes if the only additional work is a layered closure of the subcutaneous tissue.

We believe the distinction between a simple and intermediate repair should be based on anatomical levels of repair. Based on this principle, a simple repair should be used if the wound involves the skin and subcutaneous tissue and an intermediate repair should be used for closure of one or more of the deeper fascial layers, in addition to the skin and subcutaneous tissue. For Medicare reporting purposes, these definitions will be the basis of payment for the reporting of repair codes with excision codes effective January 1, 1997. This clarification should reduce the potential for misuse of intermediate repair codes. If not, we may need to reconsider this proposal in the future.

Final Decision: We will continue to allow separate payment for the intermediate and complex repair codes (CPT codes 12031 through 12057 and 13100 through 13152, respectively) if they are reported with the excision codes. However, we will no longer follow the CPT definitions of simple and intermediate repairs. We will follow the revised definitions described above while we work with the CPT Editorial Panel to incorporate these definitions in the next annual update of the CPT.

b. Skin Lesion Destruction Codes

There are several CPT codes that describe the destruction of various benign or premalignant skin lesions. Within this group of codes, the reporting methods vary. We proposed to simplify the reporting of and payment for the destruction of benign or premalignant skin lesions by assigning a "C" status indicator to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 to indicate that these CPT codes are not valid for Medicare purposes and that there is another code to use for the reporting of and payment for these services.

To report the destruction of benign and premalignant skin lesions, we proposed to create two HCPCS codes. The first code would describe the destruction of up to and including 15 lesions. The second code would describe the destruction of each additional 10 lesions. To assign RVUs to these codes, we proposed to take a weighted average of the RVUs assigned to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 based on the billing frequencies and the code descriptors.

Comment: Several commenters opposed the proposal to combine the numerous CPT codes that describe the destruction of various benign or premalignant lesions into two HCPCS codes because the work RVUs for these procedures are not similar. In addition, some commenters noted that the destruction of benign or malignant lesions is a separate procedure from paring or curettage of benign hyperkeratotic skin lesions.

Response: In general, we agree that our proposal would consolidate services with a wide range of work RVUs and have decided to modify our proposal accordingly. We also agree that distinct codes for paring or curettage of benign hyperkeratotic skin lesions is appropriate.

We intend, however, to consolidate the CPT codes with similar work RVUs—the destruction of benign or premalignant lesions (CPT codes 17001 through 17105).

Comment: Some commenters stated that the proposal would introduce administrative problems for claim submission since a dual coding system would be needed for Medicare and other insurers.

Response: We acknowledge that the creation of codes for Medicare purposes only might create some administrative problems. However, we believe these problems are significantly outweighed by the problems associated with the confusing and inconsistent terminology of the existing CPT codes for the destruction of benign or premalignant lesions (CPT codes 17001 through 17105). Within this group of codes, the reporting methods vary and create the potential for misuse. Some codes describe the destruction of a single lesion but require reporting multiple codes for the destruction of several lesions; other codes describe destruction of one or more "complicated" lesions regardless of the number of lesions destroyed. Thus, it is sometimes not clear how many codes to report.

For example, to report the destruction of 4 benign facial lesions and 11 premalignant lesions, a physician must use a combination of 3 CPT codes with varying units of service on the claim form. In contrast, to report the destruction of 15 benign lesions on the trunk, a physician would only use one code with one unit of service on the claim form. Supporting our concern for potential misuse, 1995 utilization data indicate that 2.32 percent of allowed services for CPT code 17002 were for destruction of more than 15 lesions with a range from 16 to 115 lesions.

Further support for consolidation of these CPT codes are the

recommendations from the 1996 RVU refinement panels for only a 0.03 difference in work for the destruction of premalignant lesions in any location (CPT code 17000, final RVU 0.56) and the destruction of benign lesions in locations other than the face (CPT code 17100, final RVU 0.53). See section IV.A.1. of this final rule for a fuller discussion of these work RVUs. We do not believe it is necessary to maintain two families of codes when the difference in work between the families is so small.

Final Decision: As a result of our review of the comments on this issue, we will modify our proposal. We will maintain the active status of CPT codes 11050 through 11052, 11200, 11201, 17200, and 17201. Preliminary revision of these CPT codes has begun, and we will continue working with the CPT Editorial Panel to clarify these CPT codes.

Codes for the destruction of benign or premalignant lesions will be consolidated into one series of codes, regardless of body location. Three new HCPCS codes will be used to report the

destruction of benign or premalignant lesions, and we will assign a "G" status indicator to CPT codes 17000 through 17105, indicating that these codes will not be valid for Medicare purposes. The following temporary codes will be effective January 1, 1997:

G0051: Destruction by any method, including laser, with or without surgical curettement, all benign or premalignant lesions (for example, actinic keratosis), other than skin tags or cutaneous vascular proliferative lesions, including local anesthesia; first lesion

G0052: Destruction by any method, including laser, with or without surgical curettement, all benign or premalignant lesions (for example, actinic keratosis), other than skin tags or cutaneous vascular proliferative lesions, including local anesthesia; second through fourteenth lesion, each (report in addition to G0051)

G0053: Destruction by any method, including laser, with or without surgical curettement, all benign or premalignant lesions (for example,

actinic keratosis), other than skin tags or cutaneous vascular proliferative lesions, including local anesthesia; fifteen lesions or over (includes G0051 and G0052)

The RVUs for these new codes have been derived from the RVUs for CPT codes 17000 through 17105 and distributed so that the total number of RVUs in the new family of codes will be the same as in the old family of codes. The practice expense and malpractice expense RVUs also will be distributed to maintain budget neutrality within the family of codes, and they will be proportionate to the work RVUs. Thus, this coding change will not affect the total payments made for the destruction of skin lesions currently reported with CPT codes 17000 through 17105.

The codes and RVUs assigned to them, listed in the following table, are considered interim, and we will accept comments on them. We will continue to work with the CPT Editorial Panel to standardize this coding nomenclature and will share comments on our temporary codes with the Panel.

Code	Descriptor	Work RVUs	Practice expense RVUs	Malpractice RVUs
G0051	Destruction skin lesions, first lesion	0.56	0.41	0.04
G0052	Destruction skin lesions, 2nd to 14th lesion	0.18	0.13	0.01
G0053	Destruction skin lesions, 15 or more lesions	3.06	2.25	0.20

This policy change does not require a change in the text of the regulations.

E. Change in Coverage Status for Screening and Obsolete Procedures

1. Vital Capacity Testing

CPT code 94150 (Vital capacity, total) is a screening measure and is typically performed on patients who are asymptomatic. Because these tests are performed on patients who do not have symptoms of breathing problems, they represent preventive services that are, by statute, not covered by Medicare. However, we inadvertently failed to identify CPT code 94150 as noncovered by Medicare. With limited exceptions, sections 1862(a)(1)(A) and 1862(a)(7) of the Act preclude Medicare coverage for screening services. Therefore, we proposed changing the status indicator for CPT code 94150 from "A" to "N" to represent its noncovered status.

Comment: Two commenters expressed the opinion that the proposal was in error because vital capacity tests may have some clinical utility in monitoring patients who have either congestive heart failure or restrictive lung disease. One commenter indicated

that vital capacity tests might be performed as part of the screening of asymptomatic patients for industrial exposure but suggested that most measurements of this type are performed on patients to monitor their symptoms or underlying disease process. Another commenter stated that a physician's charge for performing a simple measurement of vital capacity (CPT code 94150) should be less than the charge for a full spirogram (CPT code 94010) because the first test is an integral part of the second test.

Response: Based on our further evaluation of this issue, we have concluded that a simple vital capacity measurement by itself may provide a physician with a "partial look" when monitoring a patient with pulmonary disease or congestive heart failure either as clinical documentation, or when assessing a response to therapeutic interventions. As a stand-alone service, however, we understand that this test provides only a partial assessment of a patient's ventilatory function and, thus, has outlived its clinical usefulness. In addition, we understand that the information provided by this

measurement should be readily evident from a carefully performed physical examination of the patient and from simple maneuvers at the time of examination (for example, in the case of a pulmonary disease patient, a walking test or blowing up a balloon).

Final Decision: Based on our review of the comments received and further consultation with our medical staff, we have decided to modify our original proposal. Instead of changing the coverage status for vital capacity tests from "active" to "noncovered," we will change it from "active" to "bundled" to indicate that payment for a particular procedure will always be bundled into payment for other services furnished to Medicare patients. Simple vital capacity tests (CPT code 94150) by themselves are generally considered to be clinically incomplete and have outlived their usefulness. To the extent that these tests are still performed in medical practice, however, we understand that they are routinely performed as a small part of a more comprehensive physician's examination of a pulmonary disease or congestive heart failure patient. Therefore, we believe it is appropriate to

bundle Medicare payment for these measurements into the payment for evaluation and management services.

In addition, we received a RUC recommendation to decrease the work RVUs from 0.11 to 0.07. For a discussion of this recommendation and our decision on work RVUs, see section IV.A.15. of this final rule.

This policy change does not require a change in the text of the regulations.

2. Certain Cardiovascular Procedures

Based on the American College of Cardiology's recommendation, our review of recent claims history data, and our consultation with other medical specialty groups, we proposed to discontinue coverage for 10 phonocardiography and vectorcardiography diagnostic tests (CPT codes 93201 through 93222) that are outmoded and of little clinical value. We proposed changing the status indicators for these 10 procedures from "A" to "N" to reflect their noncovered status.

Comment: Two commenters recommended that we clarify the meaning of the "N" status indicator that was proposed to reflect the noncovered status of phonocardiography and vectorcardiography diagnostic tests. They expressed confusion as to whether status indicator "N" meant that the cardiovascular services in question were being excluded from Medicare coverage based on the statutory reasonable and necessary exclusion in section 1862(a)(1)(A) of the Act, or some other statutory exclusion such as section 1862(a)(7) of the Act, which applies to routine physical checkups and refractions. The commenters pointed out that the statutory basis for the exclusion is important because it determines whether the physician is required to file a claim for the service and whether the patient must sign a waiver of liability statement and, thus, be held financially responsible to the physician for payment for the service. They suggested that we may want to establish unique status indicators for medical procedures that are precluded from coverage based on different statutory exclusions.

Response: The statutory basis for our proposal to discontinue Medicare coverage for the 10 cardiovascular tests should have been specifically identified in our preamble of the proposed rule that was published on July 2, 1996. In view of the comments received from the American College of Cardiology that these tests are outmoded and of little clinical value, our proposal to end coverage of these tests was based on the assumption that they are no longer

considered to have clinical utility for Medicare patients, and, thus, should be precluded from payment by section 1862(a)(1)(A) of the Act (the reasonable and necessary exclusion). Accordingly, under our proposal, physicians would have to treat Medicare denials of claims for the 10 cardiovascular tests in question as medical necessity denials under section 1862(a)(1)(A) of the Act.

Since the physician fee schedule was established in 1992, the "N" status indicator has always meant that the procedures in question were not covered under Medicare because of one or more statutory exclusions in the law (for example, either section 1862(a)(1)(A) of the Act or one of the other statutory coverage exclusions). We do not believe it would be appropriate to establish unique status indicators in the physician fee schedule for various noncovered medical procedures based on different statutory exclusions for several reasons. First, the primary purpose of the physician fee schedule is to provide general Medicare payment information on more than 7,000 medical procedures to the physician community and other interested parties and not to provide specific claims processing information that Medicare carriers are required to provide to the medical community in their localities under their Medicare contracts. Second, in the case of certain medical procedures (for example, noncovered screening services), it is possible for a national noncoverage decision to be based on more than one statutory exclusion. It would unduly complicate the status indicator process if we had to explain these unique situations.

Final Decision: We are adopting our proposal to discontinue coverage for the 10 phonocardiography and vectorcardiography procedures because we did not receive any negative comments. However, we will delete the 10 codes from the 1997 fee schedule rather than change the status indicators from "A" to "N" to reflect their noncovered status because these codes have been deleted from the American Medical Association's Physician's Current Procedural Terminology for 1997. Any Medicare claims submitted by physicians for these cardiovascular procedures under a miscellaneous code will be denied by local Medicare carriers. We will issue instructions to Medicare carriers regarding the noncoverage status of these procedures.

This policy change does not require a change in the text of the regulations.

F. Payments for Supervising Physicians in Teaching Settings

1. Definition of Approved Graduate Medical Education Programs

Since publication of the December 8, 1995 (60 FR 63182) final rule, we have received questions about the difference in the definition of an approved residency program for purposes of the teaching physician rules under § 415.152 ("Definitions") and the definition used in the direct medical education rules under § 413.86(b) ("Direct graduate medical education payments"). To be consistent, we proposed to modify § 415.152 to match the definition of an approved graduate medical education program in § 413.86(b). We proposed adding a reference to programs that are recognized as an "approved medical residency program" under § 413.86(b). By making this change, the regulations text will reflect a common definition of approved graduate medical education programs for Medicare Part A and Part B. This is a technical change and will have no effect on the implementation of our revised policy regarding the payment for supervising physicians in teaching settings that is effective July 1, 1996.

Comment: Commenters, including an organization representing physicians in a subspecialty of internal medicine, objected to this proposal because residents in subspecialty programs (often called "fellows") who provide direction to interns and residents would be included in the definition of residents in an approved program. The organization argued that fellows are teaching physicians who must be allowed to bill for their direction of interns and residents. A few of the commenters objected to the proposal and suggested that each individual residency program should be allowed to decide whether to bill for the services as physicians' services or to have the services included in the hospital's count used to compute direct graduate medical education payments since a teaching hospital may receive only partial credit for its advanced residents in some cases. The commenter pointed out that this approach was consistent with our policy for services when furnished in nonprovider settings (section 1886(h)(4)(E) of the Act and § 413.86(f)(1)(iii)).

Response: Contrary to the suggestion of the commenters, we are not changing our policy on the definition of an approved residency program for purposes of determining payments for the services of teaching physicians. Rather, we proposed to revise the

regulations text because questions have been raised about the different language used to define an approved residency program in different contexts. We believe it is reasonable and appropriate to have consistent definitions and, in fact, it would make little sense to apply one definition of an approved residency program in one context and a substantively different definition in another context.

It is our position that, to the extent Medicare pays for the services of residents in an approved residency program under section 1886(h) of the Act, we should not make a separate Medicare Part B payment for the same services under the physician fee schedule. We see no reason to treat fellows in a way that is different from other residents. "Fellows" are residents in subspecialty programs, and the costs of fellows, like other residents, are addressed by section 1886(h) of the Act. Section 1886(h)(5)(A) of the Act specifically cites subspecialty programs. While we understand the comments about the partial crediting of residents beyond their initial residency period limitation, this reflects a judgment by the Congress concerning the appropriate level of Medicare payment for such activities. As was pointed out in the preamble discussion in the September 29, 1989 final rule (54 FR 40312) on the direct graduate medical education payment provision:

We believe that the enactment of section 1886(h) of the Act was a clear statement from the Congress that a limitation on the growth in Medicare GME expenditures was necessary. Further, although not explicitly stated, it reflects a decision on the part of the Congress to focus reductions on subspecialty programs beyond the initial residency periods rather than on primary care programs.

We believe it would be inappropriate to allow Medicare Part B billing for the services of fellows simply because Congress has chosen to limit the amount of GME payments for such activities. We note that teaching physicians that involve these residents or fellows in the care of the teaching physician's patients can bill Medicare Part B if the criteria addressed in the December 8, 1995 final rule are met.

Final Decision: We will revise the regulations text as proposed.

2. Evaluation and Management Services Furnished in Certain Settings

In the December 8, 1995 final rule (60 FR 63135), we revised our policy regarding the payment for supervising physicians in teaching settings. We eliminated the attending physician criteria but clarified the physician

presence requirement for services billed to the Medicare carrier. As part of our revised policy, we created a limited exception for residency programs that are fundamentally incompatible with a physical presence requirement. The exception to the physician presence requirement is for certain evaluation and management services (CPT codes 99201, 99202, 99203, 99211, 99212, and 99213) furnished in ambulatory care centers within the context of specific types of residency training programs. The exception is set forth in § 415.174 ("Exception: Evaluation and management services furnished in certain centers").

As the exception currently reads, one of the criteria is that "The range of services furnished by residents in the center includes * * * Comprehensive care not limited by organ system, diagnosis, or gender." (§ 415.174(a)(4)(iii)). It has come to our attention that many obstetric and gynecological residency programs have been restructured over the years to have a greater primary care focus. Some of these programs that otherwise qualify for an exception might be denied payment if the gender limitation were strictly applied.

Contrary to suggestions in correspondence we received after publication of the final rule, it was not our intention to prevent obstetric and gynecological residency programs or other residency programs focusing on women's health care from qualifying for the exception solely because of the patient's gender. Thus, we proposed to make a technical change to the regulations text to delete the reference to gender in § 415.174(a)(4)(iii) and change the text to "Comprehensive care not limited by organ system or diagnosis." Of course, such programs must satisfy the otherwise applicable criteria to qualify for an exception.

Comment: All of the commenters supported the proposal to delete the word "gender" from the primary care exception criteria.

Response: We agree with the commenters.

Final Decision:

We will delete the word "gender" from the primary care exception criteria in § 415.174(a)(4)(iii). We will not include the word "gender" in any program directive on the primary care exception.

G. Change in Global Periods for Four Percutaneous Biliary Procedures

The Society of Cardiovascular and Interventional Radiology advised us that a 90-day global period is inappropriate for four percutaneous biliary

procedures. The four procedures are CPT codes 47490 (percutaneous cholecystectomy), 47510 (introduction of percutaneous transhepatic catheter for biliary drainage), 47511 (introduction of percutaneous transhepatic stent for internal and external biliary drainage), and 47630 (biliary duct stone extraction, percutaneous via T-tube tract, basket, or snare (for example, Burhenne technique)). The Society believes that these four procedures should have a "0-day" global period. We agreed with the Society's arguments that a 90-day global period is contrary to the widespread practice conventions of percutaneous biliary intervention and is inconsistent with other similar interventions in the biliary tract and urinary tract.

We believed that the global periods for these four codes should be changed. Therefore, we proposed changing the global periods for these services from 90 days to 0 days. To make this change, we proposed to reduce the work RVUs assigned to these procedures to reflect the lack of postsurgical work in the shortened global period. We proposed to reduce the work RVUs for CPT codes 47490, 47510, 47511, and 47630 by 17 percent if we changed the global periods. The 17 percent figure (as the measure of the postsurgical work associated with these codes) was taken from the original data in a study by the Harvard School of Public Health ("A National Study of Resource-Based Relative Value Scales for Physician Services").

Comment: Several commenters indicated that, while they agreed with the proposal to reduce the global surgery period from 90 days to 0 days for the percutaneous biliary procedures under CPT codes 47490, 47510, 47511 and 47630, they disagreed with reducing the work RVUs by 17 percent to take into account the portion of the current RVUs attributable to postsurgical work. One physician organization indicated that a global period of 0 days was assumed in the Harvard study of CPT code 47630 and that the Harvard study included these procedures in its study of general surgeons rather than interventional radiologists. The Society of Cardiovascular and Interventional Radiology commented that its 1991 recommendations on these procedures, based on surveys by a consulting firm, were made without the inclusion of postsurgical work in the RVUs, and that reducing RVUs would lower the value of these procedures relative to analogous endoscopic procedures in the biliary tract.

Response: We reviewed the data in the Harvard study to determine whether a global period of 0 days was assumed for CPT code 47630. Three of the codes (CPT codes 47490, 47510 and 47630)

were studied and all three were assumed to have 90 day global periods. The fourth code (CPT code 47511) was new in 1992 and was not part of the Harvard study.

The following table shows the percent of total work associated with each of the components of work for which Harvard provided data:

PERCENT OF TOTAL WORK BY COMPONENT

Code	Pre-operative (percent)	Intra-operative (percent)	Post-operative same day (percent)	Post-operative hospital (percent)	Post-operative office (percent)
47490	10	40	8	33	9
47510	16	36	12	19	17
47630	10	56	9	14	11

These data show that if the current RVUs were based on Harvard data and we were to reduce the global period from 90 days to 0 days, we would need to reduce the RVUs by the amount attributed to postoperative hospital work (other than the same day) and postoperative office work. For these three codes, the reductions would not be 17 percent as described in our proposal but 42 percent for CPT code 47490, 36 percent for CPT code 47510 and 25 percent for CPT code 47630.

We also reviewed the results of the refinement panel meeting held in May 1992 for CPT codes 47510, 47511 and 47630. CPT code 47490 was not reviewed by the refinement panel. For the insertion of a catheter in a bile duct (CPT code 47510), we agreed that the work is equivalent to the work of inserting a drainage tube endoscopically (CPT code 43267). For inserting a stent for biliary drainage (CPT code 47511), we agreed that the work was more than the work of the comparable endoscopic procedure (CPT code 43267) and assigned a higher RVU. We did not accept the argument that the global period should be reduced from 90 to 0 days, because we believed a physician performing this procedure should be responsible for following the patient even if other physicians are involved in the care of the patient. For the extraction of a bile duct stone (CPT code 47630), the RVUs that emerged from the panel's ratings were less than the corresponding endoscopic procedure (CPT code 43264).

We also reviewed the RVUs assigned to the radiological supervision and interpretation (S & I) codes that are reported in addition to the procedure codes. These codes are not used with endoscopic procedures. In stating that the percutaneous biliary procedures should have comparable global periods and RVUs to endoscopic procedures, the commenter appears to have overlooked the additional RVUs associated with the

supervision and interpretation codes. The following table shows the codes and RVUs associated with each of the codes and the total RVUs associated with the complete percutaneous procedures.

Procedure codes	RVUs for procedure	S&I codes	RVUs for S&I	Total RVUs for complete procedure
47450	6.04	75989	1.19	7.23
47510	7.39	75980	1.44	8.83
47511	9.91	75982	1.44	11.35
47630	8.31	74327	0.70	9.01

Based on our re-analysis of the Harvard study data, the May 1992 refinement panel results and the total RVUs associated with these procedures, we now believe that a change in global periods from 90 to 0 days may be inappropriate because of uncertainty about the reduction in RVUs, if any, that should be made in conjunction with the change in global periods.

Final decision: We will maintain the current global period of 90 days and the current RVUs for these four percutaneous biliary procedures. We plan to refer to the Relative Value Update Committee for its consideration the issue of work RVUs and global periods for procedures that can be performed endoscopically, percutaneously, and open. For a more detailed discussion of our plans to review these procedures, see section IV.C.4 of this final rule.

III. Refinement of Relative Value Units for Calendar Year 1997 and Responses to Public Comments on the Five-Year Review of Work Relative Value Units

A. Summary of the Development of Physician Work Relative Value Units

We discussed in detail the development of the concepts and

methodology underlying the physician fee schedule in our May 3, 1996 proposed notice (61 FR 19993 through 19994).

B. Scope of the Review

This final rule is the culmination of the 5-year review of work RVUs required by section 1848(c)(2)(B)(i) of the Act. The work RVUs affected by this review will be effective for services furnished beginning January 1, 1997.

We initiated the 5-year review by soliciting public comments on all work RVUs for approximately 7,000 CPT/HCPCS (HCFA Common Procedure Coding System) codes published in our December 8, 1994 final rule (59 FR 63410). The process for evaluating codes included in the 5-year review involved the same basic methodology as the process for the annual physician fee schedule update, with some important changes. Because the 5-year review involved evaluating the physician work of established codes with established work RVUs, we required compelling arguments to support changes from the existing assignment of work RVUs. To gather evidence to support these arguments, in addition to comparing the total physician work involved in the services under review to key reference services, we asked commenters to provide a detailed comparison of the preservice, intraservice, and postservice time involved in the key reference services selected. For this purpose, for surgical procedures, we further divided postservice time into time on the day of the procedure, time in the intensive care unit, hospital visits, and office or other outpatient visits following discharge.

We also requested comments regarding other elements of physician work, in addition to time, and the extent to which the service had changed over the last 5 years. We considered the commenters' statements regarding the complexity of each nontemporal component for the services under review and the services used as key

references. The nontemporal components of work are the physician's mental effort and judgment, technical skill and physical effort, and stress resulting from the risk of mortality or iatrogenic harm to the patient. We also considered whether the service had changed over the past 5 years as the result of one of the following conditions: new technology that had become more familiar to physicians, the service having been furnished to patients who had more or less complex medical conditions, or a change in the site where the service had usually been furnished.

During the comment period, we received more than 500 public comments on approximately 1,100 individual codes. In addition, three specialty societies (the American Academy of Orthopedic Surgeons, the American Society of Anesthesiologists, and the American Academy of Otolaryngology—Head and Neck Surgery, Inc.) submitted studies conducted for them by Abt Associates, Inc., which spanned all of the more than 2,000 codes used by physicians in those specialties. The American Academy of Pediatrics also submitted comments asserting that the physician work involved in furnishing 480 services to pediatric patients is different than the physician work involved in furnishing the same services to adult patients.

After a preliminary screening, we referred approximately 3,500 codes to the AMA Specialty Society Relative Value Update Committee (RUC) for its review. The codes included those found in public comments (700 codes), the American Academy of Pediatrics' comments (480 codes); three special studies by Abt Associates, Inc. (about 2,000 codes); and those we identified as potentially misvalued (300 codes).

The RUC was formed in November 1991 and grew out of a series of discussions between the AMA and the major national medical specialty societies. The RUC is comprised of 26 members; 22 are representatives of major specialty societies. The remaining members represent the AMA, the American Osteopathic Association, and the CPT Editorial Panel. The work of the RUC is supported by the RUC Advisory Committee made up of representatives of 65 specialty societies in the AMA's House of Delegates.

We shared the comments we received with the RUC, which currently makes recommendations to us on the assignment of RVUs to new and revised CPT codes and offered to advise us on the assignment of RVUs to procedures for which we received substantive comments. We believed that the RUC's

perspective would be helpful because of the RUC's experience in recommending RVUs for the codes that have been added to, or revised by, the CPT since we implemented the physician fee schedule in 1992. Furthermore, the RUC, by virtue of its multispecialty membership and consultation with approximately 85 specialty societies, represents the family of medicine in the refinement process.

We wish to acknowledge the extraordinary efforts of the RUC, the RUC Advisory Committee, the HCPAC, the specialty societies and the staffs of these organizations in assisting us in the completion of this 5-year review process. While we did not delegate to the RUC or any other organization our responsibility for analyzing the comments and deciding whether to revise RVUs, it is doubtful that we could have completed the 5-year review in a timely manner and with such extensive clinical input without their assistance.

In our May 3, 1996 proposed notice (61 FR 19992), we identified more than 1,000 codes included in the 5-year review and for which we had received recommendations from the RUC for work RVUs. With this notice, we provided the public with an opportunity to comment on our proposed work RVUs for these codes.

We divided the CPT codes into clinical groups and another group containing all the codes identified by the RUC as potentially overvalued services. (Additional codes from the Abt Associates, Inc. studies and from the American Academy of Pediatrics' comments were discussed in sections II.C.2 and II.C.3. of the May 3, 1996 proposed notice, respectively.) In addition, the AMA is submitting approximately 65 CPT codes to its CPT Editorial Panel. The RUC was unable to recommend work RVUs for these codes because the services were not clearly described or could vary widely from patient to patient. We announced our plans to address these codes in a future annual update of the physician fee schedule.

The following is a categorization of our decisions and how they related to the comments received from the public (including medical specialty societies) and the RUC as published in the May 3, 1996 notice:

- For 28 percent of the codes, we proposed to increase the work RVUs.
- For 61 percent of the codes, we proposed to maintain the current work RVUs. We also proposed to maintain the values for the anesthesia codes.
- For 11 percent of the codes, we proposed to decrease the work RVUs.

Our proposed work RVUs agreed with the RUC recommendations for 93 percent of the codes.

C. Review of Comments (Includes Table 1—Work Relative Value Unit Refinements of Five-Year Review Codes Commented on in Response to the May 3, 1996 Proposed Notice)

During the comment period for our May 3, 1996 proposed notice, we received more than 2,900 public comments on approximately 133 codes plus all anesthesia services. Over 2,000 of these comments addressed our not having accepted the RUC recommendations for evaluation and management services.

We convened three multispecialty panels of physicians to assist us in the review of the comments. The comments that we did not submit to panel review are discussed at the end of this section as well as those that we did send to the panels. The panels were moderated by our medical staff and consisted of the following groups:

- A clinician representing each of the specialties most identified with the procedures in question. Each specialist on the panel was nominated by the specialty society that submitted the comments. This same clinician also provided ratings for the other procedures being considered. Thus, depending on the codes in question, this clinician was in one of two groups: "specialist" or "other specialist." 19 specialty societies and one individual commenter, including primary care, were represented on the panels.
- Primary care clinicians nominated by the American Academy of Family Physicians, the American Society of Internal Medicine, the American College of Physicians, the American Osteopathic Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.
- Carrier medical directors.

We submitted 33 codes for evaluation by the panels. The panel discussed the work involved in each procedure under review in comparison to the work associated with other services on the fee schedule. We had assembled a set of reference services and asked the panel members to compare the clinical aspects of the work of services they believed were incorrectly valued to one or more of the reference services. In compiling the reference set, we attempted to include: (1) Services that are commonly performed whose work RVUs are not controversial; (2) services that span the entire spectrum from the easiest to the most difficult; and (3) at least three services performed by each of the major specialties so that each specialty would

be represented. The set listed approximately 300 services. Panelists were encouraged to make comparisons to these reference services.

The intent of the panel process was to capture each participant's independent judgment based on the discussion and his or her clinical experience. Following each discussion, each participant rated the work for the procedure. Ratings were individual and confidential, and there was no attempt to reach consensus among the panel members.

We then analyzed the ratings based on a presumption that the proposed notice RVUs were correct. To overcome this presumption, the inaccuracy of the proposed RVUs had to be apparent to the broad range of physicians participating in each panel.

Ratings of work were analyzed for consistency among the groups represented on each panel. In general terms, we used statistical tests to determine whether there was enough agreement among the groups of the panel and whether the agreed-upon RVUs were significantly different from the proposed RVUs. We did not modify the RVUs unless there was a clear indication for a change. If there was agreement across groups for change, but the groups did not agree on what the new RVUs should be, we eliminated the outlier group and looked for agreement among the three remaining groups as the basis for new RVUs. We used the same methodology in analyzing the ratings that we used in the refinement process for the 1993 fee schedule. The statistical tests were described in detail in the November 25, 1992 final notice (57 FR 55938).

Our decision to convene multispecialty panels of physicians and to apply the statistical tests described above was based on our need to balance

the interests of those who commented on the work RVUs against the redistributive effects that would occur in other specialties, particularly the potential adverse effect on primary care services. Of the 33 codes reviewed by our multispecialty panels, all of the requests were for increased values.

We also received comments that we did not submit to the panels for review for a variety of reasons. These comments are discussed in section IV.B of this final rule. Of the 131 proposed RVUs that were reviewed, approximately 60 percent were increased, 13 percent were decreased, and 27 percent were not changed. These numbers excluded the changes that were made to the anesthesia services. The anesthesia changes are discussed in section IV.B.3. of this final rule.

Table 1—Work Relative Value Unit Refinements of Five-Year Review Codes Commented on in Response to the May 3, 1996 Proposed Notice

Table 1 lists the codes reviewed during this 5-year review process described in this section. This table includes the following information:

- **CPT/HCPSCS (HCFA Common Procedure Coding System) Code.** This is the CPT or alphanumeric HCPCS code for a service.
- **Mod (Modifier).** A modifier -26 is shown if the work RVUs represent the professional component of the service.
- **Description.** This is an abbreviated version of the narrative description of the code.
- **Proposed Work RVU.** This column includes the work RVUs proposed in the May 3, 1996 proposed notice for each reviewed code.
- **Requested Work RVU.** This column identifies the work RVUs requested by commenters. We received more than

one comment on some codes, and, in a few of these cases, the commenters requested different RVUs. This table lists the highest requested RVUs. For some codes, we received recommendations for an increase but by no specific RVU recommendations.

• **RUC Recommendation.** This column identifies the work RVUs recommended by the RUC if the RUC made a recommendation as part of its comments on the May 3, 1996 proposed notice.

• **1997 Work RVU.** This column contains the final RVUs for physician work.

• **Basis for Decision.** This column indicates whether:

- The recommendations of the refinement panel were the basis upon which we determined that the proposed work RVUs published in the May 3, 1996 proposed notice should be retained (indicator 1);
- A new value emerged from our analysis of the refinement panel ratings (indicator 2);
- A new or retained value came from the review of a comment (indicator 3);
- A new value came from the need to make a rank order change to maintain or correct existing relationships among services (indicator 4);
- A value is retained because the code has been referred back to the CPT Editorial Panel (indicator 5);
- A new value came from adjusting the work of services with MMM global periods as a result of changes in evaluation and management service work RVUs (indicator 6); or
- There is no value because of a 1997 CPT coding change that deletes the code (indicator 7). These deleted codes were replaced by new 1997 CPT codes.

TABLE 1.—WORK RVU REFINEMENTS OF FIVE-YEAR REVIEW CODES COMMENTED ON IN RESPONSE TO THE MAY 3, 1996 PROPOSED NOTICE

CPT/HCPCS code*	MOD	Description	Proposed work RVU	Requested work RVU	RUC recommendation	1997 work RVU	Basis for decision
00100-01999		Anesthesia Services	n/a	Increase work by 28.97%	Increase work by 22.76% Review	Increase work by 22.76%	3
10040		Acne surgery of skin abscess	0.80	1.15		1.15	3
11971		Remove tissue expander(s)	1.51			1.51	5
13300		Repair of wound or lesion	5.11			5.11	5
14300		Skin tissue rearrangement	10.76			10.76	5
15000		Skin graft procedure	1.95			1.95	5
15101		Skin split graft procedure	1.72			1.72	5
15121		Skin split graft procedure	2.67			2.67	5
15201		Skin full graft procedure	1.32			1.32	5
15221		Skin full graft procedure	1.19			1.19	5
15241		Skin full graft procedure	1.86			1.86	5
15261		Skin full graft procedure	2.23			2.23	5

*All CPT codes and descriptors copyright 1996 American Medical Association
*RVUs to remain interim in 1997
*CPT codes not used for 1997 Medicare payment, refer to sections II.D.2.b and IV.A.14 for explanation

TABLE 1.—WORK RVU REFINEMENTS OF FIVE-YEAR REVIEW CODES COMMENTED ON IN RESPONSE TO THE MAY 3, 1996 PROPOSED NOTICE—Continued

CPT/HCPCS code ^a	MOD	Description	Proposed work RVU	Requested work RVU	RUC recommendation	1997 work RVU	Basis for decision
15570		Form skin pedicle flap	3.75	9.85	8.39	8.39	2
15572		Form skin pedicle flap	3.80	9.83	8.59	8.59	2
15574		Form skin pedicle flap	3.85	10.50	8.79	8.97	2
15576		Form skin pedicle flap	4.27	8.50	7.89	8.14	2
15590		Attach skin pedicle graft	5.40	9.00	9.00	8.84	2
15755		Microvascular flap graft	28.33	41.68			7
17000		Destroy benign/premalignant lesion	0.36	0.64	0.64	0.56	2
17001		Destruction of add'l lesions	0.14	0.19	0.19	0.19	2
17002		Destruction of add'l lesions	0.14	0.19	0.19	0.19	2
17100		Destruction of skin lesion	0.53			0.53	1
17101		Destruction of 2nd lesion	0.11			0.11	1
17102		Destruction of add'l lesion	0.11			0.11	1
21025		Excision of bone, lower jaw	5.03	8.98		8.98	2
21125		Augmentation lower jaw bone	6.22	10.00	10.00	10.00	3,4
21270		Augmentation cheek bone	12.10	9.56	9.56	9.56	3,4
28010		Incision of toe tendon	2.97		2.71	2.71	3,4
28114		Removal of metatarsal heads	7.16		8.65	8.65	4
29848		Wrist arthroscopy/surgery	4.04	5.70		5.14	2
31090		Exploration of sinuses	8.65			8.65	5
31531		Operative laryngoscopy	3.39	3.79		3.59	2
31536		Operative laryngoscopy	3.16	3.56		3.56	2
31541		Operative laryngoscopy	4.13	6.00		4.53	2
31551		Operative laryngoscopy	5.46	8.13		6.00	2
31571		Laryngoscopy with injection	3.87	5.90		4.27	2
33970		Aortic circulation assist	8.05		6.75	6.75	4
33971		Aortic circulation assist	4.04		8.40	8.40	4
35556		Artery bypass graft	19.37		19.37	19.84	4
35556		Artery bypass graft	24.45		24.45	25.00	4
35571		Artery bypass graft	16.66			17.14	4
35583		Vein bypass graft	15.97		20.03	20.50	4
35585		Vein bypass graft	25.92		25.95	26.47	4
35587		Vein bypass graft	17.07			17.55	4
35586		Artery bypass graft	17.84		17.84	18.42	4
35586		Artery bypass graft	15.97			17.60	4
35571		Artery bypass graft	12.18			13.39	4
35581		Artery bypass graft	3.93	8.05		8.05	2
35575		Removal of clot in graft	8.19	9.07		9.07	2
37201		Transcatheter therapy infuse	5.00	7.25	7.25	5.00	1
46900		Destruction, anal lesion(s)	1.81			1.81	5
50590		Fragmenting of kidney stone	7.13	9.62	9.62	8.79	2
54100		Biopsy of penis	1.90			1.90	5
56312		Laparoscopic lymphadenectomy	12.06	12.10		12.06	3
56805		Repair clitoris	15.49		18.00	18.00	4
57265		Extensive repair of vagina	7.36	10.66		10.66	4
57335		Repair vagina	9.11		18.00	18.00	4
58200		Extensive hysterectomy	20.34	22.37		20.34	3
59400		Obstetrical care	20.99	Increase		23.06	6
59409		Obstetrical care	13.28	Increase		13.50	6
59410		Obstetrical care	14.44	Increase		14.78	6
59425		Antepartum care only	4.04	Increase		4.81	6
59426		Antepartum care only	6.91	Increase		8.28	6
59430		Care after delivery	2.01			2.13	6
59510		Cesarean delivery	23.67	Increase		26.22	6
59514		Cesarean delivery only	15.39	Increase		15.97	6
59515		Cesarean delivery	16.55	Increase		17.37	6
59525		Remove uterus after cesarean	8.54			8.54	6
59610		Vbac delivery	22.55			24.82	6
59612		Vbac delivery only	14.84			15.06	6
59614		Vbac care after delivery	15.96			16.34	6
59618		Attempted vbac delivery	25.23			27.78	6
59620		Attempted vbac delivery only	16.95			17.53	6
59622		Attempted vbac after care	18.11			18.93	6
63030		Low back disk surgery	11.10	12.11		11.10	3
63042		Low back disk surgery	16.56	17.27		16.56	3
67210		Treatment of retinal lesion	9.48			9.48	5
68820		Explore tear duct system	1.47	1.27			7

^a All CPT codes and descriptions copyright 1996 American Medical Association.
^b RVUs to remain interim in 1997.
^c CPT codes not used for 1997 Medicare payment, refer to sections II.D.2.b and IV.A.14 for explanation.

TABLE 1.—WORK RVU REFINEMENTS OF FIVE-YEAR REVIEW CODES COMMENTED ON IN RESPONSE TO THE MAY 3, 1996 PROPOSED NOTICE—Continued

CPT/HCPCS code ^a	MOD	Description	Proposed work RVU	Requested work RVU	RUC recommendation	1997 work RVU	Basis for decision
68825		Explore tear duct system	1.53	2.25			7
68830		Reopen tear duct channel	2.12	3.00			7
77420		Weekly radiation therapy	1.61	1.61		1.61	3,5
77425		Weekly radiation therapy	2.44	2.44		2.44	3,5
77430		Weekly radiation therapy	3.60	3.60		3.60	3,5
78806	26	Abcess imaging, whole body	0.73	0.86	0.86	0.86	3
85390	26	Fibrinolysis screen	0.37	0.75	0.75	0.37	1
88327	26	Immunoelectrophoresis assay	0.37	0.45	0.45	0.42	2
88173	26	Interpretation of smear	1.08	1.59		1.39	2
90801		Psychiatric interview	2.21	2.80	2.80	2.80	3
90820		Diagnostic interview	2.27	3.01	3.01	3.01	3
90842		Psychotherapy, 75-80 min	2.76	2.76	2.76	3.13	3
90843		Psychotherapy, 20-30 min	1.11	1.47	1.47	1.47	3
90844		Psychotherapy, 45-50 min	1.73	2.00	2.00	2.00	3
90853		Special group therapy	0.43	0.59	0.59	0.59	3
90855		Individual psychotherapy	1.82	2.15	2.15	2.15	3
90857		Special group therapy	0.43			0.63	4
90911		Anorectal biofeedback	0.89	2.15		0.89	5
92002		Eye exam, new patient	0.89	1.34		0.89	3
92004		Eye exam, new patient	1.34	1.67	1.67	1.67	3
92225		Special eye exam, initial	0.58	0.58		0.38	2
92226		Special eye exam, subsequent	0.50	0.50		0.33	2
92260		Ophthalmoscopy/dynamometry	0.50	0.50		0.20	2
93307		Echo exam of heart	0.78	1.06	1.06	0.92	2
93312		Echo transesophageal	1.90	2.39	2.39	2.20	2
93314		Echo transesophageal	0.95			1.25	4
93503		Insert/place heart catheter	2.43	3.02	2.43	2.91	2
93621	26	Electrophysiology evaluation	12.66			12.66	5
94150		Vital capacity test	0.11	0.11	0.07	0.07	3
99211		Office/outpatient visit, est.	0.17	Increase		0.17	3
99241		Office consultation	0.64	Inc pre-post		0.64	3
99242		Office consultation	1.28	Inc pre-post		1.29	3
99243		Office consultation	1.71	Inc pre-post		1.72	3
99244		Office consultation	2.56	Inc pre-post		2.58	3
99245		Office consultation	3.41	Inc pre-post		3.43	3
99281		Emergency dept visit	0.33	0.33	0.45	0.33	3
99282		Emergency dept visit	0.55	0.55	0.88	0.55	3
99283		Emergency dept visit	1.24	1.24	1.34	1.24	3
99284		Emergency dept visit	1.95	1.95	2.00	1.95	3
99285		Emergency dept visit	3.06	3.06	2.90	3.06	3
99321		Rest home visit, new patient	0.89	1.12		0.71	3
99322		Rest home visit, new patient	1.34	1.76		1.01	3
99323		Rest home visit, new patient	1.78	2.40		1.26	3
99331		Rest home visit, estab pat	0.45	1.05		0.60	3
99332		Rest home visit, estab pat	0.73	1.65		0.80	3
99333		Rest home visit, estab pat	1.18	2.25		1.00	3
99341		Home visit, new patient	1.34	1.12	1.12	1.12	3
99342		Home visit, new patient	2.00	1.76	1.76	1.58	3
99343		Home visit, new patient	2.67	2.40	2.4	2.09	3
99351		Home visit, estab patient	0.67	1.05	1.05	0.83	3
99352		Home visit, estab patient	1.10	1.65	1.65	1.12	3
99353		Home visit, estab patient	1.77	2.25	2.25	1.48	3
A2000		Chiropractor manip of spine	0.45			n/a	7
M0101		Cutting or removal of corne	0.37	0.45	0.45	0.43	2

IV. Discussion of Comments and Decisions

A. Discussion of Comments by Clinical Area

In this section, we discuss the comments we received on the approximately 133 codes of the more

than 1,000 codes for which we sought public comment. For the 800 or more codes for which we did not receive any comments, our proposed RVUs are being made final. We have sorted the comments into the same clinical areas we used in the May 3, 1996 notice. Within each clinical area, we discuss

the comments we received in CPT code order.

1. Integumentary System

CPT 10040 (Acne surgery (e.g., marsupialization, opening or removal of multiple milia, comedones, cysts, pustules)).

Comment: One commenter questioned the validity of the survey used to determine the work RVUs for CPT code 10040 (Acne surgery). The commenter stated that this survey was invalid due to insufficient volume (less than the requisite 30 respondents), the failure to take into account the more intensive work associated with the treatment of the typical patient, the absence of review of the Harvard data, and the fact that the data were seriously flawed. Data flaws resulted from discrepancies between the number of preservice and postservice visits and the time spent with the patient. Thus, the commenter believed that the work RVUs do not accurately reflect the true physician work involved in the treatment. The commenter included survey data to support the commenter's recommendation that the work RVUs for CPT code 10040 not be reduced to the proposed 0.80 work RVUs, but, rather, be reduced to 1.15 work RVUs from the current 1.34 work RVUs.

Response: Our proposed RVUs for CPT code 10040 were based on the results of the earlier survey data and the recommendations of the RUC to decrease the work RVUs from 1.34 to 0.80. After review of the survey data submitted by this commenter, we reevaluated the original data. We agree with the commenter's observations as to the quality and validity of these data. On further examination of the survey included with this comment, we agree with the recommendation that the work RVUs for CPT code 10040 be established at 1.15. Thus, the final work RVUs for this procedure will reflect this recommendation.

Final decision: The final work RVUs for CPT code 10040 are being established as 1.15.

CPT codes 15570 through 15576 (Formation of direct or tubed pedicles, with or without transfer).

Comment: There are four codes in this family that are used to report the formation of direct or tubed pedicles in different body areas. We received a comment that all of these codes are undervalued when compared to the corresponding adjacent flap codes: CPT code 14001 with 7.78 work RVUs, CPT code 14021 with 9.37 work RVUs, and CPT code 14040 with 7.18 work RVUs.

Response: In its initial recommendation to us, the RUC indicated that several old codes, CPT codes 15500 through 15515, which were valued by Harvard, were deleted in 1992 and replaced with CPT codes 15570 through 15576. The RUC also noted that

the new codes are misvalued and that no explanation had been received describing how the work RVUs of these codes were determined. Based on the survey results and the lack of rationale for the current work RVUs, the RUC recommended that the codes be valued at the same level established by Harvard for the original deleted codes.

We did not accept the RUC recommendations for two reasons. First, the RUC's understanding of the source of the work RVUs for the current codes was incorrect and, second, we believed the vignettes that were surveyed may have led to an overestimation of the work.

We were concerned that the survey respondents may have considered the work of debridement, fracture stabilization, initial emergency room evaluation, and immobilization of the hand, flap, and abdomen in their estimates of work. If so, the work RVUs would be excessive because those other services can be reported and paid separately. Therefore, we proposed to maintain the current work RVUs.

However, in light of the comments we received, we referred these codes to a refinement panel for review and discussion of the correct coding for these services.

Final decision: As a result of our analysis of the refinement panel ratings, we are assigning the final work RVUs listed below:

CPT code	HCFA proposed work RVUs	Final work RVUs
15570	3.75	8.39
15572	3.80	8.59
15574	3.85	8.97
15576	4.27	8.14

CPT code 15580 (Cross finger flap, including free graft to donor site).

Comment: One commenter stated that this code is undervalued when compared to CPT code 15240 (Skin full graft procedure) and CPT code 15100 (Skin split graft procedure). The commenter argued that the current work RVUs do not account for the intraservice time and work involved in harvesting and applying the skin graft. Survey data showed a median intraservice time of 90 minutes and 9.00 median work RVUs. The RUC recommended that the work RVUs be increased based on the survey results and its conclusion that the comparison to skin graft procedures was appropriate.

Response: We did not propose a change in the work RVUs for this code because we were concerned that the CPT is not clear regarding the separate reporting of a graft to the donor site, and the vignette may have led to an overestimation of work. There is a note in the introductory paragraphs for the flap codes that states: "Repair of donor site requiring skin graft or local flaps is considered an additional separate procedure." This contradicts the terminology of CPT code 15580 and could be a source of confusion.

We also were concerned that the survey respondents may have considered the work of debridement, initial emergency room evaluation, and immobilization of the fingers in their estimates of work. If so, the work RVUs are excessive because the other services can be reported separately. Therefore, we proposed to maintain the current work RVUs.

However, in light of the comments we received, we referred this code to a refinement panel for review and discussion of the correct coding of this service.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs from the 5.40 proposed work RVUs to 8.84 for CPT code 15580. We also will work with the CPT Advisory Committee and Editorial Panel to improve the clarity of the codes and the accompanying instructions in the CPT.

CPT code 15755 (Free flap (microvascular transfer)).

Comment: One commenter disagreed with our decision to maintain the current work RVUs of 28.33 for CPT code 15755 (Free flap (microvascular transfer)), instead of the requested change of 41.68 work RVUs. The commenter contended that the work RVUs are too low because of the amount of time and skill required for two surgeons to perform this highly complex procedure.

The commenter also stated that this surgical procedure requires two surgeons, with two separate teams working simultaneously for a period of several hours. According to the commenter, one surgeon and team prepare the recipient site, while the second surgeon and team is harvesting the free flap. This reduces the amount of time the patient is under anesthesia. Also, the surgeons have had additional training in performing microvascular procedures. Accordingly, the commenter believed that this procedure should reflect higher work RVUs for the

extra training and the amount of time spent performing the surgery.

Response: This code was referred by the RUC to the CPT Editorial Panel because the code lacked sufficient specificity for the RUC to establish appropriate work RVUs. The CPT Editorial Panel deleted this code and replaced it with three new CPT codes that were subsequently reviewed by the RUC. The RUC recommendations for the three new codes follow: for CPT code 15756, 33.23 work RVUs; for CPT code 15757, 33.23 work RVUs; and for CPT code 15758, 33.23 work RVUs. We reviewed and accepted these three recommendations. (See Table 3). We believe the new work RVUs are consistent with the commenter's concern that the work RVUs for the now deleted CPT code 15755 were too low.

Final decision: CPT code 15755 was deleted. We have reviewed and accepted the RUC recommendations of 33.23 work RVUs for CPT codes 15756, 15757, and 15758, respectively.

CPT codes 17000, 17001, 17002 (Destruction of benign facial and premalignant lesions) and CPT codes 17100, 17101, and 17102 (Destruction of benign non-facial lesions).

Comment: Several commenters objected to our proposed reductions to the work RVUs for this family of codes.

Response: The following is a summary of the background of our proposed reductions. In response to our original request for comments in 1995, an individual who underwent the destruction of skin lesions commented that the physician charges for these procedures were excessive. He stated that the application of liquid nitrogen is not time consuming and is an insignificant cost and that the physician work involved is minimal and does not require great skill. We forwarded the comment to the RUC. The specialty society recommended to the RUC that the work RVUs for these codes be maintained.

The RUC responded by indicating that the intention of the RUC and the 5-year review is to examine work RVUs. The RUC concluded that the comment we forwarded was based on charges the commenter incurred, a matter which is not directly related to the mission of the RUC. Therefore, the RUC recommended that the current work RVUs be maintained.

We acknowledge that part of the individual's comments related to the charges he incurred. However, we believe that the commenter raised a legitimate concern about the amount of

physician work when he made reference to the amount of time, physician involvement, and skill required to destroy a skin lesion. Therefore, we reexamined the work RVUs assigned to these codes and concluded they were too high when compared to other services on the fee schedule. CPT code 17000 (Destruction of a single benign facial or premalignant lesion) currently has work RVUs that are approximately 3.5 times higher than the work RVUs assigned to the destruction of a second similar lesion (CPT code 17001).

There are no other services with this variance. A more appropriate valuation of CPT code 17000 would set the initial lesion destruction at about twice the level of the work RVUs for a subsequent lesion. Therefore, we proposed 0.36 work RVUs. This downward revaluation of CPT code 17000 was supported by comparing the proposed work RVUs to the following reference services: CPT code 11700 (Debridement of nails), with 0.32 work RVUs, and CPT code 11050 (Paring of skin lesion), with 0.43 work RVUs. These services are comparable to CPT code 17000 in terms of set-up time, procedure time, risk, and aftercare.

We also believed that CPT code 17001 (Destruction of second and third benign facial or premalignant lesion, each) and CPT code 17002 (Destruction of over three lesions, each additional lesion) were overvalued. We proposed to reduce the work RVUs of these codes to 0.14. The proposed work RVUs for these codes would maintain approximately the same ratio to CPT code 17101, with 0.11 work RVUs, and CPT code 17102, also with 0.11 work RVUs, as CPT code 17000, with 0.64 work RVUs, now has to CPT code 17100, with 0.53 work RVUs, that is, about 1.2. In other words, we believed the current relative relationship of work RVUs for CPT code 17000 (Destruction of benign facial or premalignant lesions) to the work RVUs for the CPT code 17100 (Destruction of benign lesions in areas other than the face) is correct but the work RVUs are too high.

In order to properly evaluate not only the individual codes but also the relationship between the facial codes and codes for other body regions, we requested the refinement panel to consider CPT codes 17000, 17001, 17002, 17100, 17101, and 17102.

Final decision: As a result of our analysis of the refinement panel ratings, we are assigning the final work RVUs listed below:

CPT code	HCFA proposed work RVUs	Final work RVUs
17000	0.36	0.56
17001	0.14	0.19
17002	0.14	0.19
17100	0.53	0.53
17101	0.11	0.11
17102	0.11	0.11

These values will serve as the basis of the RVUs we propose for three temporary codes, HCPCS codes G0051, G0052, and G0053, that will be used for Medicare purposes to report the destruction of benign or premalignant lesions in any location. For a discussion of these codes, see section II.D.2.b. of this final rule.

2. Orthopedic Surgery

CPT code 29848 (Arthroscopy, wrist, surgical; with release of transverse carpal ligament).

Comment: A commenter objected to the 4.04 proposed work RVUs and requested an increase to 5.70. A comparison was made to CPT code 64761, the code used to report open carpal tunnel surgery. The work RVUs for CPT code 64721 are 3.99, whereas the work RVUs for CPT code 29848 are 4.04. The commenter argued that this differential does not sufficiently recognize the greater physician time and intensity required by CPT code 29848.

Response: Our 4.04 proposed work RVUs were based on a recommendation from the RUC that we accepted. However, in light of the comments we received, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we will increase the work RVUs from the 4.04 proposed work RVUs to 5.14 for CPT code 29848.

3. Otolaryngology and Maxillofacial Surgery

CPT code 21025 (Excision of bone (e.g., for osteomyelitis or bone abscess); mandible).

Comment: A commenter recommended an increase from 5.03 to 8.98 work RVUs based on a comparison to CPT code 24134 (Sequestrectomy (e.g., for osteomyelitis or bone abscess), shaft or distal humerus). The RUC noted that a rank order anomaly exists between this service and CPT code 21030 (Excision of benign tumor or cyst of facial bone other than mandible) and CPT code 21041 (Excision of benign cyst or tumor of mandible; complex). The

American Academy of Oral and Maxillofacial Surgeons' survey median for intraservice time is 120 minutes, which is significantly higher than CPT code 21041 and reference service CPT code 24134. Thus, the RUC recommended that the American Academy of Oral and Maxillofacial Surgeons' survey median of 8.92 work RVUs be adopted.

Response: We did not accept the RUC recommendation because we did not believe that the surveyed vignette represented the typical patient; further, it included services for which other codes can be reported. The vignette described a patient with intraoral and extraoral swelling and suppuration from multiple fistulae. Dissection of the inferior alveolar nerve is required, and hyperbaric oxygen is initiated. We believed this vignette described a patient with much more extensive infection than the typical patient. It was also our view that CPT code 21030, with 7.05 work RVUs, is more difficult than this procedure. Therefore, we proposed to retain the current 5.03 work RVUs for CPT code 21025. However, in light of the comments we received, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs from the 5.03 proposed work RVUs to 8.98 for CPT code 21025.

CPT code 21125 (Augmentation, mandibular body or angle; prosthetic material) and CPT code 21270 (Malar augmentation, prosthetic material).

Comment: We received one comment regarding CPT codes 21125 and 21270. The commenter disagreed with the proposed work RVUs assigned to these procedures, 8.22 and 12.10, respectively. The commenter submitted survey data supporting the commenter's contention that the rank order between these services is out of alignment. That is, procedures represented by CPT codes 21270 and 21125 are similar in preoperative and postoperative time and degree of difficulty to CPT code 21208 (Osteoplasty, facial bones; augmentation (autograft, allograft, or prosthetic implant)), with 9.56 work RVUs, and CPT code 21210 (Graft, bone; nasal, maxillary or malar areas (includes obtaining graft)), with 9.56 work RVUs.

CPT code 21125, according to this commenter, although similar to CPT code 21270, is more difficult in work, stress, and effort, and, also, requires longer intraservice time due to the location of the incision and

augmentation. Therefore, the commenter recommended reducing the work RVUs of CPT code 21270 to 9.56 and increasing the work RVUs of CPT code 21125 to 10.00.

Response: Based on our evaluation of the survey data submitted by the commenter, we concur with the recommendation. Although the sample size was relatively small for both CPT procedure codes, it did serve to document the rank order position for CPT codes 21125 and 21270. We believe the data provided sufficiently support the recommendations to increase the work RVUs for CPT code 21125 and decrease the work RVUs for CPT code 21270.

Final decision: We accepted this recommendation and will increase the work RVUs of CPT code 21125 to 10.00 and decrease the work RVUs of CPT code 21270 to 9.56.

CPT codes 31531, 31536, 31541, 31561, and 31571 (Operative laryngoscopies).

Comment: Commenters stated that CPT codes 31541, 31561, and 31571 are undervalued because of increased patient complexity and greater emphasis on acceptable vocal results.

Response: When the RUC initially reviewed these codes, it did not find the arguments compelling enough to suggest a change in work RVUs. However, the RUC identified rank order anomalies in the work RVUs for direct laryngoscopies and the corresponding procedures using an operating microscope. Among the five pairs of procedures, the difference in work RVUs for use of the operating microscope varies from -0.57 to +0.34 work RVUs. The RUC recommended retaining the 1995 work RVUs for the direct laryngoscopies (CPT codes 31530, 31535, 31540, 31560, and 31570) and adding a constant 0.40 work RVUs to arrive at the work RVUs for the corresponding procedures using an operating microscope (CPT codes 31531, 31536, 31541, 31561, and 31571).

We disagreed with the concept of increasing the work RVUs for procedures using an operating microscope and believed that the work RVUs for a procedure generally should be the same, regardless of the technique used. For example, CPT codes 17000 through 17105 (Destruction of skin lesions) are valued the same regardless of the method of destruction. Therefore, we proposed work RVUs that would be the same for both codes in a pair.

However, in light of the comments that objected to our rationale, we

referred these codes to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are assigning the final work RVUs listed below:

CPT code	HCFA proposed work RVUs	Final work RVUs
31531	3.39	3.59
31536	3.16	3.56
31541	4.13	4.53
31561	5.48	6.00
31571	3.87	4.27

4. Podiatry

HCPCS code M0101 (Cutting or removal of corns).

Comment: In response to our proposal to maintain the current 0.37 work RVUs, many commenters objected to our view that the vignette did not represent a typical patient and requested an increase to the RUC-recommended level of 0.45 work RVUs.

Response: In response to our original request for comments in 1995 as part of the 5-year review, a commenter recommended that we increase the work RVUs to 0.70 based on the view that this service is significantly more difficult than the work for CPT code 11050 (Paring or curettage of benign hyperkeratotic skin lesion with or without chemical cauterization (such as verrucae or clavi) not extending through the stratum corneum (e.g., callus or wart) with or without local anesthesia; single lesion), which is valued at 0.43 work RVUs, and CPT code 11700 (Debridement of nails, manual; five or less), which is valued at 0.32 work RVUs.

The RUC agreed that HCPCS code M0101 involves more work than treating 2 skin lesions and trimming 10 toenails and that this service is undervalued. However, it disagreed with the request for an increase to 0.70 and recommended 0.45 work RVUs.

We disagreed with these proposed work RVUs. The description of this service is "cutting or removal of corns, calluses and/or trimming of nails, application of skin creams and other hygienic and preventive maintenance care (excludes debridement of nail(s))."

In our May 3, 1996 proposed notice (61 FR 20022), we expressed our belief that the service most often reported by this code is trimming of nails, which is of less intensity than the work associated with cutting or removal of

corns and calluses. The typical service involves the less intense portions of this complex definition. The surveys conducted by the American Podiatric Medical Association used vignettes of patients with circulatory impairment and neurologic deficit accompanying systemic disease. The existence of these comorbid conditions may not accurately reflect the work RVUs for the typical patient.

Throughout the fee schedule, we base the work RVUs on the typical patient. The RUC survey methodology is also based on vignettes that are intended to describe the typical patient and service. To value the work of procedures based on atypical patients would skew the values assigned to those codes as well as their relationship to other codes. This is true even where, as here, current Medicare coverage is restricted to the more difficult patients with coexisting disease. In this case, we believed the vignette described an unusual or atypical patient; the RVU recommendation based on the vignette exceeds the current work RVUs. We believed that the usual service of trimming of nails is less work than the paring or curettage or other less common procedures such as benign hyperkeratotic skin lesions and, therefore, proposed to maintain the current 0.37 work RVUs.

However, in light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs from the 0.37 proposed work RVUs to 0.43 for HCPCS code M0101.

CPT code 28010 (Tenotomy, subcutaneous, toe; single).

Comment: This code, with 2.97 work RVUs, was identified by the RUC as a potentially overvalued service but it did not submit recommended RVUs in time for publication in the May 3, 1996 proposed notice. The RUC subsequently recommended that the work RVUs be reduced to 2.71 as it is similar in work to CPT code 28060 (Tenotomy, subcutaneous, single, each digit), with 2.71 work RVUs. All four components of physician work (time, mental effort and judgment, technical skill, and physical effort and stress) are the same for these soft tissue operations.

Response: We agree with this comparison and recommendation.

Final decision: The final work RVUs for CPT code 28010 are changed to 2.71.

CPT code 28114 (Osteotomy, complete excision; all metatarsal heads, with partial proximal phalangectomy, excluding first metatarsal (Clayton type procedure)).

Comment: Last year, the RUC submitted an interim recommendation that the current work RVUs for CPT code 28114 (Removal of metatarsal heads) be maintained until the American Podiatric Medical Association presented recommendations for this code at the February 1996 RUC meeting. We agreed and published proposed RVUs of 7.16 for CPT code 28114. We subsequently received a comment from the RUC recommending that the work RVUs for CPT code 28114 be increased to 8.65. In a survey of 66 podiatrists, 10.60 median work RVUs were recommended for CPT code 28114, suggesting that the current 7.16 work RVUs for this code are too low.

The basis for the RUC's recommendation was comparison of this service to CPT code 28113 (Osteotomy, complete excision; fifth metatarsal head), with 4.09 work RVUs. The RUC believed that the intraservice work per unit of time of the two services should be equal. The RUC then used the surveyed intraservice time of CPT code 28114 to calculate the recommended 8.65 work RVUs.

Response: We agree with the RUC recommendation.

Final decision: We are assigning 8.65 work RVUs to CPT code 28114. Because the public has not had an opportunity to comment on these work RVUs, we will consider them to be interim RVUs and will accept comments on our revision.

5. Cardiology and Interventional Radiology

CPT code 37201 (Transcatheter therapy, infusion for thrombolysis other than coronary).

Comment: A commenter objected to our proposed reduction in work RVUs from 7.25 to 5.90, which the commenter believed was based on the use of an incorrect reference service.

Response: The RUC identified this code as a potentially overvalued service, in part, because of an increasing frequency of claims since 1992. The current work RVUs are 7.25. After reviewing the issue, the RUC agreed with the Society for Cardiovascular and Interventional Radiology that the frequency of claims for this code is growing because thrombolytic infusion is an effective therapy for thrombosed arteries and grafts, allowing physicians

to save patient limbs. The service is still a relatively new technology, and the RUC believed that it is appropriately valued.

We disagreed with this recommendation. Unlike CPT code 34111 (Removal of arm artery clot), a similar open procedure with a 90-day global period, CPT code 37201 is billed with an evaluation and management code and a supervision and interpretation code. Therefore, we believe that the work RVUs for CPT code 37201 should approximate the work RVUs for CPT code 34111 (7.16) minus the work RVUs for a level-two subsequent hospital visit (0.88) and the work RVUs for the radiological supervision and interpretation, CPT code 75894 (1.31). We proposed 5.00 work RVUs for CPT code 37201.

In light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are decreasing the work RVUs from the current 7.25 work RVUs to our proposed 5.00 work RVUs for CPT code 37201.

CPT code 93307 (Echocardiography, real-time with image documentation (2D) with or without M-Mode recording; complete).

Comment: Several commenters objected to our proposal to maintain the current 0.78 work RVUs and recommended that we accept the RUC recommendation of 1.06 work RVUs. They argued that the field of echocardiography has changed significantly in the past 5 years, in both clinical utility and diagnostic complexity. Although the technical innovations of the past 5 years have made this an easier service to perform, the patients that require this service are more complex, which has resulted in an increased amount of physician work. The physicians are viewing and making judgments on constantly moving objects, which increases the possibility of misinterpretation. Often this service is furnished in acute care settings or emergency situations, which increase physician stress. The information derived from this study is used in the development of critical management decisions. The risk of misdiagnosis, in both emergent and nonemergent situations, can lead to potentially fatal events.

Response: The current work RVUs for echocardiography are 0.78. The RUC agreed that the code is undervalued based on the amount of physician work

that is required to perform this study and the increased amount of information that can now be derived from echocardiography. However, the RUC believed that the specialty society recommendation of 1.48 work RVUs was too high and recommended the Harvard value for this procedure, which was 1.06 work RVUs.

We did not agree that echocardiography is undervalued. We believed that technical innovations have made physician interpretations of echocardiograms less difficult than in the past. We also believed that some of the work that is being reported as physician work is actually the work of technicians. For example, the description of intraservice work provided to the RUC implies that physicians review entire tapes and analyze and measure the structure and dynamics of the chambers, valves, and great vessels. It is our understanding that much of this information is prepared by technicians for subsequent review by physicians. We considered the work of technicians to be a practice expense that is reflected in the practice expense RVUs, not the physician work RVUs. We also questioned whether the vignette surveyed by the specialty society, which describes an echocardiogram performed on an acutely ill patient in need of emergency echocardiography, represented the typical patient requiring echocardiography. Medicare claims data from calendar year 1995 indicate that 56 percent of claims for CPT code 93307 are billed with place of service as office or outpatient hospital and 49 percent are billed with place of service as inpatient hospital. This suggested that the typical patient is not critically ill or that there is a bimodal distribution of patients. Therefore, we did not believe that an increase in work RVUs was justified.

However, in light of the comments we received, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs from the 0.78 proposed work RVUs to 0.92 for CPT code 93307.

CPT code 93312 (Echocardiography, real-time with image documentation (2D) (with or without M-Mode recording), transesophageal; including probe placement, image acquisition, interpretation and report).

Comment: Several commenters objected to our 1.90 proposed work RVUs and recommended that we accept

the RUC recommendation of 2.39. The commenters argued that transesophageal echocardiography is undervalued in comparison to other services that require similar physician work effort and that performance of this procedure requires considerable mental effort. As described above in the discussion of CPT code 93307, the heart is constantly moving, increasing the possibility of misinterpretation, which could lead to misdiagnosis. There is an added technical skill required by the physician to insert the probe into the esophagus and the stomach of a critically ill patient. This procedure is often performed in the emergency setting while the patient is under conscious sedation.

Response: Before submitting its original recommendation to us, the RUC reviewed Harvard Phase III data that show 2.76 work RVUs (adjusted to be on a scale equivalent to 1995 work RVUs) for upper gastrointestinal endoscopy (CPT code 43235), the reference code being used in this comparison. These work RVUs are higher than both the existing 1.57 work RVUs and the 2.39 work RVUs recommended by the specialty society. The RUC agreed with the specialty society rationale and recommended an increase to 2.39 work RVUs.

For reasons similar to those described above for CPT code 93307, we did not believe that transesophageal echocardiography was undervalued. A refinement panel considered this service in 1993, and, based on the ratings of the panel, we did not increase the work RVUs. We did not find the new evidence submitted by the RUC to be sufficient to warrant an increase in work RVUs.

However, in light of the comments we received, we referred this code to a refinement panel for review. As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs for CPT code 93312 from 1.90 to 2.20.

During the refinement panel discussions, the coding of other transesophageal echocardiography services was discussed. CPT includes three codes for transesophageal echocardiography. The codes are CPT code 93312 (Echocardiography, real time with image documentation (2D) (with or without M-mode recording), transesophageal; including probe placement, image acquisition, interpretation and report), CPT code 93313 (Echocardiography, real time with image documentation (2D) (with or

without M-mode recording), transesophageal; placement of transesophageal probe only), and CPT code 93314 (Echocardiography, real time with image documentation (2D) (with or without M-mode recording), transesophageal; image acquisition, interpretation and report only).

We received no comments as part of the 5-year review that the work RVUs for the code used to report only the placement of a transesophageal probe (CPT code 93313) should be revised. Therefore, we are maintaining the current 0.95 work RVUs. By subtracting these work RVUs from the new work RVUs for CPT code 93312, we can calculate new work RVUs for CPT code 93314, which is used to report image acquisition, interpretation and report only. The result is 1.25 work RVUs.

It was necessary to calculate these RVUs because the refinement panel did not specifically address CPT code 93314. However, it was clear during the discussions of the refinement panel that the service considered by the American College of Cardiology and the American Society of Echocardiography to be undervalued was the image acquisition, interpretation and report and not the probe placement.

We also revised the relationship of the three codes in this family so that the work RVUs for CPT code 93312 equal the sum of the work RVUs for CPT codes 93313 and 93314. When we first assigned work RVUs to these codes, we assigned 20 percent more work RVUs to both CPT codes 93313 and 93314 because two different physicians were often involved in the procedure and each would have a certain amount of preservice and postservice work that could not be considered duplicative.

Consequently, the sum of these two codes exceeded the work RVUs assigned to CPT code 93312. We now believe that most transesophageal echocardiographies are performed by a single physician. Therefore, we have adjusted the work RVUs so that the work RVUs for CPT code 93312 equal the sum of the work RVUs for CPT codes 93313 and 93314.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs for CPT code 93312 from the 1.90 proposed work RVUs to 2.20. In addition, the work RVUs for CPT codes 93313 and 93314 are established as 0.95 and 1.25, respectively, based on the above decisions.

CPT code 93503 (Insertion and placement of flow directed catheter

(e.g., Swan-Ganz) for monitoring purposes).

Comment: Several commenters objected to our proposal to maintain the current 2.43 work RVUs. Our proposal was based, in part, on acceptance of a RUC recommendation to maintain current work RVUs. Several specialty societies argued that the physician work involved in a Swan-Ganz catheter was greater than the work associated with a right heart catheterization (CPT code 93501), with 3.02 work RVUs.

The commenters stated that as compared to the right heart catheter, which is usually inserted in the catheter laboratory, the Swan-Ganz catheter is usually inserted when the patient is in an unstable condition. Proper positioning of the acutely ill patient for insertion is usually more difficult. In addition, the physician usually inserts the Swan-Ganz catheter without the aid of an imaging device, in contrast to the right heart catheter, making location of the tip of the catheter significantly more challenging.

Moreover, after insertion, the physician must interpret data quickly and make immediate important judgments. Finally, the commenters argued that the risk of complications with the Swan-Ganz catheter is considerably greater than with the right heart catheter.

Response: In light of the comments we received, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs from 2.43 to 2.91 for CPT code 93503.

6. General Surgery, Colon and Rectal Surgery, and Gastroenterology

We received no comments on these codes. Therefore, we will finalize all of the proposed work RVUs for the general surgery, colon and rectal surgery, and gastroenterology codes.

7. Urology

CPT code 50590 (Lithotripsy, extracorporeal shock wave).

Comment: Several commenters objected to our proposed reduction in work RVUs from 9.62 to 7.13. They objected to our argument that the work of extracorporeal shock wave lithotripsy is more comparable to the work of evaluation and management services than surgical services.

Response: We referred this code to the RUC last year as a potentially overvalued service. The RUC reviewed it and concluded that it is similar to a

surgical procedure in that anesthesia is used and a urologist is always present. Based on its analysis of survey data showing a median intraservice time of 80 minutes, the RUC concluded that the current work RVUs should not be reduced.

We disagreed with the RUC recommendation to maintain the 9.62 work RVUs. We believed the intraservice intensity of extracorporeal shock wave lithotripsy is more comparable to evaluation and management services than traditional surgical services. For example, the current 9.62 work RVUs are higher than those for CPT code 49000 (Exploratory laparotomy, exploratory celiotomy with or without biopsy(s) (separate procedure)), with 8.99 work RVUs. We proposed 7.13 work RVUs for CPT code 50590 based on 90 minutes of critical care (CPT codes 99291 and 99292), with work RVUs of 3.64 and 1.84, respectively, and three mid-level office visits (CPT code 99213), with 0.55 work RVUs.

However, in light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing our proposed work RVUs of 7.13 for CPT code 50590 to 8.79.

8. Gynecology

CPT code 56312 (Laparoscopic lymphadenectomy).

Comment: The current work RVUs assigned to this code are 12.06. It was referred to the RUC as part of the 5-year review. The RUC recommended that the 12.06 work RVUs be maintained. In our May 3, 1996 proposed notice (61 FR 20006), we agreed with this recommendation. A commenter objected to the retention of 12.06 work RVUs for this service. The commenter noted a discrepancy between the work RVUs for comparable procedures performed laparoscopically or via open laparotomy. The commenter stated that we have indicated that these procedures should be valued the same, regardless of the approach for their performance. The commenter agreed with this premise and recommended adjustment of the work RVUs for this laparoscopic procedure, which the commenter believed is undervalued when compared to its counterpart performed at laparotomy. The counterpart code, CPT code 56870, is assigned 12.10 work RVUs. Thus, the commenter

recommended that the work RVUs for CPT code 56312 be increased from 12.06 to 12.10.

Response: In our May 3, 1996 proposed notice (61 FR 20046), we announced our intention to reexamine the relationship between endoscopic and comparable open procedures before the next 5-year review. This will provide the opportunity to address the discrepancy in work RVUs between CPT codes 56312 and 56870. We are retaining the existing 12.06 work RVUs for laparoscopic lymphadenectomy in spite of the slight difference in work RVUs between the two procedures.

Final decision: We are making final the proposed work RVUs for CPT code 56312.

CPT code 57265 (Combined anteroposterior colporrhaphy; with enterocele repair).

Comment: This code is used to report complex vaginal repairs. A commenter stated that their recommendation for this code was mistakenly not submitted to the RUC. The commenter believed that the current 7.36 work RVUs undervalue the service in comparison to CPT code 57260 (Combined anteroposterior colporrhaphy without enterocele repair), which is assigned 7.59 work RVUs. Since CPT code 57265 includes CPT code 57260 plus CPT code 57268 (Repair of enterocele, vaginal approach (separate procedure)), with 6.14 work RVUs, the commenter recommended 10.66 work RVUs for CPT code 57265. These work RVUs reflect the sum of the work RVUs for CPT code 57260 and, with the application of the multiple surgical rules, one-half of the work RVUs for CPT code 57268.

Response: The current work RVUs for CPT code 57265 represent an obvious rank order anomaly within this family of procedures.

Final decision: We accept the recommendation of 10.66 work RVUs for CPT code 57265.

CPT code 58200 (Total abdominal hysterectomy including partial vaginectomy with para-aortic and pelvic lymph node sampling, with or without removal of tube(s), with or without removal of ovary(s)).

Comment: Several commenters stated that the 20.34 work RVUs currently assigned to CPT code 58200 exceed the 13.00 work RVUs currently assigned to CPT code 58150 (Total abdominal hysterectomy (corpus and cervix), with or without removal of tube(s), with or without removal of ovary(s)) by approximately 56 percent, accurately reflecting the difference in physician

work. The commenters objected to our proposal to increase the work RVUs assigned to CPT code 58150 to 14.30 without also increasing the work RVUs assigned to CPT code 58200. Therefore, to maintain what they believed to be the correct relationship between these two codes, the commenters recommended that the work RVUs for CPT code 58200 be increased from 20.34 to 22.37.

Response: The RUC reviewed both CPT codes 58150 and 58200. We received and agreed with the RUC's recommendations to increase the work RVUs for CPT code 58150 and maintain the work RVUs for CPT code 58200. We did not refer the codes to the RUC with the expectation that their relative relationship would be maintained. Rather, we referred them to the RUC with the expectation that the appropriateness of the work RVUs currently assigned to each code would be evaluated. We believe the RUC appropriately evaluated both codes, and we do not believe the commenters provided sufficient rationale to increase the work RVUs for CPT code 58200.

Final decision: We are maintaining the current 20.34 work RVUs for CPT code 58200.

9. Neurosurgery

CPT code 63030 (Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and/or excision of herniated intervertebral disk; one interspace, lumbar) and CPT code 63042 (Laminotomy (hemilaminectomy), with decompression of nerve root(s), including partial facetectomy, foraminotomy and/or excision of herniated intervertebral disk, re-exploration, lumbar).

Comment: The American Academy of Orthopedic Surgeons objected to our proposed reductions in the work RVUs for CPT code 63030 from 12.11 to 11.10 and for CPT code 63042 from 17.27 to 16.56. The RUC recommendations for these work RVUs, which we accepted, were based on the recommendations of the American Academy of Neurological Surgeons/Congress of Neurological Surgeons. The American Academy of Orthopedic Surgeons stated that the methodology used by the American Academy of Neurological Surgeons to develop the recommended work RVUs has not been validated. The American Academy of Orthopedic Surgeons also stated these codes were not identified as

overvalued procedures by the carrier medical directors, AMA trend analysis, AMA intraservice work per unit of time analysis, nor by a comparison of Harvard with the 1992 work RVUs. The American Academy of Orthopedic Surgeons noted a study done for them ("The Abt Restudy of Physician Work Values for Orthopedic Surgery") further stated that the current relationship between CPT codes 63030 (with 12.11 work RVUs), 63042 (with 17.27 work RVUs), and 63047 (with 12.76 work RVUs) more properly represents the work differential between these codes and that the proposed work RVUs provide an incentive for upcoding.

Response: We discussed the American Academy of Neurological Surgeons/Congress of Neurological Surgeons' recommendations in detail in our May 3, 1996 proposed notice (61 FR 20025 through 20027). The American Academy of Neurological Surgeons/Congress of Neurological Surgeons' approach, which in general HCFA and the RUC found to be reasonable for these codes, focused on intensity and time data gathered from detailed operative logs. The American Academy of Orthopedic Surgeons stated that the approach has not been validated, but it does not provide compelling evidence why the approach is invalid for these codes and why the relationship between the current work RVUs is more accurate than the proposed work RVUs.

We also note that the Abt study done for the American Academy of Orthopedic Surgeons contains 12.34 work RVUs for CPT code 63030 and 13.20 work RVUs for CPT code 63042. These values would alter the current work relationship between CPT codes 63030, 63042, and 63047 significantly more than the RUC-recommended work RVUs. Given the differing work RVUs in the two studies, we believe the prudent action is to accept the RUC recommendations that reflect the judgment of all the major specialties of medicine.

Final decision: We are making final our proposed work RVUs of 11.10 for CPT code 63030 and 16.56 for CPT code 63042.

10. Ophthalmology

CPT Codes 68820, 68825, and 68830: (Probing of nasolacrimal duct).

Comment: These three codes have been deleted and replaced by three new codes in CPT 1997. The three new codes and the RUC recommendations for them are: CPT code 68810 (1.27 work RVUs);

CPT code 68811 (2.25 work RVUs); and CPT code 68815 (3.00 work RVUs).

Response: Because the development of new codes was initiated by the 5-year refinement and because the codes describe pediatric services for which we are particularly interested in developing appropriate work RVUs, we reviewed them in the context of the 5-year review. As part of the 5-year refinement, we forwarded to the RUC comments on two codes (CPT codes 68825 and 68830) that are part of the following existing family of codes for probing of nasolacrimal ducts:

CPT Code	Descriptor
68820	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral.
68825	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; requiring general anesthesia.
68830	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent.

The RUC reviewed a recommendation to increase the work RVUs for CPT code 68830 and concluded that the work RVUs should not be increased. We reviewed and accepted that recommendation.

The RUC reviewed a recommendation to increase the work RVUs for CPT code 68825 from 1.53 to 2.50 and concluded there was a problem with the current descriptor in that unilateral and bilateral procedures were valued the same. Therefore, the code was referred to the CPT Editorial Panel. In our May 3, 1996 proposed notice (61 FR 20009), we noted that the code was referred to CPT and proposed maintaining the current work RVUs.

Because the code in question was part of a family of codes, the deletion of the phrase "unilateral or bilateral" by the CPT Editorial Panel affected all the codes in the family. Subsequently, the revised family of codes was referred from the CPT Editorial Panel back to the RUC.

The codes for probing of a nasolacrimal duct (CPT codes 68820, 68825, and 68830) have been deleted and replaced with new codes (CPT codes 68810, 68811, and 68815) to indicate that these codes should be used to report unilateral procedures. Bilateral procedures will be reported using the code with the -50 modifier.

The RUC accepted the work RVU recommendation of 1.27 for CPT code

68810, presented by commenters practicing ophthalmology and optometry, that was based on budget neutral calculations assuming that 31 percent of procedures represented by CPT code 68810 (Probing of nasolacrimal duct, with or without irrigation) are performed bilaterally and would be subject to the multiple surgery reduction.

The RUC also accepted the American Academy of Ophthalmology's request to increase the work RVUs for CPT code 68811 (Probing of nasolacrimal duct, with or without irrigation; requiring general anesthesia) from 1.53 to 2.25. The American Academy of Ophthalmology estimated that 62 percent of these procedures are performed unilaterally. The preservice, intraservice, and postservice work of

this service were considered to be comparable to CPT code 67345 (Chemodenervation of extraocular muscle), with 2.91 work RVUs.

CPT code 68815 (Probing of nasolacrimal duct, with or without irrigation; with insertion of tube or stent) is performed when CPT code 68811 has failed. The RUC agreed that the work RVUs for this service should be increased from 2.12 to 3.00 to maintain relativity with CPT codes 68810 and 68811. This increase was considered to be justified by the degree of preservice, intraservice, and postservice work involved in this procedure; the complications of intranasal bleeding; the possibility of aspirating blood intraoperatively or postoperatively; and the morbidity

1996 CPT CODES AND WORK RVUS

CPT code	Descriptor	1996 work RVUs	Recommended work RVUs
68820	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral.	1.47	Not applicable; code deleted.
68825	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; requiring general anesthesia.	1.53	Not applicable; code deleted.
68830	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent.	2.12	Not applicable; code deleted.

1997 CPT CODES AND WORK RVUS

CPT code	Descriptor	1996 work RVUs	Recommended work RVUs
68810	Probing of nasolacrimal duct, with or without irrigation	1.27	Not applicable; new code.
68811	Probing of nasolacrimal duct, with or without irrigation; requiring general anesthesia.	2.25	Not applicable; new code.
68815	Probing of nasolacrimal duct, with or without irrigation; with insertion of tube or stent.	3.00	Not applicable; new code.

Final decision: We have reviewed and accepted the RUC recommendation to decrease the RVUs for deleted CPT code 68820, which will now be reported with new CPT code 68810, from 1.47 to 1.27 work RVUs. As a result of our analysis of the refinement panel ratings, we increase the work RVUs for deleted CPT code 68825, which will now be reported with new CPT code 68811, from 1.53 to 2.25 work RVUs. For deleted CPT code 68830, which will now be reported with new CPT code 68815, we increase the work RVUs from 2.12 to 3.00 work RVUs.

CPT code 92002 (Ophthalmological services; medical examination and evaluation with initiation of diagnostic and treatment program; intermediate, new patient).

Comment: Two commenters objected to linking the intermediate new patient eye examination, CPT code 92002, with the a level-two new patient office visit (CPT code 99202) and recommended linking CPT code 92002 with a level-three new patient office visit (CPT code 99203). This would result in an increase from our proposed 0.88 work RVUs to 1.34 work RVUs. The commenters stated that a level-two service is the lowest level evaluation and management service requiring a physician's presence and that our proposal would force providers to bill at level-two for all less than comprehensive eye examinations. They pointed to the times reported in the RUC surveys as support for a linkage to a level-three evaluation and management service; the RUC surveys

associated with drawing metallic probes through the nasolacrimal system.

We accepted the RUC's recommendation for CPT code 68810. For CPT codes 68811 and 68815, we believed the recommended work RVUs were too high in light of the fact that most of the procedures will be performed bilaterally resulting in payment based on 150 percent of the listed work RVUs.

Because these codes were originally commented on as part of the 5-year refinement, we would like to assign final work RVUs effective January 1, 1997. Therefore, we referred these codes to a refinement panel for a full discussion of the issues.

The following tables identify the codes and work RVUs for 1996 and 1997:

reported intraservice times of 24 minutes for CPT code 99203 and 20 minutes for CPT code 92002.

Response: The current work RVUs for CPT code 92002 are 1.01. We referred this code to the RUC last year because we believed it was overvalued compared to the evaluation and management services for new patient office visits. The RUC agreed with us and recommended that we assign the same work RVUs to the intermediate new patient eye examination (CPT code 92002) as we would assign to a level-two new patient office visit (CPT code 99202).

We disagree with the arguments that a level-two service is the lowest level evaluation and management service requiring a physician's presence and

that our proposal would force providers to bill at level-two for all less than comprehensive eye examinations. First, every level of new patient office visits requires a physician's presence. Second, there are only two levels of eye examinations: intermediate and comprehensive. Thus, by definition, every eye examination that is less than comprehensive must be billed as an intermediate eye examination.

We reviewed the survey data and have concluded that the data support our proposal. The median intraservice time for CPT code 92002 was 20 minutes. This is the typical time of a level-two new patient office visit. The work RVUs we have assigned to a level-two new patient visit are based on 20 minutes of intraservice time, not the RUC survey time. The typical time of a level-three new patient office visit is 30 minutes which is 50 percent greater than the time of a level-two visit and 50 percent greater than the surveyed time of CPT code 92002. We believe that acceptance of the comment would result in work RVUs that are inconsistent with all other evaluation and management services. To increase the work RVUs above the current 1.01 work RVUs by more than 30 percent is clearly inconsistent with our conclusion, as well as that of the RUC, that the current work RVUs are too high.

Final decision: We make final our proposed 0.88 work RVUs for CPT code 92002.

CPT code 92004 (Ophthalmological services: medical examination and evaluation with initiation of diagnostic and treatment program; comprehensive, new patient, one or more visits).

Comment: Two commenters noted that the 1.34 work RVUs for CPT code 92004 were incorrectly calculated.

Response: The work RVUs published in the May 3, 1996 proposed notice (61 FR 20039) were a technical error. We agree with the commenter that the correct work RVUs are 1.67, as recommended by the RUC.

Final decision: We correct the work RVUs to 1.67.

CPT codes 92225 and 92226 (Ophthalmoscopy, extended, with retinal drawing (eg, for retinal detachment, melanoma), with interpretation and report; initial and subsequent).

Comment: Several commenters objected to our proposal to reduce the work RVUs for these codes to 0.38 and 0.33, respectively. They recommended that the current work RVUs of 0.58 and 0.50 be maintained and indicated that

they would be willing to work with us to develop more detailed medical necessity review criteria for these procedures.

Response: Carrier medical directors identified these two codes as potentially overvalued, and we referred the codes to the RUC. The current work RVUs are 0.58 and 0.50, respectively. The carrier medical directors recommended 0.38 and 0.33 and offered the following justification: "The records that we have reviewed on this have shown no more diligence or attentiveness to the drawing than what any physician draws when describing a physical finding."

The RUC reviewed the comment and intended to refer the code to the CPT Editorial Panel for further clarification. In our May 3, 1996 proposed notice (61 FR 20038 through 20039), we erroneously noted that the codes were referred to CPT and proposed maintaining the current work RVUs. However, the codes were never referred to CPT.

At a subsequent meeting of the RUC, the American Academy of Ophthalmology recommended that, when properly performed, these procedures are appropriately valued. It attempted to develop a coding change proposal to address the possible abuse scenarios cited by the commenter. The American Academy of Ophthalmology has now concluded that coding changes would not be sufficient to solve this problem.

While we appreciate the willingness of both specialty societies to work with us to develop more detailed medical necessity review criteria for these procedures, we do not believe that the carrier medical directors' recommendations for reduced work RVUs have been fully addressed.

Since the codes will not be referred to the CPT and since they were originally commented on as part of the 5-year refinement, we referred the codes to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are decreasing the work RVUs for CPT codes 92225 and 92226 from their current 0.58 and 0.50 work RVUs to 0.38 and 0.33 work RVUs, respectively. These represent the work RVUs for appropriately performed retinal drawings. We plan to work with the specialty societies to develop more detailed medical necessity review criteria for these procedures.

CPT code 92280 (Ophthalmodynamometry).

Comment: Several commenters recommended that the current 0.50 work RVUs be maintained.

Response: Carrier medical directors originally identified this code as potentially overvalued, and we referred the code to the RUC. The current work RVUs are 0.50. The carrier medical directors recommended 0.20 work RVUs and offered the following justification: "Ophthalmodynamometry gives an approximate measurement of the relative pressures in the central retinal arteries and is an indirect means of assessing carotid artery flow on either side. The test consists of exerting pressure on the sclera with a spring plunger while observing with an ophthalmoscope the vessels emerging from the optic disks. This is included in 93875 which has an RVU of 0.16."

The RUC reviewed the comment and referred the code to the CPT Editorial Panel with a recommendation that consideration be given to deleting the code. The RUC stated that this service is rarely performed and may be an obsolete procedure. In our May 3, 1996 proposed notice (61 FR 20038 through 20039), we noted that the code was referred to CPT and proposed maintaining the current work RVUs. However, the code was never referred to CPT.

The American Academy of Ophthalmology's CPT committee decided against recommending deletion of this code because it is still being used frequently by some groups of ophthalmologists. (In 1995, we received over 8,000 claims.) The American Academy of Ophthalmology stated that this code is more like CPT code 76519 (Ophthalmic biometry by ultrasound echography, A-scan; with intraocular lens power calculation), with 0.54 work RVUs, than the newer Doppler-type technology that has replaced it. For example, the service is performed entirely by a physician face-to-face with the patient, unlike Doppler, which involves more technician time. The RUC and the American Academy of Ophthalmology recommended, therefore, that the current 0.50 work RVUs be retained.

We do not believe that the carrier medical directors' recommendations for reduced work RVUs have been fully addressed. Since the code will not be referred to the CPT and since the code was originally commented on as part of the 5-year refinement, we referred the code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings,

we are decreasing the work RVUs for CPT code 92280 from 0.50 to 0.20.

11. Imaging

CPT code 78806 (Radiopharmaceutical localization of abscess; whole body).

Comment: A commenter indicated that we made an apparent technical error by assigning the same work RVUs to CPT codes 78805 and 78806. The correct work RVUs for CPT codes 78805 and 78806 should be 0.73 and 0.86, respectively.

Response: We agree that a technical error was made.

Final decision: CPT code 78806 is corrected to 0.86 work RVUs.

12. Cardiothoracic and Vascular Surgery

CPT code 35700 (Reoperation for vascular infrainguinal bypass grafts) and CPT codes 35556, 35566, 35571, 35583, 35585, 35587, 35656, 35666, and 35671 (Vascular infrainguinal bypass grafts).

Comment: As part of the 5-year refinement, the RUC examined several of the codes for infrainguinal bypass procedures. In addition, we received a request from the Society for Vascular Surgery/International Society for Cardiovascular Surgery to reexamine the work RVUs that were assigned to the

nine CPT codes that can be reported with the reoperation CPT code 35700.

The descriptor for CPT code 35700 reads: "Reoperation, femoral-popliteal or femoral (popliteal)-anterior tibial, posterior tibial, peroneal artery or other distal vessels, more than one month after original operation." This code is to be listed separately in addition to any one of the nine CPT codes for the primary procedure (CPT codes 35556, 35566, 35571, 35583, 35585, 35587, 35656, 35666, or 35671). The reoperation code was new in 1994. At that time, we estimated that approximately 22 percent of the primary procedures represent reoperations for which the new add-on code would be used in the future. To maintain the same number of work RVUs in 1994, we reduced the work RVUs of the primary procedures by approximately 3.5 percent.

The Society for Vascular Surgery/International Society for Cardiovascular Surgery believed that an analysis of current data would prove that our estimates on the probable number of reoperations were too high. They requested that we make appropriate adjustments to the work RVUs based on actual utilization of the code.

Response: Our analysis of the data revealed the following:

In 1994, CPT code 35700 was billed in conjunction with the primary procedure codes listed above 3.47 percent of the time. There were 67,482 primary services performed in 1994 and 2,343 reoperations (CPT code 35700).

In the first three quarters of 1995, CPT code 35700 was billed in conjunction with the above listed primary procedure codes 4.12 percent of the time. There was a total of 44,684 primary services performed while 1,839 reoperations (CPT code 35700) were billed. These data confirm that our original estimates regarding the utilization of the reoperation CPT code 35700 were too high.

Final decision: The following table identifies the nine codes, lists the 1996 work RVUs and lists the corrected work RVUs based on the actual utilization of the reoperation code. The differences in work RVUs between 1996 and the corrected work RVUs are also shown. Some of these codes were reviewed as part of the 5-year refinement, and we accepted the RUC recommendations for them. To determine the final work RVUs, we added the differences in work RVUs between 1996 and the rescaled work RVUs to either the RUC-recommended work RVUs or the current work RVUs for codes that were not part of the 5-year review.

CPT code	1996 work RVUs	Corrected work RVUs	Difference	5-year RUC recommendations	Final work RVUs
35556	15.47	15.94	0.47	19.37	19.84
35566	20.21	20.76	0.55	24.45	25.00
35571	16.66	17.14	0.48	None	17.14
35583	15.97	16.44	0.47	20.03	20.50
35585	19.05	19.60	0.55	25.05	25.60
35587	17.07	17.55	0.48	None	17.55
35656	13.86	14.44	0.58	17.84	18.42
35666	15.97	17.60	1.63	None	17.60
35671	12.18	13.39	1.21	None	13.39

CPT code 35681 (Bypass graft, composite).

Comment: We received comments from the Society for Vascular Surgery/International Society for Cardiovascular Surgery and the American College of Surgeons that provided the following explanation for the RUC's recommendations, which the commenters believed was an error. The American College of Surgeons identified CPT code 35681 as an overvalued

service based on an Abt survey of surgical procedures. In its 5-year review letter dated February 3, 1995, the American College of Surgeons recommended a decrease in work RVUs from 8.00 to 3.93. A RUC work group endorsed this decrease with virtually no discussion, and the full RUC accepted it by consent decree.

We accepted the recommended decrease in work RVUs in the May 3, 1996 proposed notice (61 FR 20028).

The Society for Vascular Surgery/International Society for Cardiovascular Surgery believed that the American College of Surgeons' data identifying CPT code 35681 as overvalued were faulty because the American College of Surgeons used an inappropriate clinical vignette in the Abt survey.

The American College of Surgeons' vignette described the splicing of a 6 cm segment of synthetic conduit into what is primarily a bypass graft constructed

with autogenous vein. The Society for Vascular Surgery/International Society for Cardiovascular Surgery stated that the use of synthetic conduits in this situation is not standard surgical practice. Instead, most surgeons performing this operation would harvest a separate segment of vein to use as the additional segment of conduit since the long term graft patency of the all-vein combination is far superior. Harvesting additional vein requires a separate skin incision, identification of another segment of acceptable vein, harvest of that vein with ligation of branches, and skin closure of the additional site. This is obviously far more work than opening a box of synthetic conduits to obtain the additional required conduit, yet the only code available for either procedure is CPT code 35681.

In order to determine exactly how this code is used clinically, the Society for Vascular Surgery/International Society for Cardiovascular Surgery reviewed operative records from 16 practices across the country and found that the American College of Surgeons' vignette represents only 3 percent of the actual use of this code, and in 97 percent of cases the work involved is actually far greater than that described in the American College of Surgeons' vignette.

Response: In light of the comments we received, we referred this code to a refinement panel for review of the coding issues and ratings of physician work.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs assigned to CPT code 35681 from the proposed 3.93 work RVUs to 8.05, the current work RVUs for the code. In addition, we are referring CPT code 35681 to CPT for division into two codes, one to represent addition of a segment of synthetic conduit to a primary bypass constructed of vein, and another to represent harvest and addition of a segment of vein conduit to a primary bypass constructed of vein or synthetic conduit. Once the codes have been accurately defined, they will be referred to the RUC for work evaluation. The work RVUs for CPT code 35681 are interim values until we receive the final RUC recommendations.

CPT code 35875 (Thrombectomy of arterial or venous graft).

Comment: The American College of Surgeons submitted CPT code 35875 for review in its letter to us, dated February 3, 1995. Its identification of this code as being overvalued was based on a survey of the work involved in a vignette that

described a thrombectomy of a clotted hemodialysis shunt. The American College of Surgeons recommended a decrease in work RVUs for CPT code 35875 from 9.07 to 8.19. A RUC work group adopted the decrease without discussion, and the full RUC accepted it by consent decree. We subsequently accepted the decrease in our May 3, 1996 proposed notice (61 FR 20002).

In a comment, the Society for Vascular Surgery/International Society for Cardiovascular Surgery provided the following explanation of the proper use of the codes. Thrombectomy and revision of a dialysis graft as described in the American College of Surgeons' vignette is actually CPT code 36832 (Revision of an arteriovenous fistula, with or without thrombectomy, autogenous or nonautogenous graft (separate procedure)), not CPT code 35875. CPT code 36832 falls within the family of hemodialysis graft codes in CPT and exactly fits the American College of Surgeons' vignette. It has only 5.84 work RVUs. The commenter believed that this error had caused the RUC to recommend a value that was too low.

In contrast, the commenter explained, CPT code 35875 is defined as thrombectomy of arterial or venous graft, and it lies numerically within the CPT family of codes that describes bypass grafts performed for arterial insufficiency. CPT code 35875 requires significantly more work than CPT code 36832, and it has 9.07 work RVUs. It was, therefore, no surprise to the commenter that the surgeons participating in the American College of Surgeons' study considered that 9.07 work RVUs were too high when asked to evaluate the work involved in thrombectomy of a dialysis graft since they were actually being asked to rate a service that has only 5.84 work RVUs.

In order to identify exactly how CPT code 35875 is used by practicing surgeons, the Society for Vascular Surgery/International Society for Cardiovascular Surgery reviewed charts of patients receiving this service over a period of 1 year at 16 surgical practices from across the country. The study identified 209 consecutive cases. CPT code 35875 was used for thrombectomy of arterial bypass grafts in patients with peripheral vascular disease in 80 percent of the cases, and, somewhat to their surprise, in 40 percent of cases, CPT code 35875 was claimed when thrombectomy of a dialysis graft was performed in renal failure patients. The

review indicated that some carrier medical directors also are confused regarding appropriate use of this code.

Response: In light of the comments we received, we referred this code to a refinement panel for review of the coding issues and ratings of physician work.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs assigned to CPT code 35875 from the proposed 8.19 work RVUs to 9.07, which are the current work RVUs for the code. In addition, we will refer CPT code 35875 to CPT for redefinition by adding the term "not for hemodialysis graft." We are also referring CPT code 36832 to CPT to be split into three separate codes, one specifically for thrombectomy of hemodialysis grafts, one for revision of hemodialysis grafts without thrombectomy, and one for thrombectomy and revision of hemodialysis grafts.

Once the codes have been accurately defined, they will be referred to the RUC for work evaluation. We are keeping the work RVUs for CPT code 35875 interim until we receive the final RUC recommendations.

13. Pathology and Laboratory Procedures

CPT code 85390-26 (Fibrinolysis or coagulopathy screen, interpretation and report).

Comment: We received several comments objecting to our proposal to maintain the current 0.37 work RVUs rather than to accept the RUC recommendation of 0.75 work RVUs.

Response: In its original recommendation to us, the RUC noted that this procedure had never been surveyed and the current work RVUs were established by HCFA. The RUC agreed that the physician work of furnishing this service has changed during the past few years. The clinical problems presented by patients are more complex, the tests are more technical, and the physician is required to perform more tests. However, the RUC did not believe that these changes warranted an increase to 1.20 work RVUs, as requested by a specialty society. Instead, the RUC believed that the service is comparable in physician work to the key reference service CPT code 88305 (Tissue exam by pathologist), with 0.75 work RVUs. Therefore, the RUC recommended 0.75 work RVUs.

Clinical laboratory tests are covered by the Medicare program and paid for under the clinical laboratory fee

schedule; performance of the test itself does not require the services of a physician and does not have physician work associated with it. However, we have recognized that there are a limited number of clinical laboratory codes for which it is almost always necessary for the laboratory physician to furnish an interpretation, and we have assigned 0.37 work RVUs to these interpretations.

We were not persuaded that the work has changed over time. The vignette used to survey this code appeared to represent services well beyond interpretation of a single test and seemed to describe a typical consultation. CPT code 80502 (Lab pathology consultation) describes the surveyed vignette and is valued at 1.33 work RVUs, which is similar to the 1.20 work RVUs from the RUC survey. Therefore, we proposed to retain the current 0.37 work RVUs for CPT code 85390-26. However, in light of the comments we received, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we maintain our current 0.37 work RVUs for CPT code 85390-26.

CPT code 86327-26 (Immunoelectrophoresis; crossed (2-dimensional assay)).

Comment: We received several comments objecting to our proposal to maintain the current 0.37 work RVUs rather than to accept the RUC recommendation of 0.45 work RVUs.

Response: In its original recommendation to us, the RUC noted that this procedure had never been surveyed and the current work RVUs were established by HCFA. The RUC agreed that the physician work of furnishing this service has changed during the past few years.

The current work RVUs are 0.37. Pathology interpretation of laboratory tests was originally valued at 0.37 work RVUs. (See comment for CPT code 85390 above.) We were not persuaded that the work has changed over time. However, in light of the comments we received, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs from 0.37 to 0.42 for CPT code 86327-26.

CPT code 88173-26 (Evaluation of fine needle aspirate with or without preparation of smears; interpretation and report).

Comment: We received several comments objecting to our proposal to maintain the current 1.08 work RVUs.

Our proposal was based, in part, on acceptance of a RUC recommendation to maintain the current work RVUs. A specialty society argued that the physician work involved in the interpretation of a fine needle aspiration has increased because of a change in the way the service is used in the continuum of diagnosis and treatment.

When the service was first studied by the Harvard study team, fine needle aspiration was relatively new, performed primarily on advanced tumors and used as a screening service to be followed by confirmatory biopsy. Now, the fine needle aspiration specimen received for interpretation is from an earlier stage in the disease process, often from lesions that are borderline in their presentation. In addition, the procedure is now used as a definitive diagnostic procedure from which treatment decisions are made. These two changes lead to increased work for the pathologist.

Response: In light of the comments we received, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, we are increasing the work RVUs from 1.08 to 1.39 for CPT code 88173-26.

14. Psychiatry

Comment: In our May 3, 1996 proposed notice (61 FR 20029 through 20030), we described the RUC's review of the comments submitted by the American Psychiatric Association and the American Academy of Child and Adolescent Psychiatry as part of the 5-year refinement. The American Psychiatric Association, in its comments and during its presentation to the RUC, presented the following evidence to support increasing the work RVUs of the psychiatric codes:

- Patient type and mix have changed dramatically during the past 5 years. The American Psychiatric Association reported that before 1990, for the most part, "stable" patients were seen in an office outpatient setting. Patients that were considered unstable, and otherwise hard to manage, were treated as inpatients, allowing the physician to coordinate with the hospital staff, if necessary. In the past, patients tended to seek treatment earlier and physicians were able to make referrals to psychiatrists earlier. The onset of managed care has increased the likelihood that many patients are referred to non-physician mental health providers, which has translated into

psychiatrists treating only severely ill patients.

- Decreasing inpatient hospital admissions has resulted in increased patient morbidity. Again, the American Psychiatric Association noted that shifting insurance industry patterns have played a significant role in this trend. Although many insurance policies offer mental health coverage, the coverage is often very restrictive. For example, most policies have strict limits on the number of inpatient hospital days. Many managed care policies have shifted away from long-term psychotherapy in favor of short intermittent treatment therapies.

- Since many more patients are seen on an outpatient basis, there is an increasing amount of coordination of care with other providers. The American Psychiatric Association noted that the time spent dealing with coordination of care issues has resulted in an increase of physician preservice and postservice work.

- During the past 5 years, new, highly sophisticated neuroleptic and antidepressant medications have been introduced. The American Psychiatric Association noted that, because of the advances in psychopharmacology, a greater number of individual psychotherapy patients will likely utilize these medications than was the case 5 years ago. The greater reliance on these medications has increased the complexity of the medical decision making during an individual psychotherapy visit. Many of these new drugs require constant monitoring, such as weekly blood monitoring in the case of Clozapine. The failure to monitor these drugs appropriately could result in adverse side effects and possibly death.

The RUC reviewed 18 services in the psychiatry section of CPT. For 13 of those services, the RUC recommended no change from the current work RVUs. For the other five services, the RUC believed that the points cited above provided a compelling argument for increasing the work RVUs from their current levels.

In our response to the RUC recommendations for the 18 codes, we agreed with the RUC that the current work RVUs for 13 of the psychiatric services should be maintained. However, we did not agree that there was compelling evidence to increase the work RVUs for the following five psychiatric services: Psychiatric interview (CPT code 90801), Psychotherapy, 20-30 minutes (CPT code 90843), Psychotherapy 45-50

minutes (CPT code 90844), Special group therapy (CPT code 90853), and individual psychotherapy (CPT code 90855). Therefore, we did not accept the RUC-recommended increases for these five psychiatry codes.

Commenters expressed concern that we provided no rationale for our disagreement and argued that the RUC and the American Psychiatric Association had provided compelling evidence for the recommended increases.

The RUC and the American Psychiatric Association reaffirmed their previous recommendations for these services and provided the following arguments for increasing the codes in question:

- The shifts from inpatient to outpatient care in psychiatry have shifted a major burden of work to the codes proposed for increase.
- Selectivity and complexity factors clearly apply to this family of codes.
- Many of the work changes that we accepted for increasing the evaluation and management services apply to these codes as well.

Response: We agree that we did not provide a thorough rationale for rejecting the RUC recommendations. At the time we were preparing the May 3, 1996 proposed notice, we had initiated informal discussions with the American Psychiatric Association about the need to revise the existing psychotherapy codes to reflect the variation in work associated with the type of psychotherapy and the setting in which it is furnished. In anticipation of new and revised codes, we did not review the RUC recommendations at that time as thoroughly as we now have. We now accept the arguments of the RUC and the American Psychiatric Association that the work of the five codes has increased over time and that the work RVUs should be adjusted accordingly. In the next two sections, we discuss the coding of psychiatric services and the assignment of work RVUs to the psychotherapy codes.

Coding of Psychiatric Services

It now appears that the American Psychiatric Association has decided against pursuing a change in the CPT codes for psychiatric services at this time. However, we believe that a change in the code descriptors is essential as part of the 5-year refinement of the work RVUs in order for us to properly recognize the variations in work associated with the different types of psychotherapy as well as the settings in

which the different types of psychotherapy are furnished. Also, the problems with the coding of psychiatric services have been known for several years. The following is a summary of the most important problems that have been identified with the current codes:

- The current psychotherapy codes do not distinguish the settings in which psychotherapy is furnished because the same codes are used to report office and inpatient psychotherapy. In 1990, the American Psychiatric Association submitted a request to CPT to create new codes for psychiatric care in a facility. Those codes would have recognized the difference in work associated with psychotherapy furnished to inpatients. However, the codes were not approved.

- In 1990, the American Psychiatric Association noted the need to refine the CPT codes in its comments on the Medicare model fee schedule that was published in our September 4, 1990 notice with comment period (55 FR 36178). The American Psychiatric Association expressed the need for codes to report inpatient psychiatric services and objected to the use of the existing psychotherapy codes by non-physician providers (psychologists and clinical social workers). The American Psychiatric Association cited the following terminology in the codes to support their argument: "Individual medical psychotherapy by a physician, with continuing medical diagnostic evaluation, and drug management when indicated." The American Psychiatric Association argued that while non-physician providers do provide psychotherapy services, those services cannot be interpreted as "medical psychotherapy." For Medicare purposes, the existing psychotherapy codes are used by psychologists and clinical social workers even though the code descriptors attempt to limit their use to physicians. We believe that services that can be furnished by both physicians and non-physician providers should be described by codes with descriptors that do not limit their use to physicians.

- In January 1991, the Harvard study team published a final report entitled "Refinement of the Development of a Resource Based Relative Value Scale for Psychiatric Services." In the Executive Summary, it states: "The data from the national survey of psychiatry tend to suggest the need for further examination of coding of services for psychiatry. First, the findings are especially strong

for the need to distinguish between services provided in the hospital and those provided in the offices. Second, the findings indicate that, controlling for subspecialty of the provider, services delivered to young children differ in the amount of work required, suggesting the possible need for new or modified service codes for child psychiatry." The first finding has not been resolved. The second has been partially resolved by the addition of a new code in CPT 1992 for reporting "interactive psychotherapy." However, there are two major problems with this new code. First, it is not clearly defined, and the lack of clear definition has led to the submission of approximately 500,000 claims for interactive therapy. We believe that most of those claims were improperly coded since the typical interactive psychotherapy session is furnished to children. Second, the code does not distinguish the time of the session as do the other psychotherapy codes. Because we have assigned work RVUs to this code that are higher than those for CPT code 90844 (Psychotherapy, 45–50 minutes), a claim for psychotherapy of 20–30 minutes, that is improperly reported as interactive psychotherapy, will be significantly overpaid. Consequently, we view our inability to properly assign work RVUs, based on the length of the sessions, to be a significant problem that must be corrected as soon as possible.

- We do not permit the reporting of an evaluation and management service on the same day of service that psychotherapy is furnished. We announced this policy in our November 25, 1991 final rule (56 FR 59502) for the 1992 physician fee schedule. The policy was based in part on our need to standardize payment policies because there was considerable variation across carriers in their policies regarding payment for hospital care and psychiatric care on the same day of service. In addition, we were concerned that there was considerable overlap in the preservice and postservice work of psychotherapy and evaluation and management services that could lead to two payments for the same service. Therefore, we increased the work RVUs assigned to the psychotherapy codes but precluded the reporting of an evaluation and management service on the same day as psychotherapy. We acknowledged in the final rule that our policy is not consistent with the introductory notes to the psychiatric section of CPT. However, we also stated

that, if the CPT codes were revised, we would consider revising the work RVUs to be consistent with the new or revised codes.

To address these problems, we have developed new alpha-numeric codes to report psychotherapy services. These codes will go into effect on January 1, 1997. For Medicare purposes, they will replace CPT codes 90842 (Psychotherapy, 75–80 minutes), 90843 (Psychotherapy, 20–30 minutes), 90844 (Psychotherapy, 45–50 minutes), and 90855 (Interactive individual medical psychotherapy). We will no longer recognize these CPT codes for Medicare payment purposes. The objectives of our new codes and the introductory paragraphs that precede them are the following:

- Distinguish psychotherapy furnished in an office from psychotherapy furnished in an inpatient or other facility by creating two families of codes.

- Distinguish interactive psychotherapy services based on the duration of the face-to-face time with the patient by creating three time-based codes that would parallel the three time-based codes for the other psychotherapy services, that is, 20–30 minutes, 45–50 minutes, and 75–80 minutes.

- Distinguish between interactive psychotherapy and other forms of psychotherapy by providing clearer definitions.

- Unbundle the existing psychotherapy codes to allow the reporting of psychotherapy that is furnished without medical evaluation and management services from psychotherapy that is furnished with medical evaluation and management services.

- Eliminate the word "medical" from "medical psychotherapy" and eliminate the phrase "by a physician" to make it clear that the use of the codes to report psychotherapy without medical evaluation and management services is not restricted to physicians. The use of these codes will be open to physicians, psychologists, and clinical social workers.

- Serve as a basis for assigning appropriate work RVUs to psychotherapy services as part of the 5-year refinement of work RVUs.

In the following section, we provide a listing of the new codes including the complete descriptors and several introductory paragraphs. Our new coding structure establishes 12 codes for office and other outpatient services and 12 codes for inpatient hospital, partial

hospital, or residential care facilities. We have included partial hospital services with inpatient hospital services because we believe the work of a physician in a partial hospital setting is more comparable to the work in an inpatient setting than it is to the work in an office setting. In particular, in both the inpatient and partial hospital setting, physicians are responsible for admitting patients, developing and revising treatment plans, supervising multi-disciplinary treatment and planning for discharge.

Within each setting there are six codes for insight oriented, behavior modifying, and/or supportive psychotherapy and six codes for interactive psychotherapy. Each family of six codes is further divided based on the face-to-face time spent with the patient and whether evaluation and management services are furnished in addition to the psychotherapy. We plan to submit these codes to the CPT Editorial Panel as part of a comprehensive revision of the psychiatry section of CPT. For a discussion of the work RVUs that we have assigned to the new codes, see the section below entitled, "Assignment of Work RVUs to the Psychiatric Codes."

Psychiatric Therapeutic Procedures

Psychotherapy is the treatment for mental illness and behavioral disturbances in which the therapist establishes a professional contract with the patient and, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior, and encourage personality growth and development. The codes for reporting psychotherapy are divided into two broad categories: Interactive Psychotherapy; and Insight Oriented, Behavior Modifying and/or Supportive Psychotherapy.

Interactive psychotherapy is typically furnished to children. It involves the use of physical aids and non-verbal communication to overcome barriers to therapeutic interaction between the physician and a patient who has lost, or has not yet developed, either the expressive language communication skills to explain his/her symptoms and response to treatment, or the receptive communication skills to understand the physician if he/she were to use ordinary adult language for communication.

Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight or affective understanding, the use of

behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of the above to provide therapeutic change.

Some patients receive psychotherapy only and others receive psychotherapy and medical evaluation and management services. These evaluation and management services involve a variety of responsibilities unique to the medical management of psychiatric patients, such as medical diagnostic evaluation, drug management when indicated, physician orders, interpretation of laboratory or other medical diagnostic studies and observations, review of activity therapy reports, the supervision of nursing and ancillary personnel, the programming of all hospital resources for diagnosis and treatment, and activity in leadership or direction of a treatment team as related to that patient.

In reporting psychotherapy, the appropriate code is chosen on the basis of the type of psychotherapy (interactive using non-verbal techniques versus insight oriented, behavior modifying and/or supportive using verbal techniques), the place of service (office versus inpatient), the face-to-face time spent with the patient during psychotherapy, and whether evaluation and management services are furnished on the same date of service as psychotherapy.

To report medical evaluation and management services furnished on a day when psychotherapy is not provided, providers select the appropriate code from the "Evaluation and Management (E/M) Services Guidelines" section of CPT.

Office or Other Outpatient Psychotherapy

Insight Oriented, Behavior Modifying and/or Supportive Psychotherapy

G0071—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient

G0072—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient, with medical evaluation and management services

G0073—Individual psychotherapy, insight oriented, behavior

modifying and/or supportive, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient

G0074—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient, with medical evaluation and management services

G0075—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient

G0076—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient, with medical evaluation and management services

Interactive Psychotherapy

G0077—Individual psychotherapy, interactive, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient

G0078—Individual psychotherapy, interactive, in an office or outpatient facility, approximately 20 to 30 minutes face-to-face with the patient, with medical evaluation and management services

G0079—Individual psychotherapy, interactive, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient

G0080—Individual psychotherapy, interactive, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient, with medical evaluation and management services

G0081—Individual psychotherapy, interactive, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient

G0082—Individual psychotherapy, interactive, in an office or outpatient facility, approximately 75 to 80 minutes face-to-face with the patient, with medical evaluation and management services

Inpatient Hospital, Partial Hospital or Residential Care Facility

Insight Oriented, Behavior Modifying and/or Supportive Psychotherapy

G0083—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient

G0084—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient, with medical evaluation and management services

G0085—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient

G0086—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient, with medical evaluation and management services

G0087—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient

G0088—Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient, with medical evaluation and management services

Interactive Psychotherapy

G0089—Individual psychotherapy, interactive, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient

G0090—Individual psychotherapy, interactive, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the

patient, with medical evaluation and management services

G0091—Individual psychotherapy, interactive, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient

G0092—Individual psychotherapy, interactive, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient, with medical evaluation and management services

G0093—Individual psychotherapy, interactive, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient

G0094—Individual psychotherapy, interactive, in an inpatient hospital, partial hospital or residential care setting, approximately 75 to 80 minutes face-to-face with the patient, with medical evaluation and management services

Assignment of Work RVUs to the Psychiatric Codes

The RUC, American Psychiatric Association, and other commenters recommended an increase from 2.18 to 2.80 in the work RVUs assigned to CPT code 90801 (Psychiatric diagnostic interview examination including history, mental status, or disposition (may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies)). We accepted this recommendation.

We also received a final work RVU recommendation for CPT code 90820 (Interactive medical psychiatric diagnostic interview examination). In September, the RUC recommended that the current 2.27 work RVUs be maintained until the American Academy of Child and Adolescent Psychiatry had an opportunity to conduct a survey. A survey of nearly 40 child psychiatrists resulted in a median of 3.25 work RVUs. CPT code 90820 requires more work than CPT code 90801 (Psychiatric interview), for which the 5-year review RUC recommendation was 2.80 work RVUs. The survey indicated 170 minutes of total time for this service, compared to 135 minutes for CPT code 90801. The preservice time is greater for CPT code 90820 because the psychiatrist must contact not only the child's pediatrician, but also the child's school and, in some instances, a

non-custodial parent. The intraservice time is longer and the service requires more work to develop a relationship with the child using non-verbal techniques and to collect and interpret data. Drawing inferences from the data requires the child psychiatrist to generate and test a series of developmental and dynamic hypotheses. There is also increased technical skill required to use the play equipment during this interactive interview. The postservice time is greater than that for CPT code 90801 because the psychiatrist must again contact the school and, perhaps, the non-custodial parent.

The RUC agreed that CPT code 90820 requires more work than CPT code 90801 (Psychiatric interview), with 2.80 work RVUs, and recommended 3.01 work RVUs to maintain a consistent relationship between the RUC recommendations for CPT code 90855 (Interactive individual medical psychotherapy), with 2.15 work RVUs, and CPT code 90844 (Psychotherapy, 45–50 minutes), with 2.00 work RVUs. We agree with this recommendation and have assigned 3.01 work RVUs to CPT code 90820 (Interactive medical psychiatric diagnostic interview examination).

The RUC, American Psychiatric Association, and other commenters recommended increases in the work RVUs assigned to CPT code 90843 (Psychotherapy, 20–30 minutes) and CPT code 90844 (Psychotherapy, 45–50 minutes) from 1.10 and 1.72 to 1.47 and 2.00, respectively. We accepted these recommendations and have assigned them to new HCPCS codes G0072 and G0074 that are the codes for reporting psychotherapy with medical evaluation and management services of 20–30 and 45–50 minutes, respectively, in an office or outpatient facility. We believe these two codes correspond most closely to the vignettes for CPT codes 90843 and 90844 that were surveyed as part of the RUC process. The vignettes were for office psychotherapy and included medical evaluation and management services.

For the codes used to report psychotherapy without medical evaluation and management services of 20–30 minutes and 45–50 minutes duration (HCPCS codes G0071 and G0073), we have assigned 1.11 and 1.73 work RVUs. These are the work RVUs currently assigned to CPT codes 90843 and 90844. We considered lowering the work RVUs for HCPCS codes G0071 and

G0073 since the codes describe services (psychotherapy alone) that require less work than the existing CPT codes 90843 and 90844 (psychotherapy with continuing medical diagnostic evaluation and drug management when indicated). However, we decided to maintain the current work RVUs out of recognition that the work of psychotherapy alone also may have increased over time.

The RUC has recommended that the work RVUs for CPT code 90842 (Psychotherapy, 75–80 minutes) be maintained at their current level of 2.76. In our May 3, 1996 proposed notice (61 FR 20014), we accepted that recommendation. We now believe these are the appropriate work RVUs for psychotherapy without medical evaluation and management services and have assigned 2.76 work RVUs to HCPCS code G0075. For HCPCS code G0076, which is the code for reporting psychotherapy of 75–80 minutes with medical evaluation and management services, we have assigned 3.15 work RVUs. These work RVUs are 14 percent higher than those for HCPCS code G0075 and correspond to the increases we established for the other psychotherapy codes with medical evaluation and management services relative to the codes for psychotherapy alone.

For the interactive psychotherapy codes in an office or outpatient facility (HCPCS codes G0077 through G0082), we looked to the relationship established by the RUC for interactive psychiatric services relative to other psychiatric services. CPT code 90820 (Interactive medical psychiatric diagnostic interview examination) was valued by the RUC 7.5 percent higher than CPT code 90801 (Psychiatric interview); and CPT code 90855 (Interactive individual medical psychotherapy) was valued 7.5 percent higher than CPT code 90844 (Psychotherapy, 45–50 minutes duration). Therefore, we have assigned work RVUs to HCPCS codes G0077 through G0082 that are 7.5 percent higher than those for the corresponding psychotherapy codes.

Our new coding structure establishes 12 codes for office and other outpatient services and 12 codes for inpatient hospital, partial hospital, or residential care facilities. Within each setting there are six codes for psychotherapy and six codes for interactive psychotherapy. There were no inpatient vignettes surveyed as part of the 5-year

refinement. Therefore, we looked to the Harvard study of psychiatric services as a basis for assigning work RVUs to the 12 inpatient codes. Based on our analysis of the findings of that study, we have concluded that inpatient psychiatric services require approximately 12 percent more work than office based services. Therefore, we have assigned work RVUs to the new inpatient codes that are 12 percent higher than those for the corresponding office codes.

Finally, we have examined further our decisions regarding the group psychotherapy codes. For CPT code 90853 (Group psychotherapy (other than of a multiple-family group) by a physician, with continuing medical diagnostic evaluation and drug management when indicated), we initially rejected the RUC recommendation to increase the work RVUs from 0.43 to 0.59. Based on the comments we received, we now accept that recommendation. For CPT code 90857 (Interactive group medical psychotherapy), we initially accepted the RUC recommendation for no increase above the current 0.43 work RVUs. We now believe these work RVUs should be increased to be 7.5 percent more than the work RVUs for CPT code 90853 (Group psychotherapy (other than of a multiple-family group) by a physician, with continuing medical diagnostic evaluation and drug management when indicated) so that the relationship of interactive psychiatric services to other psychiatric services will be maintained. Therefore, we have assigned 0.63 work RVUs to CPT code 90857.

Final decision: We have accepted or increased the RUC-recommended RVUs for psychiatry services. The RUC-recommended RVUs are the basis of the RVUs we have assigned to temporary HCPCS codes G0071 through G0094. We have issued temporary codes so that we may properly recognize the variations in work associated with the different types of psychotherapy as well as the settings in which the different types of psychotherapy are furnished.

The codes and assigned RVUs are considered interim, and we will accept comments on them. We plan to submit the codes to the CPT Editorial Panel as part of a comprehensive review of the psychiatry section, and we will share any comments we receive on the temporary HCPCS "G" codes with the Editorial Panel.

We will no longer recognize CPT codes 90842 (Psychotherapy, 75–80

minutes), 90843 (Psychotherapy, 20-30 minutes), 90844 (Psychotherapy, 45-50 minutes), and 90855 (Interactive individual medical psychotherapy). An abbreviated descriptor for the new codes and the values are shown below.

HCPCS code	Descriptor	Work RVUs
G0071	Individual psychotherapy (e.g., insight oriented), office or outpatient, 20-30 minutes	1.11
G0072	Individual psychotherapy (e.g., insight oriented), office or outpatient, 20-30 minutes, with medical evaluation and management.	1.47
G0073	Individual psychotherapy (e.g., insight oriented), office or outpatient, 45-50 minutes	1.73
G0074	Individual psychotherapy (e.g., insight oriented), office or outpatient, 45-50 minutes, with medical evaluation and management.	2.00
G0075	Individual psychotherapy (e.g., insight oriented), office or outpatient, 75-80 minutes	2.75
G0076	Individual psychotherapy (e.g., insight oriented), office or outpatient, 75-80 minutes, with medical evaluation and management.	3.15
G0077	Individual psychotherapy, interactive (non-verbal), office or outpatient, 20-30 minutes	1.19
G0078	Individual psychotherapy, interactive (non-verbal), office or outpatient, 20-30 minutes, with medical evaluation and management.	1.58
G0079	Individual psychotherapy, interactive (non-verbal), office or outpatient, 45-50 minutes	1.86
G0080	Individual psychotherapy, interactive (non-verbal), office or outpatient, 45-50 minutes, with medical evaluation and management.	2.15
G0081	Individual psychotherapy, interactive (non-verbal), office or outpatient, 75-80 minutes	2.97
G0082	Individual psychotherapy, interactive (non-verbal), office or outpatient, 75-80 minutes, with medical evaluation and management.	3.39
G0083	Individual psychotherapy (e.g., insight oriented), inpatient or partial hospital, 20-30 minutes	1.24
G0084	Individual psychotherapy (e.g., insight oriented), inpatient or partial hospital, 20-30 minutes, with medical evaluation and management.	1.65
G0085	Individual psychotherapy (e.g., insight oriented), inpatient or partial hospital, 45-50 minutes	1.94
G0086	Individual psychotherapy (e.g., insight oriented), inpatient or partial hospital, 45-50 minutes, with medical evaluation and management.	2.24
G0087	Individual psychotherapy (e.g., insight oriented), inpatient or partial hospital, 75-80 minutes	3.09
G0088	Individual psychotherapy (e.g., insight oriented), inpatient or partial hospital, 75-80 minutes, with medical evaluation and management.	3.53
G0089	Individual psychotherapy, interactive (non-verbal), inpatient or partial hospital, 20-30 minutes	1.33
G0090	Individual psychotherapy, interactive (non-verbal), inpatient or partial hospital, 20-30 minutes, with medical evaluation and management.	1.77
G0091	Individual psychotherapy, interactive (non-verbal), inpatient or partial hospital, 45-50 minutes	2.08
G0092	Individual psychotherapy, interactive (non-verbal), inpatient or partial hospital, 45-50 minutes, with medical evaluation and management.	2.41
G0093	Individual psychotherapy, interactive (non-verbal), inpatient or partial hospital, 75-80 minutes	3.32
G0094	Individual psychotherapy, interactive (non-verbal), inpatient or partial hospital, 75-80 minutes, with medical evaluation and management.	3.80

15. Other Medical and Therapeutic Services

CPT code 90911 (Anorectal biofeedback).

Comment: A commenter objected to our proposed reduction of the work RVUs from 2.15 to 0.89. We rejected the RUC recommendation to retain the current 2.15 work RVUs because this procedure involves little physician work. We believe the physician work involved in CPT code 90911 to be similar to that in all the other biofeedback codes, which all have 0.89 work RVUs. The commenter pointed out that the typical patient treatment time for this procedure is 1 hour. The commenter stated that during this time, detailed office notes, patient progress and goals, analysis of the electromyogram data printouts, and patient billing information must be completed by the highly trained nurses that deliver the treatment under physician supervision. The commenter

stated that the reduction in physician work RVUs would result in an overall payment for this procedure that would be insufficient to cover the overhead associated with this procedure.

Response: We agree that the actual biofeedback therapy is delivered by a nurse or other auxiliary medical personnel under the general supervision of a physician. As such, the physician work involved is minimal as we stated in our proposal in our May 3, 1996 proposed notice (61 FR 20030 through 20031) to reduce the physician work RVUs. The nurse's efforts in delivering the treatment and the other overhead associated with this procedure are included in the practice expense RVUs, not the work RVUs, and are thus not within the scope of the 5-year work RVU refinement as we stated in our May 3, 1996 proposed notice (61 FR 19994).

Final decision: We make final our 0.89 proposed work RVUs for CPT code 90911.

CPT code 94150 (Vital capacity, total (separate procedure)).

Comment: Several commenters expressed support for our proposal to retain the current 0.11 work RVUs for CPT code 94150.

Response: We believe the commenters may have misunderstood the work RVUs we proposed in July 1996. When the RUC reviewed this code, it identified a CPT coding issue and referred it to the CPT Editorial Panel for review. In July, at the time of publication of our proposal, we had not received the RUC's recommendations following the CPT Editorial Panel's revision so we listed the current RVUs of 0.11 as proposed work RVUs. During the comment period of our May 3, 1996 proposed notice, we received the RUC's recommendation to decrease the work RVUs from 0.11 to 0.07.

Final decision: We reviewed and agreed with the RUC recommendation and are decreasing the work RVUs to 0.07 for CPT code 94150.

In addition, in our July 2, 1996 proposed rule (61 FR 34626), we proposed to remove from Medicare coverage, the services represented by CPT code 94150. Our final decision, after review of the comments received, is to make CPT code 94150 a bundled service rather than a non-covered service. See section II.E.1. of this final rule for a more complete discussion of this code.

16. Speech/Language/Hearing

We received no comments on the speech, language, and hearing codes and have accepted all of the RUC recommendations as final.

B. Other Comments

1. Evaluation and Management Services

In our May 3, 1996 proposed notice (61 FR 20031 through 20039), we reevaluated the work RVUs for all 98 of the evaluation and management services that have RVUs. We only accepted two of the RUC's 39 recommendations for evaluation and management services. However, we agreed with many of the RUC's arguments for increasing the work RVUs for evaluation and management services and used those arguments as the basis for our proposed changes.

Comment: We received voluminous identical comments from family practitioners stating that we "dismissed the RUC recommendations" and used an arbitrary method for revising the work RVUs.

Response: We provided a lengthy rationale in our May 3, 1996 proposed notice (61 FR 200310 through 20039) for why we rejected the RUC-recommended work RVUs and how we arrived at our proposed work RVUs. We did not "dismiss" the RUC recommendations. In its comments, the RUC expressed its pleasure at our acceptance of its arguments about why evaluation and management services were undervalued. In fact, the RUC stated, "... we believe that the overall results for evaluation and management services are consistent with the RUC recommendations and supporting rationale." Most primary care specialties, while preferring the RUC-recommended RVUs, supported our decision to increase the work RVUs for evaluation and management services. With a few exceptions, noted below, we are making the proposed work RVUs for evaluation and management services final.

Comment: One commenter stated that we did not specify in what ways we thought the RUC data were "flawed."

Response: In our May 3, 1996 proposed notice (61 FR 20032), we identified several flaws, including overstated postservice times.

Comment: One commenter stated that we were inconsistent in our characterization of preservice and postservice work. In one place, we stated that preservice and postservice work intensity is a fixed percentage of intraservice work intensity while elsewhere we stated that preservice work and postservice work is a fixed percentage of intraservice work.

Response: The commenter has identified a proofreading error on our part. Our assumption is that preservice work and postservice work is a fixed percentage of intraservice work. This assumption was articulated in the November 25, 1992 final notice for the 1993 physician fee schedule (57 FR 55949 through 55951) and was based largely on the Harvard resource-based relative value scale study and comments from primary care groups.

Comment: Several primary care groups requested that we recognize that the data on evaluation and management services the RUC presented are sufficient evidence for us to remain open to receiving further information that shows the relationships between some families of these services have changed.

Response: As we explained in our May 3, 1996 proposed notice (61 FR 20032), we do not believe that the data the RUC presented as part of the 5-year review were sufficient for us to change the existing relationships among the evaluation and management service families. However, we will remain open to data regarding evaluation and management services. If, in the future, the data convince us that the relationships have changed, we will go through the public notice and comment procedures to make the necessary changes to the work RVUs for evaluation and management services.

CPT codes 99201 through 99215 (Office visits).

Comment: Some commenters requested that we apply the same increases to CPT code 99211 that we applied to the other office visit codes.

Response: Because CPT code 99211 does not require the presence of a physician, we had considered making it a code with zero work. Instead, we are maintaining the current work RVUs for CPT code 99211 and will reevaluate this

as we develop our proposals for resource-based practice expense. We recognize that we have deviated from our approach to the rest of the evaluation and management services. While we have raised the RVUs for other evaluation and management services, we are not raising the RVUs for CPT code 99211 because the use of this code has changed since it was first introduced with all other evaluation and management changes in January 1992. Over time, the code has been used increasingly to report services furnished by physicians' office staff rather than by physicians themselves. Given this change, we do not believe that an increase in the physician work RVUs is warranted.

CPT codes 99241 through 99245 (Office or other outpatient consultations).

Comment: Several commenters objected to our assumption that the preservice and postservice work associated with outpatient consultations was less than that of office visits. Specific specialties provided examples illustrating that the preservice and postservice work of an outpatient consultation is more like a visit, and as such, should have been given the same percentage increase in preservice and postservice work as the office visits. The RUC incorrectly stated that we based our proposed RVUs on the assumption that preservice and postservice work for outpatient consultations had not increased at all. Several other commenters strongly approved of the approach we took when valuing outpatient consultations.

Response: Our proposed work RVUs for outpatient consultations included a recognition that the preservice and postservice work had increased. We increased the preservice and postservice work (expressed as a percentage of intraservice work) by 10 percent rather than the 25 percent increase we included for the office visits. Our assumption was, and still is, that the preservice and postservice work associated with the typical patient is less for an outpatient consultation than for an office visit for the reasons outlined in the May 3, 1996 proposed notice (61 FR 20037). However, based on the comments provided to us, we acknowledge that for some specific specialties the preservice and postservice work associated with the consultations is greater. Because the physician fee schedule has no specialty differential, we cannot assign different

work RVUs for the same service for different specialties. Therefore, we are increasing the percentage of intraservice work slightly more than we did with our proposed work RVUs.

The final work RVUs for CPT codes 99241 through 99245 will include a 12.5 percent increase in the percentage of intraservice work to reflect the added preservice and postservice work rather than the 10 percent increase we proposed. This change reflects that the increase in preservice and postservice work over the past 5 years for outpatient consultations is half of that for office visits. If we had increased the preservice and postservice work percentage further, the current relationship between outpatient consultations and inpatient consultations would be lost since outpatient consultations would be valued higher than the inpatient consultations. As stated in previous regulations, we believe that the work of inpatient consultations is slightly higher than the work of outpatient consultations at the highest levels of service.

CPT codes 99281 through 99285 (Emergency department services).

Comment: We received a comment from the American College of Emergency Physicians expressing support for our proposed changes. However, the RUC, in its comments, made new recommendations for the emergency department services. In its recommendations, the RUC equated CPT codes 99281 through 99283 with CPT codes 99201 through 99203, and assigned 2.00 work RVUs for CPT code 99284 and 2.90 work RVUs for CPT code 99285. These work RVUs, with the exception of the work RVUs for CPT code 99285, are higher than the proposed work RVUs.

Response: We believe our proposed work RVUs maintain the proper relationship with other evaluation and management services. These values are also supported by the American College of Emergency Physicians. Therefore, we are making the proposed work RVUs final.

CPT codes 99321 through 99333 (Domiciliary, rest home (e.g., boarding home), or custodial care services).

Comment: One commenter suggested that domiciliary visits should have the same value as the home visit codes because there is very little difference between these two families of services. The commenter held the view that our assumption that domiciliary visits require less work than home visits because of the availability of personal

assistant services is incorrect. The staff, the commenter maintained, is essentially unskilled and too busy to assist the physician.

Response: We are unclear as to why there are separate families of codes if home visits and domiciliary visits require similar work. In our May 3, 1996 proposed notice (61 FR 20038), we maintained the current relationship between domiciliary visits and home visits. Until the comment period for our May 3, 1996 proposed notice, we had not received any comments suggesting that the existing relationship was incorrect. Because we are waiting until the CPT Editorial Panel reworks the home visit codes before revaluing the services, we will also wait until the Panel reworks the domiciliary visit codes before revaluing them. Therefore, we will maintain the 1996 work RVUs for CPT codes 99321 through 99333 until after the CPT Editorial Panel reviews these codes.

CPT codes 99341 through 99353 (Home services).

Comment: Commenters challenged the assumptions that we used in reevaluating all the evaluation and management codes with respect to home visits. They stated that equating home visits with office visits of greater length is not appropriate since home visits were not part of the early stages of the Harvard study. Also, in developing the May 3, 1996 proposed notice, we did not review the RUC recommendations and survey data that were made available in April. The commenters suggested that the difference between new and established patient home visits is less than that seen in other families of evaluation and management services and that the preservice and postservice work is proportionally higher for home visits than for other evaluation and management services. In particular, commenters opposed our proposed reductions in the work RVUs for CPT codes 99351 and 99352.

In its comments, the RUC made its final recommendations for the home visit codes. Whereas the RUC had previously recommended no change in the work RVUs for these services, the new recommendations were for substantial increases. The RUC's comments indicated that the current CPT descriptors do not accurately describe the home visits, and the RUC has referred these codes back to CPT. With its recommendations, the RUC noted " * * * that there are significant differences between the home visits and other visits, including the severe and

multiple disabilities of the patients, the need to assess patients' functional and mental status, to train both patients and untrained caregivers, and the need to manage problems related to patient dementia, other psychiatric problems and the care giver pathologies." Other arguments used in the development of the RUC's recommended work RVUs are that because the physician is in the home, he or she must evaluate the environment and its effect on the illness and care plan; ancillary services such as laboratory, EKG, and oximetry that are normally done by a technician in the office must be performed by the physician; the physician has no on-site staff to reduce the time for such functions as dressing and undressing the patient, counseling patients, family members, and caregivers, and taking vital signs; and patients and families have higher intensity needs when a home visit is furnished.

Response: The work RVUs we proposed were created in an effort to maintain the current relationship between home visits and office visits. We had not reviewed the most recent RUC recommendations because they had not been submitted to us as part of the RUC's 5-year review recommendations received in late 1995. Our proposed work RVUs were also based on the current CPT code descriptors. We recognized that there was something intangible about the work of home visits that was not captured in the descriptors but was captured, we had thought, in the current relationship of work RVUs between home and office visits. For the family of home visit services, it appears from the comments that the CPT descriptors do not accurately describe the nature of the services furnished in the typical case. Therefore, because the CPT Editorial Panel is going to reexamine these codes, we are not adjusting the 1996 work RVUs for CPT codes 99341 through 99353, and the work RVUs for CPT codes 99351 and 99352 are not being decreased as proposed. We will revalue these services once the code descriptors are changed. We anticipate that the new descriptors and new work RVUs will become effective in 1998. Simultaneously, the adoption of a practice expense RVU schedule in 1998 will allow us to address the increased physician work and decreased use of clinical staff for these codes in a uniform manner. Only when we have a more accurate description of the service

can we fairly assign work RVUs to the home visits.

Comment: A commenter requested that we allow physician assistants and nurse practitioners to furnish home visits "incident to" a physician's practice. The physician would have to be available immediately by telephone.

Response: This issue was not subject to comment. Our current policy stands. A home visit cannot be billed by a physician unless the physician was actually present in the beneficiary's home.

Final decision: With the exception of CPT codes 99241 through 99245 (Office or other outpatient consultations) and 99321 through 99353 (Domiciliary and home care), we finalize the work RVUs we proposed for the evaluation and management services. We are slightly increasing the work RVUs for CPT codes 99241 through 99245, and we will maintain the 1996 work RVUs for 99321 through 99353. The final work RVUs follow:

CPT code	Proposed work RVUs	Final work RVUs	CPT code	Proposed work RVUs	Final work RVUs
99236	1.75	1.75	99375	1.73	1.73
99241	0.64	0.64	99381	1.19	1.19
99242	1.28	1.28	99382	1.36	1.36
99243	1.71	1.72	99383	1.36	1.36
99244	2.56	2.58	99384	1.53	1.53
99245	3.41	3.43	99385	1.53	1.53
99251	0.66	0.66	99386	1.88	1.88
99252	1.32	1.32	99387	2.06	2.06
99253	1.82	1.82	99391	1.02	1.02
99254	2.64	2.64	99392	1.19	1.19
99255	3.65	3.65	99393	1.19	1.19
99261	0.42	0.42	99394	1.36	1.36
99262	0.85	0.85	99395	1.36	1.36
99263	1.27	1.27	99396	1.53	1.53
99271	0.45	0.45	99397	1.71	1.71
99272	0.84	0.84	99401	0.48	0.48
99273	1.19	1.19	99402	0.98	0.98
99274	1.73	1.73	99403	1.46	1.46
99275	2.31	2.31	99404	1.85	1.85
99281	0.33	0.33	99411	0.15	0.15
99282	0.55	0.55	99412	0.25	0.25
99283	1.24	1.24	99431	1.17	1.17
99284	1.95	1.95	99432	1.26	1.26
99285	3.06	3.06	99433	0.62	0.62
99291	4.00	4.00	99435	1.50	1.50
99292	2.00	2.00	99440	2.93	2.93
99295	16.00	16.00			
99296	8.00	8.00			
99297	4.00	4.00			
99301	1.28	1.28			
99302	1.71	1.71			
99303	2.14	2.14			
99312	0.64	0.64			
99313	1.06	1.06			
99321	1.51	1.51			
99322	0.69	0.71			
99323	1.34	1.01			
99331	1.78	1.28			
99332	0.45	0.80			
99333	0.73	0.80			
99341	1.18	1.00			
99342	1.34	1.12			
99343	2.00	1.55			
99344	2.67	2.09			
99351	0.67	0.83			
99352	1.10	1.12			
99353	1.77	1.48			
99354	1.77	1.77			
99355	1.77	1.77			
99356	1.71	1.71			
99357	1.71	1.71			

Although the work RVUs for CPT code 99375 (Care plan oversight) have not changed, we are replacing this code with three HCPCS codes, in an effort to eliminate confusion about proper reporting of this service. Our 1995 and 1996 data reveal inappropriate use of CPT code 99375. Physicians billed it for services furnished to beneficiaries who were not receiving Medicare-covered home health or hospice benefits. The new codes are much more specific than CPT code 99375. They will have the same final work RVUs assigned to them as CPT code 99375. Existing CPT code 99375 will no longer be recognized for Medicare reporting services. We plan to forward the temporary codes to the CPT Editorial Panel for consideration of their inclusion in the CPT. The new codes, effective January 1, 1997, follow:

HCPCS code	Descriptor
G0054	Physician supervision of a patient under care of home health agency (patient not present) requiring complex and multidisciplinary care modalities involving regular physician development and/or revision of care plans, review of subsequent reports of patient status, review of related laboratory and other studies, communication (including telephone calls) with other health care professionals involved in patient's care, integration of new information into the medical treatment plan and/or adjustment of medical therapy, within a calendar month; 30 minutes or more.
G0065	Physician supervision of a hospice patient (patient not present) requiring complex and multidisciplinary care modalities involving regular physician development and/or revision of care plans, review of subsequent reports of patient status, review of related laboratory and other studies, communication (including telephone calls) with other health care professionals involved in patient's care, integration of new information into the medical treatment plan and/or adjustment of medical therapy, within a calendar month; 30 minutes or more.

HCPCS code	Descriptor
G0066	Physician supervision of a nursing facility patient (patient not present) requiring complex and multidisciplinary care modalities involving regular physician development and/or revision of care plans, review of subsequent reports of patient status, review of related laboratory and other studies, communication (including telephone calls) with other health care professionals involved in patient's care, integration of new information into the medical treatment plan and/or adjustment of medical therapy, within a calendar month; 30 minutes or more.

The codes for home health and hospice patients, HCPCS codes G0064 and G0065, will be active codes on our fee schedule with 1.73 work RVUs each. The third code, HCPCS code G0066, will be considered a bundled service because we do not recognize separate payment for care plan oversight services furnished to beneficiaries in nursing facilities. This policy is explained in the December 8, 1994 physician fee schedule final rule (59 FR 63418 through 63423). Therefore, there is no separate payment for HCPCS code G0066. Only one of these codes may be billed per month per Medicare beneficiary. All of the policies regarding CPT code 99375 apply to HCPCS codes G0064 and G0065.

2. Pediatrics

Comment: We received a comment from the RUC on the importance of properly valuing pediatric services. The RUC first expressed concern about the need for the Medicare relative value scale to be complete and accurate for pediatric services in 1993. Since then, the RUC has developed work RVU recommendations for several hundred pediatric and pediatric subspecialty services that were previously listed with 0.00 work RVUs. Consistent with our proposal to refine the relative value scale on a periodic basis as necessary rather than waiting until the 10-year review to make additional needed corrections, the RUC urged us to continue to accept coding changes and work RVU recommendations for the pediatric services over the coming year as the American Academy of Pediatrics, the CPT Editorial Panel, and the RUC complete remaining work on these issues.

Response: In our May 3, 1996 proposed notice (61 FR 20039), we restated our belief that the work RVUs for the full range of pediatric services are essentially complete. However, we also indicated our intention to review RUC recommendations for any new or revised CPT codes for pediatric services in future annual physician fee schedule updates. We remain committed to that position.

CPT codes 56805 (Clitoroplasty for intersex state) and 57335 (Vaginoplasty for intersex state).

Comment: The RUC recommended an increase in CPT code 56805 (Clitoroplasty for intersex state), with 15.49 work RVUs in 1996, and CPT code 57335 (Vaginoplasty for intersex state), with 9.11 work RVUs in 1996, to 18.00 to correct a current rank order anomaly and to appropriately value these services that are performed on children less than 1 year of age.

CPT code 56805 is similar in time and intensity to CPT code 54336 (One stage perineal hypospadias repair requiring extensive dissection to correct chordee and urethroplasty by use of skin graft tube and/or island flap), with 18.95 work RVUs, and is more work than CPT code 54325 (Amputation of penis; complete), with 12.80 work RVUs, a destructive procedure to treat carcinoma of the penis.

CPT code 57335 has a substantially longer intraservice time and is more intense than CPT code 57292 (Construction of artificial vagina; with graft), with 12.34 work RVUs, and is more work than CPT code 45123 (Proctectomy, partial, without anastomosis, perineal approach), with 13.27 work RVUs, which describes a destructive procedure. CPT code 57335 also includes the endocrine management of the adenogenital syndrome.

Response: We have reviewed the RUC recommendations, and we agree with them.

Final decision: We are assigning 18.00 work RVUs to CPT codes 56805 and 57335. Because the public has not had an opportunity to comment on these work RVUs, we consider them to be interim work RVUs and will accept comments on these codes.

3. Anesthesia

Comment: In response to our request for public comments at the beginning of the 5-year review process in December 1994, the American Society of Anesthesiologists furnished comments based on a study by Abt Associates. The Abt study advocated that the anesthesia work under the physician fee schedule

be increased by an average of 34.8 percent. We referred that proposal and the Abt study to the RUC for its recommendation. On February 10, 1996, the RUC unanimously recommended that anesthesia work RVUs be increased by 22.8 percent or about two-thirds of the size of the increase recommended by the Abt study.

We did not include the RUC recommendation for increased work RVUs for anesthesia services in the May 3, 1996 proposed notice because it was not included in the RUC's initial recommendation for codes under the 5-year review. The anesthesia recommendation was one of several recommendations that the RUC made to us on June 27, 1996, which we received as a comment in response to the May 3, 1996 proposed notice.

The Abt study evaluated anesthesia work in relation to other services by partitioning an anesthesia service uniformly into five distinct components, assigning intensity values to these components based on the intensity values of benchmark procedures, and multiplying anesthesia time per component by its corresponding intensity. The five components are preanesthesia, induction, procedure, emergence, and postanesthesia.

There was considerable discussion by the RUC about the intensity values for anesthesia services. The RUC accepted the intensity values for the preanesthesia, postanesthesia, emergence, and induction intervals. However, the RUC did not accept the minimum intensity value (that is, 0.25) proposed in the final Abt study for most of the procedure interval. Instead, the RUC assigned an intensity value of 0.017.

For half of the 15 procedures reviewed by the Abt multidisciplinary panel, the procedure interval was consistently valued at one intensity value, namely the minimum intensity value. However, for some anesthesia services, the intensity values for the procedure interval represented a weighted average because the intensity value fluctuated as a result of the underlying complexity of the activities performed in this period.

Since the procedure interval represents the largest portion of the anesthesia service, the relative value for an anesthesia service is most sensitive to the minimum intensity value assigned to the procedure interval. The use of the intensity value of 0.017 means that the intensity of the procedure interval is kept at its current value (that is, pre-5-year review level) although the increased intensity values of other portions of the anesthesia service are recognized.

The American Society of Anesthesiologists commented that they continue to believe that the minimum procedure intensity benchmark should be 0.025 but recommended that, at the very least, this benchmark should be 0.021. If this latter approach were accepted, application of the Abt methodology would result in increasing the anesthesia work by 29 percent.

Response: While the RUC eventually accepted the Abt methodology and the intensity values, we are somewhat concerned with an approach in which physicians estimate intensity values for an entire service or a component of a service. Research by Harvard that led to the original physician fee schedule values illustrated that work can be overvalued when physician estimates of intensity are matched with service time.

However, in light of the fact that the RUC conducted a thorough and detailed review of this issue, having looked at this issue on three separate occasions, and relied heavily on the expertise of its research committee, we have accepted the RUC recommendation. We agree that the minimum intensity of the procedure interval should be 0.017 because the intensity of this interval is less than the intensity of evaluation and management services.

Because anesthesia services have base and time units, and, thus, are not on the same system as are all other physicians' services, the adjustment is more complicated. This adjustment must be made, in the aggregate, on the anesthesia CF since there is no defined work RVU per code for anesthesia services. In addition, the budget neutrality adjuster will be applied to the anesthesia CF.

Final decision: We have reviewed and accepted the RUC recommendation and are increasing the work for anesthesia services by 22.76 percent. Since the adjustment was not proposed in the May 3, 1996 proposed notice, we will accept comments as we do for interim work RVUs.

4. Codes Without Work Relative Value Units

Comment: The Joint Council for Allergy, Asthma and Immunology commented that work RVUs should be reflected in CPT codes 95004 and 95024 (allergy skin tests) and CPT codes 95115 and 95117 (allergy shots). Currently those codes have zero work RVUs. In our May 3, 1996 proposed notice (61 FR 19994), we advised that codes with zero work RVUs were not subject to review as part of the 5-year review. The Joint Council for Allergy, Asthma and Immunology disagreed with that position. It stated that there is no statutory authority for us to limit the scope of the 5-year review in that manner and that we have not provided an alternative process for the review of codes with zero work RVUs.

Response: We believe that we have the authority to establish reasonable limits on the scope of services reviewed within the 5-year review. As we explained in our May 3, 1996 proposed notice (61 FR 20041), the work RVUs represent primarily the work of physicians. We believe that codes that do not include the work of physicians are more appropriately included as part of the process of developing resource-based practice expense RVUs. Therefore, we plan to invite comments on codes with zero work RVUs during that process. We will also invite comments on codes for which commenters might believe that work now reflected in practice expenses, such as the work of a nurse or technician, is, instead, work that physicians are and should be doing.

5. Potentially Overvalued Services

Comment: The RUC submitted recommendations for several potentially overvalued codes that had not been reviewed in time for consideration before publication of the May 3, 1996 proposed notice. The RUC's recommendations for these codes follow:

CPT code 33970 (Insertion of intra-aortic balloon assist device through the femoral artery, open approach) and CPT code 33971 (Removal of intra-aortic balloon assist device including repair of femoral artery, with or without graft).

Comment: The RUC identified CPT code 33970 (Insertion of intra-aortic balloon assist device through femoral artery, open approach) with 8.05 work RVUs, as a potentially overvalued service. The RUC determined that there are rank order anomalies in the intra-

aortic balloon insertion and removal codes. The relationship between CPT codes 33970 and 33971 should be similar to CPT code 33973 (Insertion of intra-aortic balloon assist device through the ascending aorta), with 8.78 work RVUs, and CPT code 33974 (Removal of intra-aortic balloon assist device from the ascending aorta, including repair of the ascending aorta, with or without graft), with 12.69 work RVUs.

To correct this rank order problem, the RUC recommended a decrease to 6.75 work RVUs for CPT code 33970. In addition, the RUC compared CPT code 33971 (Removal of intra-aortic balloon assist device including repair of femoral artery, with or without graft), with 4.04 work RVUs, to the family of codes and determined that it is currently undervalued and should be increased to 8.40 work RVUs since it is more work than CPT codes 33970 and 35226 (Repair blood vessel, direct; lower extremity), with 8.17 work RVUs.

Response: We have reviewed the RUC recommendations, and we agree with them.

Final decision: We are assigning 6.75 work RVUs to CPT code 33970 and 8.40 work RVUs to CPT code 33971. Because the public has not had an opportunity to comment on these work RVUs, we will consider them to be interim work RVUs and will accept comments on our proposal.

CPT code 67210 (Treatment of retinal lesion).

Comment: In September 1995, the RUC recommended that the current work RVUs for this code be maintained and the issue be referred to CPT. The intraservice work per unit of time analysis and the original work RVUs failed to take into account that the code includes multiple treatments that are bundled into the 90-day global period and cannot be billed separately. There is a bimodal distribution of patients treated within this code. The code includes treatment of acute macular degeneration and diabetic retinopathy. The RUC referred the issue to CPT to consider addition of a code for the treatment of the less complex retinal lesions. The American Academy of Ophthalmology is proceeding with development of two replacement codes for this procedure.

Response: We agree that this code should be reviewed by the CPT Editorial Panel.

Final decision: We are maintaining the current work RVUs of 0.48 for CPT code 67210 as interim until they have

been reviewed by CPT and the RUC. We anticipate assigning final work RVUs that would go into effect on January 1, 1998.

CPT codes 77420, 77425, and 77430 (Weekly radiation therapy management).

Comment: The RUC recommended that the current work RVUs for these codes be maintained on an interim basis until the radiation oncology codes are reviewed by the CPT Editorial Panel. The assignment of complexity levels of weekly radiation treatment currently requires the consideration of equipment that is used for treatment setup (for example, beam arrangement, number of ports, use of blocks, wedges, and other beam attenuation devices). The descriptors should be revised to adequately reflect different levels of complexity in managing the treatment of these patients. The current global period of XXX should also be considered because weekly treatment management includes evaluation and management services during treatment and 90 days posttreatment, the interpretation of port-films, and continuous supervision and management of physics and technical factors.

Another commenter indicated a concern that the section in our May 3, 1996 proposed notice entitled "Future Review" (61 FR 20046) had included radiation oncology. The commenter stated the following:

- The three levels of radiation therapy treatment management were included in the 5-year review; further reconsideration would be a violation of the established process for review of work RVUs.

- The identification of the treatment management codes as potentially overvalued was based on faulty data, and no justification was given for further review.

- A significant portion of radiation oncology codes (the technical components and technical only codes) are being addressed under the practice expense study.

- We had accepted the relative value of these procedures without modification when the American College of Radiology and HCFA were jointly developing the Medicare radiologist fee schedule.

Response: We agree with the RUC's recommendation and will leave the current work RVUs for radiation therapy treatment management in place as interim work RVUs with the understanding that the codes will be referred by the RUC to CPT and that the

RUC and HCFA may want to revisit the whole area of work RVUs for radiation oncology services at a later date. There continues to be some disagreement or misunderstanding about which services are payable through the weekly treatment management codes and which are separately billable. In fact, the American College of Radiology's examples of treatment management activities that were presented to the RUC included services we thought were paid through the professional component of the treatment devices and physics codes. We continue to believe that there is a reasonable basis to more closely define the work of the exact services payable through the weekly management codes and to consider the bundling of codes when appropriate.

Final decision: We are maintaining the work RVUs of the weekly radiation therapy management codes (CPT codes 77420, 77425, and 77430) as interim pending review of the codes by the CPT Editorial Panel.

C. Other Issues

1. Budget Neutrality

In past years, we have made budget neutrality adjustments across the entire physician fee schedule: to all RVUs (initially) and, beginning in 1996, to the CFs. We generally prefer to make adjustments across the entire fee schedule.

In the May 3, 1996 proposed notice (61 FR 20044 through 20045), we reiterated the policy of making budget neutrality adjustments required by changes in payment policy through adjustments to the CFs. However, since this 5-year review covered work RVUs, we proposed making the required budget neutrality adjustment from the 5-year review only on the work RVUs. We indicated that we proposed simply to rescale the work RVUs. We noted, however, that this rescaling could cause administrative problems for other payers using the RVUs and stated that we would consider developing a new budget neutrality adjuster that would be applied only to the work RVUs.

Comment: No comments questioned our making budget neutrality adjustments required by changes in payment policy through adjustments to the CFs. Regarding the budget neutrality adjustment required for RVU changes resulting from the 5-year refinement, the bulk of the comments focused on making the adjustment to work RVUs (that is, rescaling work RVUs). Most commenters favored achieving budget

neutrality through a special separate budget neutrality adjuster for work RVUs. Many commenters, including two payers, indicated that rescaling RVUs would cause administrative difficulties in other programs using the RVUs. One payer stated that lowering RVUs to achieve budget neutrality might cause payers to develop their own RVUs. The other payer emphasized the need for continuity and clear relativity in the relative value scale.

Response: We will continue our policy of making adjustments to the CF for budget neutrality adjustments required by changes in payment policy. However, instead of the policy of rescaling the work RVUs for the 5-year refinement that we proposed in the May 3, 1996 proposed notice, we will use a separate work budget neutrality adjuster in 1997. We emphasize that this is a 1-year policy. We plan to eliminate the separate adjuster in 1998 simultaneously with the implementation of resource-based practice expense payments. We agree with commenters that it will reduce confusion among other payers and enable easier tracking and analysis of work RVUs over time if we can minimize the rescaling of RVUs. While making a separate adjustment to the work RVUs for 1997 introduces an additional term in the payment formula, the term is temporary. In years subsequent to 1998, we plan to make the budget neutrality adjustments to the CFs.

The payment formula for 1997 will be [(work RVU) (work adjuster) (work geographic practice cost expense)] + [(practice expense RVU) (practice expense geographic practice cost expense)] + [(malpractice RVU) (malpractice geographic practice cost expense)] × conversion factor.

Comment: Several commenters stated that the purpose of the 5-year review is to ensure that the RVUs are correct and reflect the relative difference in work among procedures. They stated that rescaling RVUs would distort the integrity of the RVUs and undermine the relationships among procedures.

Response: We disagree that rescaling work RVUs would distort the integrity of the work RVUs and undermine the relationships among procedures. Because such an adjustment uniformly changes the work RVUs, it does not alter the relationship between them.

Comment: About a quarter of the commenters suggested achieving budget neutrality by adjusting the CFs as an alternative to rescaling RVUs. A few of

the commenters stated that the simplicity of this approach was appealing. A few others observed that we have used different methods to achieve budget neutrality and urged adjusting the CFs to be consistent with the method we used for 1996. One commenter proposed a single budget neutrality adjuster that would, in effect, be applied to the CFs. A few commenters recommended that we make the budget neutrality adjustment without rescaling RVUs but did not recommend a specific method.

Response: We agree that it would be preferable to make adjustments at the CF level as we did in 1996 (and in a similar overall way in prior years, but by adjusting all RVUs). However, achieving budget neutrality by adjusting the CFs would have the effect of reducing payment for all services on the fee schedule. This would include a number of services that have no physician work and are, therefore, outside the scope of the 5-year review. Examples of these services include radiology and other diagnostic tests where the technical component may be reported separately; certain diagnostic tests, such as audiologic function tests; and certain therapeutic services, such as chemotherapy administration. Our goal is to make overall adjustments in the future.

Comment: Several commenters recommended that we maintain the integrity of the three pools of RVUs; some thought this was especially important when we adopt resource-based practice expense RVUs. However, one commenter disagreed, maintaining that the three pools of RVUs are not coherent and independent and noting that gap-filling techniques have relied on a dependable relationship among the three pools.

Response: The Physician Payment Review Commission recommended applying the budget neutrality adjustment from the 5-year review only to work RVUs to preserve the integrity of the three pools of RVUs. (As discussed above, applying the adjustment to the CFs would, in effect, spread the adjustment across all RVUs.) The separate work adjuster will enable us to do that for 1997, prior to the implementation of resource-based practice expense RVUs in 1998, after which time it would be preferable to make budget neutrality adjustments on the CFs as discussed above.

The existing practice expense RVUs were based on historical charges and the historical practice expense shares for

the specialties performing the service. (The same is true of malpractice expense RVUs, but the size of that pool is very small.) The commenter is correct that there are some relationships between the work and practice expense RVUs, although we would characterize them as fairly tenuous.

Comment: One commenter observed that the separate budget neutrality adjuster is only for the Medicare program and requested that it not be displayed in tables of RVUs that are published for general information.

Response: Because the adjuster is a constant to be applied to all work RVUs, we will not display it in tables of RVUs. We will provide the value of the adjuster in the text describing the tables of RVUs, just as we provide the values of the CFs.

Comment: Two commenters requested that we restore previous budget neutrality adjustments to the work RVUs and incorporate them into the new budget neutrality adjuster.

Response: We intend to use the new adjuster only for 1 year and only for the budget neutrality adjustment required by changes due to the 5-year review of work RVUs. The previous budget neutrality adjustments generally have been related to changes in payment policy and not specifically to changes in work RVUs.

Comment: One commenter suggested that we perform analyses comparing the impact of the two options for achieving budget neutrality (that is, applying the adjustment to the work RVUs or to the CFs) and invite public comment on those analyses.

Response: The statute requires that we implement the results of the 5-year review in 1997. Time does not permit preparation of impact analyses of the types described, opportunity for public comment, and analysis of those comments prior to January 1, 1997. In our May 3, 1996 proposed notice (61 FR 20045), we indicated that a 7.63 percent decrease in RVUs would be required (based on proposed work RVUs) if the adjustment were applied only to work. We also indicated that the services with no work or with a practice expense percentage of total RVUs greater than average for the fee schedule would be adversely affected by applying the adjustment to the CFs.

Final decision: A separate budget neutrality adjuster is being applied to the work RVUs for 1 year, after which time we plan to eliminate it simultaneously with the implementation of the new practice

expense RVUs in 1998. In years subsequent to 1998, we plan to make the budget neutrality adjustments to the CFs.

2. Impact of Work Relative Value Unit Changes for Evaluation and Management Services on Work Relative Value Units for Global Surgical Services

We proposed not to make a change to the values of global surgical packages in connection with the increase in RVUs for evaluation and management services. In the May 3, 1996 proposed notice (61 FR 20045 through 20046), we articulated several arguments for why global surgical packages should be valued solely on their own merit.

Comment: Several commenters supported our proposal to maintain current work RVUs for global surgical services. These groups agreed with the underlying rationale that although increases to the work RVUs for evaluation and management services were warranted, corresponding across-the-board increases in the work RVUs for all global surgical packages would be inappropriate. Other commenters expressed the following opposing comments: the decision not to raise the work RVUs for global surgical services unfairly penalizes physicians whose clinical activities focus primarily on the performance of surgical procedures; evaluation and management services related to a procedure have been subjected to the same increasing complexity as non-procedural evaluation and management services due to such factors as reduced inpatient lengths of stay, same day admissions for major surgery, and increased utilization of home health care programs requiring far more involved and extensive postservice planning and management; and the amount of preoperative and postoperative work required in the provision of these services is the same whether it is performed separately or as part of the global surgical package. However, another group of commenters encouraged further study of this issue. They recommended including an examination of the work involved in furnishing specific global services, changes in practice patterns that may have shifted some of the postoperative care from the surgeon who performed the procedure to other physicians (for example, primary care or medical subspecialists) who are participating in the medical management of the patient during the postoperative period, external data such as changes in length

of stay and an increase in the number of laparoscopic procedures, the number of preoperative and postoperative visits that are assumed to be included in the global surgical period, and the complexity associated with the history, physical examination, and medical decision-making involved in the evaluation and management services of a surgeon during a global period.

Response: The widely divergent comments indicate the need for a more thorough review before we make adjustments to the global surgical services.

Comment: The RUC recommended that we include the relationship between evaluation and management services and global surgical services in a future review of work RVUs so that this aspect of the Medicare physician fee schedule can be updated in 1998. We plan to revisit this issue next year.

Response: We look forward to a RUC recommendation on this issue. We hope to receive the recommendation next year to assist us as we further examine whether a change in the work RVUs for global surgical services is warranted because of the increases in the RVUs for evaluation and management services.

Comment: A commenter stated that if we choose not to revalue global surgical services on the basis of changes in the work RVUs for evaluation and management services, we should, alternatively, discontinue the use of a surgical bundle and return to the practice of separate billing of the component services.

Response: Section 1848(c)(1)(A)(ii) of the Act requires that we use a global definition of surgical services.

Comment: Several commenters requested that we make interim across-the-board adjustments to the values for global surgical services until the RUC presents its recommendations on the issue. This interim adjustment should be utilized until further study results in a precise methodology. One possible approach would be to begin with our existing methodology for identifying the relative value share believed to be attributable to postoperative office visits. A percentage adjustment equivalent to the increase being proposed for physician office visits, perhaps CPT code 99213, a mid-level visit, could be applied. For global services typically furnished on an inpatient basis, available length-of-stay data could be used assuming that at least one inpatient hospital visit occurred on each day of the patient's inpatient stay. The length-of-stay could

then be multiplied by the planned increase in RVUs for subsequent hospital care.

Response: Although we believe there may be some merit to the approach recommended by the commenter, we do not believe that an interim adjustment should be made while we are studying the issue more completely during 1997.

Comment: One commenter recommended increasing the RVUs assigned to CPT codes 59400, 59409, 59410, 59510, 59514, 59515, 59425, and 59426 (maternity care and delivery services). The commenter stated that when we valued these services, we explicitly added work RVUs based on specific evaluation and management services as articulated in the December 2, 1993 final rule.

Response: The commenter has correctly identified an area where we should make adjustments to the RVUs assigned to these global services.

Therefore, we are accepting this comment and modifying the work RVUs for maternity services. The new work RVUs maintain the relationships that we published in the December 1993 final rule. The commenter did not request that we modify the work RVUs for CPT code 59430 (postpartum care only), but we have adjusted them to be consistent within the family. The following table shows the adjustments that we have made.

CPT code	1996 work RVUs	Adjustment for evaluation and management increase	1997 work RVUs
59400	20.99	2.07	23.06
59409	13.28	0.22	13.50
59410	14.44	0.34	14.78
59425	4.04	0.77	4.81
59426	6.91	1.37	8.28
59430	2.01	0.12	2.13
59510	23.67	2.55	26.22
59514	15.39	0.58	15.97
59515	16.55	0.82	17.37

The percent increase varies across the services because the number and type of evaluation and management services included in each CPT code are different. Therefore, an across-the-board adjustment would have been inappropriate.

Because we have made these adjustments to the delivery codes, we also need to adjust the work RVUs for the vaginal birth after cesarean services in order to maintain the existing relationship. As explained in the

December 2, 1995 final rule (60 FR 63165 through 63166), we added 1.56 work RVUs to the delivery codes to establish the values for the corresponding vaginal birth after cesarean services. Therefore, we will add 1.56 work RVUs to the new values for the delivery services to reassign RVUs to the vaginal birth after cesarean codes.

CPT code for vaginal birth after cesarean service	Corresponding delivery code	New work RVUs for delivery code	New work RVUs for vaginal birth after cesarean code
59610	59400	23.06	24.52
59612	59409	13.50	15.06
59614	59410	14.78	16.34
59618	59510	26.22	27.78
59620	59514	15.97	17.53
59622	59515	17.37	18.93

The aforementioned adjustments correct the services with an MMM global period (maternity) to reflect the increases in the work RVUs for the evaluation and management services. We did not modify the work RVUs for CPT code 59525 (removal of uterus after cesarean) because this service is billed in conjunction with either CPT code 59510 or 59515, both of which have had their work RVUs adjusted. We will consider all of these changes to be final.

Final Decision: With the exception of the services described above that have an MMM global period, at present we are making no adjustments to the work RVUs assigned to global surgical services as a result of the increases in the RVUs of evaluation and management services. However, we will reevaluate this policy next year. The extra year will allow time for us to closely examine our data and for the RUC to present us with additional data and a recommendation on this issue. Any further changes that we may make will be effective in 1998.

3. Codes Referred to the Physicians' Current Procedural Terminology Editorial Panel

Comment: We received a comment from the RUC indicating that the RUC has referred to the CPT Editorial Panel the following issues:

- CPT code 11971 (Removal of tissue expander(s) without insertion of prosthesis).
- CPT codes 13300 (Repair of wound or lesion) and 14300 (Skin tissue rearrangement).

- CPT codes 15000, 15101, 15121, 15201, 15221, 15241, and 15261 (Skin graft procedures).

- CPT code 31090 (Sinusotomy combined, three or more sinuses).

- CPT code 46900 (Destruction, anal lesion(s)).

- CPT code 54100 (Biopsy of penis).

- CPT code 93621 (Comprehensive electrophysiologic evaluation with right atrial pacing and recording, right ventricular pacing and recording, His bundle recording, including insertion and repositioning of multiple electrode catheters; with left atrial recordings from coronary sinus or left atrium, with or without pacing).

For these issues, the RUC believes the codes should be reviewed by the CPT Editorial Panel and the definitions and/or instructions for use be clarified.

Response: We agree that these codes should be reviewed by the CPT Editorial Panel.

Final decision: We are maintaining the work RVUs for these codes as interim during 1997 because we consider them to be 5-year review issues that have not yet been finalized. If the CPT adds, deletes, or revises any of the codes in response to the RUC's referral, then the RUC will have the opportunity to submit work RVU recommendations to us on those new or revised codes. In the event that no action is taken by the CPT Editorial Panel on any of the issues, we anticipate assigning final work RVUs that would go into effect on January 1, 1998.

4. Future Review

Since the physician fee schedule was implemented in 1992, we have undertaken significant annual revisions to the work RVUs for large numbers of codes, and, with the publication of this final rule, we have completed the first 5-year review. We believe that through these extensive efforts the work RVUs are now largely correct, and a significant case would need to be made to convince us to change the work RVUs for the overwhelming bulk of procedures.

For the future, we are considering periodic review of the physician fee schedule as necessary. However, there are several categories of codes and issues that we have tentative plans to review prior to the next 5-year review: Services that typically require reporting more than one code to describe the service correctly; the relationship of physician work between analogous open and closed procedures; radiation oncology; and rank order anomalies within families.

We described these tentative plans in our May 3, 1996 proposed notice (61 FR 20046), and several specialty societies submitted comments on codes that they believe fit into one of the above categories. Most of the codes for which they submitted comments were not subject to comment. Although we typically do not respond to comments on codes that are not subject to comment, we believe that some general responses would be appropriate to provide the public with some insights as to the direction future reviews might take.

Comment: The rapid development of endoscopy and minimally invasive approaches to surgery has led to widespread adoption of these alternative approaches. As these new procedures have become recognized and have been designated by unique procedure codes, we have often but not always adopted work RVUs that were equal to the traditional open approach for the same procedure. Several commenters identified codes that describe procedures performed using a traditional approach whose RVUs are higher than similar procedures that can be performed with endoscopes or minimally invasive techniques. The commenters argued that we should increase the work RVUs of the endoscopic or minimally invasive procedure codes to equal the work RVUs assigned to procedures that accomplish the same result by incision (open procedures). The commenters requested that we make these changes now, as part of the 5-year review process, so that the increased work RVUs would be effective January 1, 1997.

Response: While we agreed with this approach in the past, we now believe it is appropriate to examine the actual work relationship between open and closed procedures. The intent of the relative value scale is to value each procedure based on the work involved, not based on the clinical result. It is not clear that the work involved is in fact the same. We believe that there may be significant differences in the postoperative care between open and minimally invasive procedures. One of the claimed advantages of closed procedures is the rapid patient recovery, which may also represent a decrease in physician postoperative work. The actual work involved in the procedure itself, however, may be greater, resulting in no net difference in total work. Some closed procedures may have greater

total work than the analogous open procedure and some may be less. Finally, it is not clear what impact the selection of patients for one approach over another has on the total physician work involved.

The continued clinical use of two different techniques may in part be due to the selection of procedures based on patient risk factors, severity of disease, and the presence or absence of comorbidities. These selection criteria may account for differences in the work when comparing open and closed procedures. For these reasons, we believe it is time to reexamine the assumption that open and closed procedures should be valued equally. With the assistance and advice of the RUC, we plan to revisit this issue before the next 5-year review. In the interim, we will retain the existing work RVUs for codes in these categories unless we have specifically dealt with them in the 5-year review.

Comment: We received some comments supporting our proposed increases for individual codes and advocating increases within the entire family of codes to maintain existing relationships even when the other codes in the family had not been identified as undervalued when the 5-year review began.

Response: In our May 3, 1996 proposed notice, we invited comments on rank order anomalies created as a result of the 5-year review. We expressed our intention to consider correcting anomalies before the next 5-year review. We do not believe that the revaluation of a single code necessarily requires all other codes in a family to be revalued as this comment implies. We believe that the original comments were submitted to identify codes that were under or overvalued. In some cases, commenters requesting 5-year refinement identified groups of related codes. The 5-year review considered groups of codes when groups of codes were thus identified. Alternatively, when a single code was identified, we believe it was appropriate to view that code as a single misvalued code, and we considered the evidence presented. When rank order anomalies have appeared, we have sought to correct them. An example of a rank order problem that we corrected (CPT codes 57260 and 57265) can be found in section IV.A.8. of this final rule.

When recommendations to increase a code resulted in a change in the relationship between that code and other codes, we presume that the new

work RVUs represent a refined relationship. One purpose of the 5-year refinement is to improve the accuracy of relationships by revaluing codes that are under or overvalued. We do not believe it is reasonable to make recommended changes intended to refine existing relationships and then to change all other codes to maintain existing relationships. The following comments illustrate recommendations for revised work RVUs that we do not believe should be accepted without survey or other data that would support the requested change. This will be appropriate for the next 5-year review.

Comment: We received comments related to CPT code 57410 (Pelvic examination under anesthesia). The current work RVUs assigned to this code are 0.59. It was referred to the RUC as part of the 5-year review. The RUC recommended that the work RVUs be increased to 1.75. In our May 3, 1996 proposed notice (61 FR 20006), we agreed with this recommendation. Commenters expressed support for the increase in work RVUs for this service. However, the commenters stated that all gynecological surgical procedures include an examination under anesthesia as part of the procedure. Therefore, they believed that all gynecological procedures should have their work RVUs adjusted to account for the increased work attributable to the examination under anesthesia.

Response: Although a pelvic examination under anesthesia is a common element of many pelvic surgical procedures, it is not clear how this compares to the work assigned to CPT code 57410 (Pelvic examination under anesthesia). The examination performed at the time of other surgery is often such an inherent part of the procedure that we believe it has been properly considered as part of the total work of the surgical procedure.

It could be argued that during the course of a surgical procedure by a vaginal approach, a pelvic examination is performed many times—before, during, and at the end of the procedure. Adding the work RVUs of three CPT 57410 codes to this procedure is clearly not reasonable. The revaluation of CPT code 57410 was based on the evidence presented regarding the performance of a pelvic examination alone, as described by the CPT code. We believe the other procedures to which the commenter alluded should be revalued based on independent evidence of total work, not based on the assumption that if one

code is revalued all similar codes should be revalued. We see no evidence that the change in CPT code 57410 creates significant rank order anomalies. If other more complex codes involving examination at the time of surgery are undervalued in their own right, they can be corrected at the next opportunity for refinement.

Comment: We received similar comments stating that the proposed increase in work RVUs from 2.45 to 2.91 for CPT code 58120 (Dilation and curettage (D&C), diagnostic and/or therapeutic (nonobstetrical)) should result in corresponding increases in work RVUs for a code that was not identified as undervalued during the 5-year review: CPT code 56351 (Hysteroscopy, surgical; with sampling (biopsy) of endometrium and/or polypectomy, with or without D&C) since a D&C is included in CPT code 56351.

Response: We believe the requested increase in work RVUs for this code is not warranted. First, the CPT definition is clear that not all hysteroscopies involve a dilation and curettage. Second, we are not convinced that the work involved in performing a dilation and curettage as an independent procedure can be equated to the curettage of the uterus following direct visualization of the endometrial cavity. The work involved may be considerably different. The commenter presented no compelling evidence to support the equality of work. The existing work RVUs for CPT code 56351 (2.85) now will be slightly less than the new RVUs for CPT code 58120 (2.91). This reverses the prior relationship. Finally, since we have announced in this rule our intention to examine the proper relationship of open and closed procedures, we believe that it is appropriate to evaluate the relationship between these codes as part of that process rather than change the work RVUs for CPT code 56351 at this time.

V. Refinement of Relative Value Units for Calendar Year 1997 and Responses to Public Comments on Interim Relative Value Units for 1996

A. Summary of Issues Discussed Related to the Adjustment of Relative Value Units

Section V.B. of this final rule describes the methodology used to review the comments received on the RVUs for physician work and the process used to establish RVUs for new and revised CPT codes. Changes to

codes on the physician fee schedule reflected in Addendum B are effective for services furnished beginning January 1, 1997.

B. Process for Establishing Work Relative Value Units for the 1997 Fee Schedule

Our December 8, 1995 final rule on the 1996 physician fee schedule (60 FR 63124) announced the final RVUs for Medicare payment for existing procedure codes under the physician fee schedule and interim RVUs for new and revised codes. The RVUs contained in the rule apply to physician services furnished beginning January 1, 1996. We announced that we would accept comments on interim RVUs for these codes. We announced that we considered the RVUs for the remaining codes to be subject to public comment under the 5-year refinement process. In this section, we summarize the refinements to the interim work RVUs that have occurred since publication of the December 1995 final rule and our establishment of the work RVUs for new and revised codes for the 1997 fee schedule.

1. Work Relative Value Unit Refinements of Interim and Related Relative Value Units

a. Methodology (Includes Table 2—Work Relative Value Unit Refinements of 1996 Interim and Related Relative Value Units)

Although the RVUs in the December 1995 final rule were used to calculate 1996 payment amounts, we considered the RVUs for the new or revised codes to be interim. We accepted comments for a period of 60 days. We received substantive comments from approximately 10 specialty societies on approximately 50 CPT codes with interim RVUs.

Only comments received on codes listed in Addendum C of the December 1995 final rule were considered this year. (We also considered comments we received on other codes under the 5-year refinement process.) We convened multispecialty panels of physicians to assist us in the review of comments. The comments that we did not submit to panel review are discussed at the end of this section. The panels were moderated by our medical staff and consisted of the following groups:

- A clinician representing each of the specialties most identified with the procedures in question. Each specialist on the panel was nominated by the specialty society that submitted the

comments. This same clinician also provided ratings for the other procedures being considered. Thus, depending on the codes in question, this clinician was in one of two groups: "specialist" or "other specialist."

- Primary care clinicians nominated by the American Academy of Family Physicians, the American Society of Internal Medicine, the American College of Physicians, the American Academy of Pediatrics, the American Osteopathic Association, and the American College of Obstetricians and Gynecologists.

- Carrier medical directors.

After eliminating the codes with final RVUs and certain codes that are discussed at the end of this section, we submitted comments on 40 codes for evaluation by the panels. The panels discussed the work involved in each procedure under review in comparison to the work associated with other services on the fee schedule. We had assembled a set of reference services and asked the panel members to compare the clinical aspects of the work of services they believed were incorrectly valued to one or more of the reference services. In compiling the set, we attempted to include: (1) Services that are commonly performed whose work RVUs are not controversial; (2) services that span the entire spectrum from the easiest to the most difficult; and (3) at least three services performed by each of the major specialties so that each specialty would be represented. The set listed approximately 300 services. Panelists were encouraged to make comparisons to reference services.

The intent of the panel process was to capture each participant's independent judgment based on the discussion and his or her clinical experience. Following each discussion, each participant rated the work for the procedure. Ratings were individual and confidential, and there was no attempt to achieve consensus among the panel members.

We then analyzed the ratings based on a presumption that the interim RVUs were correct. To overcome this presumption, the inaccuracy of the interim RVUs had to be apparent to the broad range of physicians participating in each panel.

Ratings of work were analyzed for consistency among the groups represented on each panel. In general terms, we used statistical tests to determine whether there was enough agreement among the groups of the panel and whether the agreed-upon RVUs were significantly different from the interim RVUs published in Addendum C of the December 1995 final rule. We did not modify the RVUs unless there was clear indication for a change. If there was agreement across groups for change, but the groups did not agree on what the new RVUs should be, we eliminated the outlier group and looked for agreement among the three remaining groups as the basis for new RVUs. We used the same methodology in analyzing the ratings that we used in the refinement process for the 1993 fee schedule. The statistical tests were described in detail in the November 25, 1992 final notice (57 FR 55938).

Our decision to convene multispecialty panels of physicians and to apply the statistical tests described above was based on our need to balance the interests of those who commented on the work RVUs against the redistributive effects that would occur in other specialties, particularly the potential adverse effect on primary care services. Of the 40 codes reviewed by our multispecialty panel, all but two of the requests were for increased values.

We also received comments on RVUs that were interim for 1996 but which we did not submit to the panel for review for a variety of reasons. These comments and our decisions on those comments are discussed in further detail in section V.B.1.b. of this final rule. Of the 59

interim work RVUs that were reviewed, approximately 27 percent were increased, and approximately 42 percent were not changed.

Table 2—Work Relative Value Unit Refinements of 1996 Interim and Related Relative Value Units

Table 2 lists the interim and related codes reviewed during the 1996 refinement process described in this section. All of these codes are discussed in code order following Table 2, in section V.B.1.b. of this final rule. This table includes the following information:

- **CPT Code.** This is the CPT code for a service.
- **Description.** This is an abbreviated version of the narrative description of the code.
- **1996 Work RVU.** The work RVUs that appeared in the December 1995 rule are shown for each reviewed code.
- **Requested Work RVU.** This column identifies the work RVUs requested by commenters. We received more than one comment on some codes, and, in a few of these cases, the commenters requested different RVUs. The table lists the highest requested RVUs. For some codes, we received recommendations for an increase but no specific RVU recommendations.
- **1997 Work RVU.** This column contains the final RVUs for physician work.
- **Basis for Decision.** This column indicates whether—
 - The recommendations of the refinement panel were the basis upon which we determined that the interim work RVUs published in the December 1995 final rule should be retained (indicator 1);
 - A new value emerged from our analysis of the refinement panel ratings (indicator 2); or
 - A new or retained value emerged from some other source (indicator 3).

TABLE 2.—WORK RVU REFINEMENTS OF 1996 INTERIM AND RELATED RVUS

CPT code	Description	1996 work RVU	Re-requested work RVU	1997 work RVU	Basis for decision
20930	Spinal bone allograft				
20931	Spinal bone allograft	0.00	Increase	0.00	3
20936	Spinal bone allograft	1.81	Increase	1.81	3
20937	Spinal bone allograft	0.00	Increase	0.00	3
20938	Spinal bone allograft	2.79	Increase	2.79	3
22554	Neck spine fusion	3.02	Increase	3.02	3
22556	Thorax spine fusion	17.24	Increase	17.24	3
22558	Lumbar spine fusion	22.27	Increase	22.27	3
22600	Neck spine fusion	21.22	Increase	21.22	3
		14.74	Increase	14.74	3

TABLE 2.—WORK RVU REFINEMENTS OF 1996 INTERIM AND RELATED RVUS—Continued

CPT code	Description	1996 work RVU	Re-requested work RVU	1997 work RVU	Basis for decision
22610	Thorax spine fusion	14.62	Increase	14.62	3
22612	Lumber spine fusion	20.19	Increase	20.19	3
22840	Insert spine fixation device	8.27	12.54	12.54	3
22842	Insert spine fixation device	7.19	12.58	12.58	3
22843	Insert spine fixation device	8.97	13.46	13.46	3
22844	Insert spine fixation device	10.96	16.44	16.44	3
22845	Insert spine fixation device	5.98	11.96	11.96	3
22846	Insert spine fixation device	9.28	12.42	12.42	3
22847	Insert spine fixation device	9.20	13.80	13.80	3
22851	Apply spine prosth device	6.71	Increase	6.71	3
56859	Percutaneous insert, pros	0.29	14.00	12.00	2
56343	Laparoscopic salpingostomy	6.96	13.34	13.34	3
56344	Laparoscopic fibrioplasty	7.16	12.50	12.50	3
92525	Oral function evaluation	1.13	1.61	1.50	2
92526	Oral function therapy	0.52	0.84	0.55	2
92597	Oral speech device eval	1.11	1.50	1.35	2
92598	Modify oral speech device	0.73	0.99	0.99	2
97010	Hot or cold packs therapy	0.11	0.11	0.06	2
97012	Mechanical traction therapy	0.25	0.25	0.25	1
97014	Electric stimulation therapy	0.18	0.18	0.18	1
97016	Vasopneumatic device therapy	0.18	0.18	0.18	1
97018	Paraffin bath therapy	0.11	0.11	0.06	2
97020	Microwave therapy	0.11	0.11	0.06	2
97022	Whirlpool therapy	0.25	0.25	0.17	2
97024	Dialysis treatment	0.11	0.11	0.06	2
97026	Infrared therapy	0.11	0.11	0.06	2
97028	Ultraviolet therapy	0.20	0.20	0.08	2
97032	Electrical stimulation	0.25	0.25	0.25	1
97033	Electric current therapy	0.26	0.26	0.26	1
97034	Contrast bath therapy	0.21	0.21	0.21	1
97035	Ultrasound therapy	0.21	0.21	0.21	1
97036	Hydrotherapy	0.38	0.20	0.28	2
97039	Physical therapy treatment	0.29	0.20	0.20	2
97110	Therapeutic exercises	0.45	0.45	0.45	1
97112	Neuromuscular reeducation	0.45	0.45	0.45	1
97113	Aquatic therapy/exercises	0.44	0.44	0.44	1
97116	Gait training therapy	0.40	0.40	0.40	1
97122	Manual traction therapy	0.45	0.45	0.42	2
97124	Massage therapy	0.35	0.35	0.35	1
97139	Physical medicine procedure	0.21	0.35	0.21	1
97150	Group therapeutic procedures	0.27	0.27	0.27	1
97250	Myofascial release	0.45	0.45	0.45	1
97265	Joint mobilization	0.45	0.45	0.45	1
97530	Therapeutic activities	0.44	0.44	0.44	1
97535	Self care management training	0.33	0.45	0.45	2
97537	Community/work reintegration	0.33	0.45	0.45	2
97542	Wheelchair management training	0.25	0.45	0.25	1
97703	Prosthetic checkout	0.25	0.45	0.25	1
97750	Physical performance test	0.45	0.45	0.45	1
97770	Cognitive skills development	0.44	0.44	0.44	1

*All CPT codes and descriptors copyright 1996 American Medical Association.

b. Interim 1996 Codes.

CPT codes 22840, 22842, 22843, 22844, 22845, 22846, and 22847 (Insert spine fixation device).

Comment: Effective 1996, substantial changes were made in the CPT codes for spine surgery. The RUC recommended work RVUs for these new and revised codes, and we accepted those recommendations as interim work

RVUs, which were subject to comment. (When appropriate, malpractice and practice expense RVUs for these new and revised codes were calculated using the weighted average data from predecessor codes or by imputing the RVUs based on the experience of the dominant specialty, in this case, orthopedic surgery.)

We received comments on the interim work RVUs for the spinal instrumentation codes. All commenters indicated that the RUC recommendations for the instrumentation codes, which we had accepted, were based on erroneous assumptions. Those assumptions had, according to the commenters, resulted in the RUC recommending work RVUs

that were, for some codes, half of what they should have been. Specifically, two commenters recommended the following:

- The work RVUs for CPT code 22840 should be increased by 100 percent.
- The work RVUs for CPT code 22842 should be increased by 75 percent.
- The work RVUs for CPT code 22843 should be increased by 50 percent.
- The work RVUs for CPT code 22844 should be increased by 50 percent.
- The work RVUs for CPT code 22845 should be increased by 100 percent.
- The work RVUs for CPT code 22846 should be increased by 50 percent.
- The work RVUs for CPT code 22847 should be increased by 50 percent.

Other commenters recommended that we consider appropriate work RVUs for these codes. The commenters suggested that we ask the RUC or another physician panel to review the matter. Also, one commenter suggested that any increases in the work RVUs be retroactive to January 1, 1996.

Response: We convened a panel that included our medical staff and carrier medical directors to consider the issue of the appropriateness of the instrumentation work RVUs. Members of that panel reviewed the comments and agreed with the commenters who requested 50 percent increases in work RVUs for CPT codes 22843, 22844, 22846, and 22847, a 75 percent increase in work RVUs for CPT code 22842, and 100 percent increases in work RVUs for CPT codes 22840 and 22845. The panel members believed that the resulting work RVUs are an accurate reflection of the relative resource intensity of the work involved in the codes.

In accepting this recommendation for change, the panel members noted that the posterior and anterior segmental codes were in two groups. One group is the posterior segmental, comprised of CPT codes 22842, 22843, and 22844, with CPT code 22842 being the lowest number of segments and CPT code 22844, the highest. Similarly, for the anterior codes, CPT code 22845 is the lowest number of segments, CPT code 22846, the next highest number of segments, and CPT code 22847, the highest number of segments. The panel members concluded that the highest codes in the posterior instrumentation group should be valued, for work, at approximately 25 percent more than the lowest code in the series. They believed that to be the appropriate work differential between the highest and the lowest code. For the anterior group, they concluded that the work for the code

representing the highest number of segments should be valued at approximately 15 percent more than the code representing the lowest number of segments. Thus, we accepted the recommendations of the commenters based, in part, on the opinions of the panel members.

However, there is nothing in the law that would permit fee schedule determinations to be made retroactive. Indeed, the entire thrust of section 1848 of the Act is prospective: in accordance with the law, the codes, RVUs, updates, CFs, and volume performance standards are announced in advance of a fee schedule year, and adjustments are prospective only. In our view, the Congress did not intend that there be retroactive "correction" of any elements of the fee schedule. Thus, as in the past, we are not retroactively adjusting claims for instrumentation services furnished in 1996.

CPT code 22851 (Application of prosthetic device (eg, metal cages, methylmethacrylate) to vertebral defect or interspace).

Comment: One commenter stated that the proposed work RVUs for this code are too low. The interim work RVUs for 1996 are 6.71.

Response: The interim work RVUs were based, in part, on the RUC recommendation that we accepted. The commenter presented no compelling arguments that would support increasing the work RVUs, which we believe are appropriate for CPT code 22851.

Comment: One commenter objected to our use of a formula that imputes malpractice and practice expense RVUs for new and substantially revised codes. That formula relies on the malpractice and practice expense experience of the specialty or specialties that perform the service. In this case, we relied upon the overall practice experience of orthopedic surgeons. The commenter stated that for spine codes this resulted in inappropriate reductions in practice expense and malpractice expense RVUs.

Response: We believe that the continued use of charge-based practice expense and malpractice expense RVUs is generally inappropriate when codes have substantially changed. The use of the formula that relies on the overall practice expense experience of the specialty performing the service is, in our judgment, the most reasonable approach to pricing until we develop resource-based practice expense RVUs.

CPT codes 20930 through 20938 (Bone grafts).

Comment: One commenter objected to the CPT instruction for reporting spine surgery bone graft codes, beginning with CPT code 20930, that only one bone graft code should be reported per operative session.

Response: The RUC was aware of this coding rule. The recommended work RVUs took into account that only one bone graft code can be reported per operative session. The commenter would have to submit any proposed changes to this coding rule to the CPT Editorial Panel.

CPT codes 22554, 22556, and 22558 (Anterior arthrodesis procedures).

Comment: A commenter expressed concern about the reduction in the work RVUs for CPT codes 22554, 22556, and 22558. The commenter stated that we made this reduction in work RVUs because we assumed that the coding change would result in providers' billing additionally for bone grafts that were not previously billed separately. According to the commenter, bone grafts were billed separately before and will be billed separately now. Therefore, we should not have made the adjustment in work RVUs based on a billing change.

Response: Through the RUC, the specialty societies recommended a reduction in work RVUs because of the expectation that the new bone graft codes would be billed in half of the anterior arthrodesis cases, when in fact there had not been separate bone graft billing before.

Final decision: The following table lists the final work RVUs only for those codes whose work RVUs will be changed in response to our consideration of the public comments:

CPT code	Current/1996 interim work RVUs	Recommended percentage increase	Final/1997 work RVUs
22840	6.27	100	12.54
22842	7.19	75	12.55
22843	8.97	50	13.46
22844	10.96	50	16.44
22845	5.98	100	11.96
22846	9.28	50	12.42
22847	9.20	50	13.80

CPT codes 22600, 22610, and 22612 (Posterior arthrodesis procedures).

Comment: One commenter expressed concern that the reductions in the work RVUs for CPT codes 22600, 22610, and 22612 are inappropriate because no other codes may be billed in addition.

Response: In making its recommendations regarding these codes,

which we accepted, the RUC pointed out that the reporting of bone grafts and use of spinal instrumentation with some of these services will be appropriate.

CPT code 55859 (Transperineal placement of needles or catheters into prostate for interstitial radioelement application, with or without cystoscopy).

Comment: Several commenters expressed concern about our rejection of the RUC recommendation of 14.00 work RVUs and our proposed 8.29 work RVUs.

Response: The RUC's initial recommendation of 14.00 work RVUs was based upon the use of CPT code 61770 (Stereotactic localization, any method, including burr hole(s) with insertion of catheter(s) for brachytherapy) as a reference procedure. We believed that 14.00 work RVUs were too high and disagreed with the RUC's use of CPT code 61770 as a reference procedure; we viewed that procedure as requiring greater technical skill, mental effort, and judgment. The recommended 14.00 work RVUs are higher than the work RVUs assigned to CPT code 55860 (Exposure of prostate, any approach, for insertion of radioactive substance), with 13.33 work RVUs. This is an open surgical procedure with significantly more postservice work than CPT code 55859, which can be performed on an outpatient basis.

The placement of needles or catheters into the prostate is performed under ultrasonic guidance, and the guidance is separately reported by new CPT code 76965 for which we accepted the RUC recommendation of 1.34 work RVUs. In addition, CPT also directs separate reporting of the interstitial radioelement application (CPT codes 77776 through 77778). CPT code 77778 (Interstitial radioelement application, complex) is the code most likely to be reported. We assigned 10.46 work RVUs to this code. Thus, we believed a physician performing all aspects of this procedure would report all three codes with 25.80 total work RVUs if we accepted the RUC recommendation of 14.00 work RVUs for CPT code 55859.

We believed it was possible that urologists responding to the surveyed vignette may have misunderstood that this code is used to report only the placement of the needles or catheters into the prostate and that they inadvertently included in their estimates of work the separately reported work of ultrasonic guidance and application of the radioelements.

We believed that a more appropriate reference procedure than a neurosurgical procedure would be another prostate procedure that can be performed on an outpatient basis. We selected CPT code 55700 (Biopsy, prostate; needle or punch, single or multiple, any approach), with 1.57 work RVUs. Because of the increased intraoperative time and complexity as well as the increased surgical risk associated with CPT code 55859, we increased the work RVUs four-fold to 6.28 work RVUs. In addition, we added 2.01 work RVUs, the work RVUs assigned to CPT code 52000, to reflect the added work of the cystoscopy. This addition resulted in the proposed 8.29 work RVUs for CPT code 55859.

In light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: During the panel discussion and before the service was rated, the panel members agreed that the physician inserting needles or catheters into a prostate for interstitial radioelement application could not also report an interstitial brachytherapy code, for example, CPT code 77778, because a radiation oncologist must perform that service.

As a result of our analysis of the refinement panel ratings, we are increasing the interim work RVUs from 8.29 RVUs to 12.00 for CPT code 55859.

CPT code 56343 (Laparoscopy, surgical; with salpingostomy) and CPT code 56344 (Laparoscopy, surgical; with fimbrioplasty).

Comment: We received a recommendation to increase the work RVUs assigned to these two codes from 6.96 and 7.16 to 13.34 and 12.50, respectively, based on a comparison to the work RVUs that were proposed as part of the 5-year review for the corresponding open procedures, CPT code 58760 (Fimbrioplasty), with 12.50 work RVUs, and CPT code 58770 (Salpingostomy (salpingoneostomy)), with 13.34 work RVUs.

Response: CPT 1996 added new CPT codes 56343 and 56344 to allow the reporting of these procedures when they are performed laparoscopically. We reviewed and accepted the RUC recommendation to assign the same work RVUs to the two new codes that were then assigned to the corresponding open procedures, CPT code 58760, with 7.16 work RVUs, and CPT code 58770, with 6.96 work RVUs.

CPT codes 58760 and 58770 were then being evaluated as part of the 5-year review and, based on the RUC's

recommendation, these codes were increased in value from 7.16 to 12.50 work RVUs for CPT code 58760 and 6.96 to 13.34 work RVUs for CPT code 58770. We believe that the RUC adequately considered the work relationships between these open and closed procedures and, in spite of our intention to reexamine the general relationships of open versus closed procedures, as described in section IV.C.4. of this final rule, "Future Review," we accept the recommendation to assign the same work RVUs to CPT codes 56343 and 56344 as we have assigned to CPT codes 58770 and 58760.

Final decision: We are assigning 13.34 work RVUs to CPT code 56343 and 12.50 work RVUs to CPT code 56344.

CPT codes 59610, 59612, 59614, 59618, 59620, and 59622 (Vaginal birth after cesarean).

Comment: We received a comment recommending that we assign work RVUs to these codes by increasing the work RVUs for each of the existing delivery codes by 8.5 percent rather than by adding the fixed amount of 1.56 work RVUs to each of the codes as we proposed.

Response: The CPT added a new section to the 1996 edition for "Delivery After Previous Cesarean Delivery." Included in this section are six new codes that are used to report the services furnished to patients who have had a previous cesarean delivery and who present with the expectation of a vaginal delivery. If the patient has a successful vaginal delivery after a previous cesarean delivery, either CPT code 59610, 59612, or 59614 is reported. If the attempt is unsuccessful and another cesarean delivery is carried out, either CPT code 59618, 59620, or 59622 is reported. The RUC recommended work RVUs for all six codes that added varying increments of work to the work RVUs of the six existing codes that are used to report routine vaginal and cesarean deliveries.

While we accepted the RUC conclusion that a vaginal delivery after a previous cesarean delivery entails more physician work and that the existing delivery codes are appropriate reference points, we disagreed with the variable and small differences in work from one code to the next. We believed the increased stress, mental effort, and judgment associated with a vaginal delivery after a previous cesarean delivery is the same regardless of the particular delivery service furnished. Therefore, we added 1.56 work RVUs

(the median work RVUs of the above differences) to each of the existing delivery codes.

We continue to believe that our approach is correct since the increased stress, mental effort, and judgment associated with a vaginal delivery after a previous cesarean delivery is the same regardless of the particular delivery service furnished. Adding a fixed percentage of 8.5 percent to each of the codes would result in additional work RVUs for each of the codes for a vaginal delivery after a previous cesarean delivery that would range from 1.13 work RVUs to 2.01 work RVUs. We do not believe these differences are warranted. We also note that this request would result in lower work RVUs than we proposed for four of the six codes.

Final decision: We are not revising our proposed work RVUs based on our consideration of this comment. However, as part of the 5-year review and the changes we are making in the work RVUs for evaluation and management services, we are increasing the work RVUs for all delivery codes including a vaginal delivery after a previous cesarean delivery. See section IV.C.2. of this final rule for a discussion of these changes and Table 1 for a listing of the new work RVUs.

CPT code 92525 (Evaluation of swallowing and oral function for feeding).

Comment: Commenters objected to our decision to decrease the work RVUs to a value lower than the RUC recommendation.

Response: The RUC recommended 1.61 work RVUs based on a clinical vignette of an inpatient whose evaluation included a barium swallow. The RUC lowered the specialty's recommendation to better account for the times when barium swallow might not be done. We believed that the work RVUs recommended, which were between the work RVUs of a level-three inpatient consultation (CPT code 99253), with 1.56 work RVUs, and a level-four inpatient consultation (CPT code 99254), with 2.27 work RVUs, were too high. While we believed that the intraservice work determined by the survey for the vignette may have been reasonable, we did not agree that the surveyed vignette represents a typical patient.

Our data suggest that this procedure, which was formerly reported by CPT code 92506, is performed primarily in the physician's office. We took into consideration that the procedure is

currently reported using CPT code 92506, which is assigned 0.86 work RVUs. We then took into account that the barium swallow is probably included in at least 50 percent of the cases and that the evaluation of the barium swallow is an integral part of the procedure. Therefore, we added half the value of CPT code 74230 (Swallowing function, pharynx and/or esophagus, with cineradiography and/or video), with 0.54 work RVUs, to the 0.86 work RVUs for CPT code 92506, resulting in an assignment of 1.13 work RVUs for CPT code 92525. These proposed work RVUs are slightly higher than the work RVUs of CPT code 99242, which is the code for a level-two office consultation, the components of which include an expanded problem-focused history, an expanded problem-focused examination, and straightforward medical decision making.

However, in light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, the final work RVUs are established as 1.50 for CPT code 92525.

CPT code 92526 (Treatment of swallowing dysfunction and/or oral function for feeding).

Comment: Several commenters objected to our decision to decrease the work RVUs to a value lower than the RUC recommendation. Commenters stated that the vignette describes a typical patient and that it is not proper to equate speech-language pathology treatment (CPT code 92507) with the treatment of swallowing disorders.

Response: The RUC recommended 0.64 work RVUs based on a clinical vignette of an inpatient similar to the patient described in the vignette used for CPT code 92525 described above. Our data suggest that this procedure, which is currently reported using CPT code 92507, also is performed primarily in physicians' offices. Because we believed the surveyed vignette did not describe a typical patient, we reduced the RUC recommendation for CPT code 92526 to 0.52 work RVUs, which are the same work RVUs as those for CPT code 92507 (Treatment of speech, language, voice, communication, and/or auditory processing disorder (includes aural rehabilitation); individual). These work RVUs are slightly less than the work RVUs assigned to a mid-level office visit (CPT code 99213), with 0.55 work RVUs, which typically requires 15

minutes of face-to-face time with a physician.

In light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, the final work RVUs are established as 0.55 for CPT code 92526.

CPT code 92597 (Evaluation for use and/or fitting of voice prosthetic or augmentative/alternative communication device to supplement oral speech).

Comment: Several commenters objected to our comparison of this service to a level-three new patient office visit. The commenters provided an extensive description of the elements included in the vignette.

Response: The RUC originally recommended 1.50 work RVUs. We believed the recommended work RVUs were too high because they are comparable to the highest level established patient office visit, CPT code 99215, the components of which include a comprehensive history, a comprehensive examination, and medical decision making of high complexity. We did not believe the work of these two services is comparable. Rather, we believed the work associated with CPT code 92597 is slightly less than the work associated with a level-three new patient office visit (CPT code 99203), with 1.14 work RVUs, and a level-two inpatient consultation (CPT code 99252), with 1.13 work RVUs. Therefore, we proposed 1.11 work RVUs for CPT code 92597.

In light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, the final work RVUs are established as 1.35 for CPT code 92597.

CPT code 92598 (Modification of voice prosthetic or augmentative/alternative communication device to supplement oral speech).

Comment: Several commenters objected to our decision to decrease the work RVUs to a value lower than the RUC recommendation.

Response: The RUC recommended 0.99 work RVUs, which are higher than the work RVUs assigned to a level-four established patient office visit (CPT code 99214), with 0.94 work RVUs. We believed that the recommendation is too high. However, we believed that the relative relationship between this service and CPT code 92597, as

established by the RUC, should be maintained. Thus, we calculated the interim work RVUs by multiplying the recommended 0.99 work RVUs by 74 percent (0.99x1.11/1.5) representing the percentage of the RUC-recommended work RVUs, which we accepted for the preceding code. This calculation resulted in 0.73 interim work RVUs for CPT code 92598.

In light of the comments that objected to our rationale, we referred this code to a refinement panel for review.

Final decision: As a result of our analysis of the refinement panel ratings, the final work RVUs are established as 0.99 for CPT code 92598.

CPT codes 97010 through 97770
(Physical medicine and rehabilitation codes).

Background

The following is a brief summary of the complex history associated with the assignment of work RVUs to all the physical medicine and rehabilitation services reported with CPT codes in the range 97010 through 97770 since the beginning of the physician fee schedule on January 1, 1992. By statute, physicians' services, outpatient physical therapy services, and outpatient occupational therapy services are paid under the physician fee schedule. The work RVUs for physical medicine services that were included in the physician fee schedule for 1992, 1993, and 1994 were based on historic charges rather than the work in furnishing the services.

The CPT codes for physical medicine services were substantially revised for 1995 and the codes were organized into a number of categories: supervised modalities, constant attendance modalities, therapeutic procedures, and other procedures. These revised codes were forwarded to the RUC's Health Care Professionals Advisory Committee (HCPAC) for evaluation of the work in the services represented by the new codes. The HCPAC is a multi-disciplinary committee of nonphysician and limited license practitioners, which includes, but is not limited to, representatives of the American Physical Therapy Association and the American Occupational Therapy Association, both of which had recommended work RVUs for these new and revised codes. The HCPAC reviewed the work in these services in the context of the work in other services on the physician fee schedule and provided us with recommended work RVUs for them.

We base the work RVUs for these services on the expectation that the definition of the codes represents how the services will be furnished when billed to Medicare. For example, we expect that when 15 minutes of a service in the constant attendance category is billed, we may be confident that the provider furnished the 15 minutes of constant one-on-one attendance that is included in the definition of the code. If the provider did not furnish 15 minutes of one-on-one constant attendance, as the code is defined, he or she may not bill a code for 15 minutes of constant attendance. If the provider is overseeing the therapy of more than one patient during a period of time, he or she must bill the code for group therapy (CPT code 97150), since he or she is not furnishing constant attendance to a single patient.

The HCPAC provided recommended work RVUs for 26 of the 28 new or revised codes. Of the 26 codes for which the HCPAC provided recommended work RVUs, we agreed with or increased the work RVUs for 20 codes, mostly therapeutic or other procedures. We decreased the work RVUs for six codes, all of which were modalities that do not require the constant attendance of a professional. The HCPAC provided recommended work RVUs for work hardening/conditioning (CPT codes 97545 and 97546), which we set as carrier-priced.

Thus, the interim work RVUs established for these codes for 1995 represented the first time that the work RVUs for these codes had been based on the work associated with furnishing the service. We accepted the HCPAC's recommendations of 0.45 work RVUs for most therapeutic procedures.

Later in 1995, the HCPAC recommended 0.45 work RVUs for the following four services: CPT code 97535 (Self care management training); CPT code 97537 (Community/work reintegration); CPT code 97542 (Wheelchair management training); and CPT code 97703 (Prosthetic checkout). These recommendations were made on the basis of their comparability to other physical medicine codes, for example, CPT code 97110 (Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility).

For CPT codes 97535 and 97537, we believed the recommended 0.45 work RVUs were too high. Before 1996, they were reported using CPT code 97540 (Training for daily living), with 0.44

work RVUs. We divided the work RVUs for CPT code 97540 by 2 to arrive at work RVUs for 15 minutes and added 50 percent to account for the preservice and postservice work inherent in the service. This resulted in 0.33 work RVUs for CPT codes 97535 and 97537.

For new CPT codes 97542 and 97703, we also believed the recommended 0.45 work RVUs were too high. We believed these services were comparable to attended modality services such as CPT code 97032 (Application of a modality to one or more areas; with electrical stimulation (manual), each 15 minutes), with 0.25 work RVUs. Therefore, we assigned 0.25 work RVUs to both CPT codes 97542 and 97703.

While we agreed that these new services appropriately were compared to other therapeutic procedures, our review of the new services caused us to believe that the interim work RVUs we previously had assigned to the therapeutic procedures may have been too high relative to other services on the fee schedule, for example, osteopathic manipulative treatments and evaluation and management services. In other words, our review of these four new codes caused us to reexamine our previous decision to accept the HCPAC's earlier recommendations for the other physical medicine services.

Therefore, we decided to maintain the work RVUs for the physical medicine and rehabilitation codes (CPT codes 97010 through 97770) as interim work RVUs on the 1996 fee schedule so that we would have additional time to reevaluate them. While we acknowledged in our December 8, 1995 final rule (60 FR 63167) that we had accepted the previous year's recommendations of the HCPAC, we decided to refer these codes back to the RUC HCPAC Review Board for its reconsideration and to notify the RUC of our concerns. The RUC HCPAC Review Board is composed of all members of the HCPAC and three physician representatives of the RUC. It is chaired by a physician member of the RUC and provides recommendations for services performed primarily by non-physician practitioners. In addition, we sought public comments on this issue.

Comment: In response to our concern that the interim work RVUs we previously had assigned to the therapeutic procedures may have been too high relative to other services on the physician fee schedule, the RUC HCPAC Review Board formed a workgroup to assist in developing a response by the American Physical Therapy Association

and the American Occupational Therapy Association. The workgroup was chaired by an AMA representative on the RUC and included members of the RUC HCPAC Review Board and members of the RUC representing orthopedic surgery, psychiatry, and osteopathic medicine.

The workgroup's report was approved by the full RUC HCPAC Review Board and submitted as a comment on our proposal. The report provided rationale for maintaining the current work RVUs for most services or increasing the work RVUs for those services that we had reduced below the HCPAC's initially recommended work RVUs. The recommended work RVUs that were included in the workgroup's report are listed in Table 2.

We also received recommendations from the HCPAC for three codes that will be new in 1997: CPT code 97504 (Orthotics training); CPT code 97520 (Prosthetic training); and CPT code 90901 (Biofeedback training). They recommended 0.45 work RVUs for all three codes.

Response: In light of the comments we received and the report of the workgroup, we referred all of the physical medicine and rehabilitation codes to a refinement panel for review. To expedite the assignment of final work RVUs effective January 1, 1997 for all physical medicine services, we also had the refinement panel review the recommendations from the HCPAC for the three codes that will be new in 1997: CPT code 97504 (Orthotics training); CPT code 97520 (Prosthetic training); and CPT code 90901 (Biofeedback training).

Final decision: The results of the refinement panel ratings for existing CPT codes are listed in Table 2 and for new or revised CPT codes in Table 3. The two most important results are that the ratings for the majority of the therapeutic procedures will be at the level recommended by the HCPAC, and the work RVUs for five of the modality codes that are used to report the application of heat have been reduced from 0.11 to 0.06 work RVUs.

For CPT code 97010, application of hot or cold packs, we have bundled the RVUs across other services, and separate payment will no longer be made effective January 1, 1997. For a

discussion of this bundling service, see section II.D.1. of this final rule.

2. Establishment of Interim Work Relative Value Units for New and Revised Physicians' Current Procedural Terminology Codes and New HCFA Common Procedure Coding System Codes for 1997

a. Methodology (Includes Table 3—American Medical Association Specialty Society Relative Value Update Committee and Health Care Professionals Advisory Committee Recommendations and HCFA's Decisions for New and Revised 1997 CPT Codes).

One aspect of establishing work RVUs for 1997 was related to the assignment of interim work RVUs for all new and revised CPT codes. As described in our November 25, 1992 notice on the 1993 fee schedule (57 FR 55938) and in section III.B. of this final rule, we established a process, based on recommendations received from the AMA's RUC, for establishing interim RVUs for new and revised codes.

We received work RVU recommendations for approximately 90 new and revised codes from the RUC. Physician panels consisting of carrier medical directors and our staff reviewed the RUC recommendations by comparing them to our reference set or to other comparable services on the fee schedule for which work RVUs had been established previously, or to both of these criteria. The panels also considered the relationships among the new and revised codes for which we received the RUC recommendations. We agreed with a majority of those relationships reflected in the RUC values. In some cases when we agreed with the RUC relationships, we revised the work RVUs recommended by the RUC in order to achieve work neutrality within families of codes. That is, the work RVUs have been adjusted so that the sum of the new or revised work RVUs (weighted by projected frequency of use) for a family of codes will be the same as the sum of the current work RVUs (weighted by their current frequency of use). For approximately 87 percent of the RUC recommendations, proposed work RVUs were accepted or increased, and, for approximately 13 percent, work RVUs were decreased.

We received 11 recommendations from the HCPAC for new or revised codes for which the RUC did not provide a recommendation. For 6 of the HCPAC recommendations, the proposed work RVUs were accepted. A discussion of the interim RVUs for chiropractic manipulative treatment is discussed in section V.B.2.b. below. For 3 of the recommendations, the proposed work RVUs were decreased.

Table 3 is a listing of those codes that will be new or revised in 1997 for which we received recommended work RVUs. This table includes the following information:

- A "N" identifies a new code for 1997.
 - CPT code. This is the CPT code for a service.
 - Modifier. A "26" in this column indicates that the work RVUs are for the professional component of the code.
 - Description. This is an abbreviated version of the narrative description of the code.
 - RUC recommendations. This column identifies the work RVUs recommended by the RUC.
 - HCPAC recommendations. This column identifies work RVUs recommended by the HCPAC.
 - HCFA decision. This column indicates whether we agreed with the RUC recommendation ("agreed"); we established work RVUs that are higher than the RUC recommendation ("increased"); or we established work RVUs that were less than the RUC recommendation ("decreased"). Codes for which we did not accept the RUC recommendation are discussed in greater detail following Table 3 in section V.B.2.c. below. An "(a)" in this column indicates that work RVUs were taken from the 5-year refinement of work RVUs and not from the RUC. A "(b)" indicates that no RUC recommendation was provided. A discussion follows the table in section V.B.2.c.
 - 1997 work RVUs. This column contains the 1997 RVUs for physician work. The 1997 work RVUs shown have not been adjusted for budget neutrality.
- This table includes only those codes that were reviewed by the full RUC or for which we received a recommendation from the HCPAC.

TABLE 3.—AMA RUC AND HCPAC RECOMMENDATIONS AND HCFA DECISIONS FOR NEW AND REVISED 1997 CPT CODES

CPT code	MOD	Description	RUC recommendation	HCPAC recommendation	HCFA decision	1997 work RVU
11010#		Debride skin, tx	4.15		Agreed	4.15
11011#		Debride skin/muscle, tx	4.95		Agreed	4.95
11012#		Debride skin/muscle/bone, tx	6.88		Agreed	6.88
11720#		Debride nail, 1-5		0.45	Decreased	0.32
11721#		Debride nail, 6 or more		0.60	Decreased	0.54
15766#		Free muscle flap, microvasc	33.23		Agreed	33.23
15767#		Free skin flap, microvasc	33.23		Agreed	33.23
15768#		Free facial flap, microvasc	33.23		Agreed	33.23
20150#		Excise epiphyseal bar	13.00		Agreed	13.00
20656#		Iliac bone graft, microvasc	37.00		Agreed	37.00
20657#		Mt bone graft, microvasc	38.33		Agreed	38.33
20682		Other bone graft, microvasc	Carrier		(*)	37.00
20689		Bone/alkin graft, microvasc	42.08		Agreed	42.08
20670		Bone/alkin graft, iliac crest	41.22		Agreed	41.22
24149#		Radical resection of elbow	13.25		Agreed	13.25
24341#		Repair tendon/muscle arm	7.33		Agreed	7.33
24342		Repair of ruptured tendon	10.13		Agreed	10.13
25332		Revises wrist joint	10.83		Agreed	10.83
26040		Release palm contracture	3.09		Agreed	3.09
26080		Incision of finger tendon	2.71		Agreed	2.71
26070		Explore/treat hand joint	3.34		Agreed	3.34
26121		Release palm contracture	7.34		Agreed	7.34
26123		Release palm contracture	8.64		Agreed	8.64
26125		Release palm contracture	4.61		Agreed	4.61
26185#		Remove finger bone	5.00		Agreed	5.00
26640		Repair hand joint	8.03		Agreed	8.03
26541		Repair hand joint with graft	8.20		Agreed	8.20
26549#		Repair non-union hand	8.50		Agreed	8.50
26551#		Great toe-hand transfer	44.31		Agreed	44.31
26553#		Single toe-hand transfer	44.00		Agreed	44.00
26554#		Double toe-hand transfer	52.50		Agreed	52.50
26568#		Toe joint transfer	44.75		Agreed	44.75
27036#		Excision of hip joint/muscle	12.00		Agreed	12.00
32491#		Lung volume reduction	21.25		Agreed	21.25
33234		Removal of pacemaker system	5.72		Increased	7.50
33235		Removal pacemaker electrode	6.96		Increased	8.74
37250#		Intravascular us	2.10		Decreased	1.51
37251#		Intravascular us	1.60		Decreased	1.15
43485#		Free jejunum flap, microvasc	Carrier		Agreed	Carrier
49020		Drain abdominal abscess	14.25		Agreed	14.25
49021#		Drain abdominal abscess			(*)	9.08
49068#		Free omental flap, microvasc	Carrier		Agreed	Carrier
52300		Cystoscopy and treatment	5.31		Agreed	5.31
52301#		Cystoscopy and treatment	5.51		Agreed	5.51
52340		Cystoscopy and treatment	9.00		Agreed	9.00
56300		Pelvic laparoscopy, dx	5.00		Decreased	3.65
56305		Pelvic laparoscopy, biopsy	5.30		Decreased	3.97
56362		Laparoscopy w/cholangio	4.89		Agreed	4.89
56363		Laparoscopy w/biopsy	5.18		Agreed	5.18
56369		Laparoscopy procedure	Carrier		Agreed	Carrier
57160		Insertion of pessary/device	0.89		Agreed	0.89
58525		Remove uterus after cesarean	8.54		Agreed	8.54
59565#		Abortion	4.00		Agreed	4.00
61588#		Resect nasopharynx, skull	23.60		Agreed	23.60
61793		Focus radiation beam	16.70		Agreed	16.70
68801#		Dilate tear duct opening	0.89		Agreed	0.89
68810#		Probe nasolacrimal duct	1.27		Agreed	1.27
68811#		Probe nasolacrimal duct	2.25		Agreed	2.25
68815#		Probe nasolacrimal duct	3.00		Agreed	3.00
69801		Incise inner ear	8.19		Agreed	8.19
75554	26	Cardiac mr/function	1.83		Agreed	1.83
75555	26	Cardiac mr/limited study	1.74		Agreed	1.74
75645#	26	Intravascular us	0.40		Decreased	0.29
75646#	26	Intravascular us	0.40		Decreased	0.29
78445	26	Vascular flow imaging	0.49		Agreed	0.49
78480	26	Heart muscle blood single	0.86		Agreed	0.86

*No RUC recommendation provided.

*RUC retained as carrier priced but HCFA assigned a value.

*All numeric HCPCS CPT Copyright 1996 American Medical Association.

TABLE 3.—AMA RUC AND HCPAC RECOMMENDATIONS AND HCFA DECISIONS FOR NEW AND REVISED 1997 CPT CODES—Continued

CPT code	MOD	Description	RUC recommendation	HCPAC recommendation	HCFA decision	1997 work RVU
78461	26	Heart muscle blood multiple	1.23		Agreed	1.23
78464	26	Heart image (3d) single	1.09		Agreed	1.09
78465	26	Heart image (3d) multiple	1.46		Agreed	1.46
78469	26	Heart infarct image (3d)	0.92		Agreed	0.92
78481	26	Heart first pass single	0.98		Agreed	0.98
78483	26	Heart first pass multiple	1.47		Agreed	1.47
90875#		Psychophysiological therapy		1.11	Agreed	1.11
90876#		Psychophysiological therapy		1.73	Agreed	1.73
90901#		Biofeedback training, any method		0.45	Decreased	0.41
92240#	26	log angiography	1.10		Agreed	1.10
92548#	26	Posturography	0.50		Agreed	0.50
92978#	26	Intravascular us, heart	2.50		Decreased	1.50
92979#	26	Intravascular us, heart	2.00		Decreased	1.44
92995		Coronary atherectomy	12.09		Agreed	12.09
93303#	26	Echo transthoracic			(*)	1.30
93304#	26	Echo transthoracic			(*)	0.75
93315#	26	Echo transeophageal			(*)	2.78
93316#	26	Echo transeophageal			(*)	0.95
93317#	26	Echo transeophageal			(*)	1.83
93619	26	Electrophysiology evaluation	7.32		Agreed	7.32
93620	26	Electrophysiology evaluation	11.59		Agreed	11.59
93975	26	Vascular study	1.80		Agreed	1.80
93976	26	Vascular study	1.21		Agreed	1.21
95921#	26	Autonomic nervous function test	0.90		Decreased	0.45
95922#	26	Autonomic nervous function test	0.95		Decreased	0.48
95923#	26	Autonomic nervous function test	0.90		Decreased	0.45
95950	26	Ambulatory eeg monitoring	1.51		Agreed	1.51
97504#		Orthotic training		0.45	Agreed	0.45
97520		Prosthetic training		0.45	Agreed	0.45
98940#		Chiropractic manipulation		0.45	Agreed	0.45
98941#		Chiropractic manipulation		0.65	Agreed	0.65
98942#		Chiropractic manipulation		0.87	Agreed	0.87
98943#		Chiropractic manipulation		0.40	Agreed	0.40

b. Discussion of Interim Relative Value Units for Chiropractic Manipulative Treatment.

Comment: We received a comment from the RUC HCPAC Review Board recommending RVUs for chiropractic manipulative treatment. Medicare coverage of chiropractic services is limited to manual manipulation for treatment of subluxation of the spine. HCPCS Level II code, A2000

(Manipulation of spine by chiropractor) has been used to report this service. With the introduction of new CPT procedure codes for chiropractic manipulative treatment, a chiropractic professional organization submitted a comment during the 5-year review that the physician work in the chiropractic manipulative treatment is equivalent to the existing osteopathic manipulative treatment codes.

The RUC HCPAC Review Board reviewed data based on survey responses of 106 chiropractors and a previous study performed by Lewin-VHL. The Review Board agreed that the work RVUs for the chiropractic manipulative treatment should be equivalent to the established RVUs for osteopathic manipulative treatment codes as follows:

New chiropractic manipulative treatment CPT code	Existing osteopathic manipulative treatment CPT code	Work RVUs
98940 (Chiropractic manipulative treatment; spinal, 1 to 2 regions).	98925 (Osteopathic manipulative treatment; 1 to 2 body regions).	0.45
98941 (Chiropractic manipulative treatment; spinal, 3 to 4 regions).	98926 (Osteopathic manipulative treatment; 3 to 4 body regions).	0.65
98942 (Chiropractic manipulative treatment; spinal, 5 regions)	98927 (Osteopathic manipulative treatment; 5 to 6 regions)	0.87

The RUC HCPAC Review Board also recommended 0.40 work RVUs for CPT code 98943 (Chiropractic manipulative treatment, extraspinal, one or more regions).

The chiropractic manipulative treatment codes include a

premanipulation patient assessment, as do the osteopathic manipulative treatment codes. Additional evaluation and management must be reported separately using the modifier -25, only if the patient's condition requires a

significant separately identifiable evaluation and management service.

Response: We agree with the recommendation of the RUC HCPAC Review Board that the chiropractic manipulative treatment codes represent services and physician work that

essentially parallel that of the osteopathic manipulation codes. The work RVUs based on the survey results appear to be identical to osteopathic manipulation treatment, and both the osteopathic manipulation treatment work RVUs and the chiropractic manipulation treatment work RVUs contain a manipulation component as well as an evaluation and management component.

We note that, for purposes of Medicare coverage and payment, the five regions referred to by the CPT codes 98940, 98941, and 98942 are the cervical region (includes atlanto-occipital joint); thoracic region (includes costovertebral and costotransverse joints); lumbar region; sacral region; and pelvic (sacro-iliac joint) region. These are the only codes that the Medicare program will recognize for chiropractic treatment by manual manipulation for subluxation of the spine. CPT code 98943 (Chiropractic manipulation treatment, extraspinal) is not covered by Medicare. HCPCS code A2000 will no longer be recognized by Medicare.

In conclusion, we agree with the RUC that the work assigned to the chiropractic manipulation treatment codes is sufficiently comparable to that assigned to the osteopathic manipulation treatment codes. Therefore, we are assigning work RVUs to CPT codes 98940, 98941, and 98942 according to the RUC recommendation as follows:

CPT code	Descriptor	Work RVUs
98940	Chiropractic manipulative treatment; spinal, 1 to 2 regions.	0.45
98941	Chiropractic manipulative treatment; spinal, 3 to 4 regions.	0.65
98942	Chiropractic manipulative treatment; spinal, 5 regions.	0.87

For CPT code 98943, extraspinal chiropractic manipulative treatment, we agree with the RUC recommendation of 0.40 work RVUs. However, this service is not covered by Medicare. These RVUs are considered interim for 1997. We welcome comments on the interim RVUs.

c. Discussion of Codes for Which the RUC Recommendations Were Not Accepted.

The following is a summary of our rationale for not accepting particular recommendations. It is arranged by type

of service in CPT code order. This summary refers only to work RVUs.

CPT code 11720 (Debridement of nail(s) by any method(s); one to five) and CPT code 11721 (Debridement of nail(s) by any method(s); six or more).

The RUC recommended 0.32 work RVUs for CPT code 11720 and 0.45 for CPT code 11721. These codes encompass services that were previously reported using CPT codes 11700, 11701, 11710, and 11711. The following table identifies the codes and the final work RVUs we assigned to them for the 1997 physician fee schedule:

CPT code	Description	Work RVUs
11700	Debridement of nails, manual; five or less.	0.32
11701	Debridement of nails, manual; each additional, five or less.	0.23
11710	Debridement of nails, electric grinder; five or less.	0.32
11711	Debridement of nails, electric grinder; each additional, five or less.	0.20

There are two sets of codes: one set for manual debridement and one set for electric grinder debridement. These codes were initially referred to the RUC in 1995 because we received conflicting comments on the work RVU assignments for the second code in each set. The American Podiatric Medical Association recommended that the correct work RVUs for CPT code 11711 should be 0.23 and not 0.20 based on the analogy that if CPT code 11700 (Debridement of nails, manual; five or less) and CPT code 11710 (Debridement of nails, electric grinder; five or less) have the same work RVUs (0.32), then CPT code 11711 should have the same work RVUs as CPT code 11701. Based on the same analogy, another commenter recommended that the work RVUs for CPT code 11701 be reduced to 0.20.

This issue was referred by the RUC to CPT where the codes were collapsed so that the same codes would be used to report debridement regardless of the method of debridement (manual or electric grinder). In addition, the codes were revised so that only one code would be used to report the debridement of six or more nails. The two new codes then went back to the RUC for the development of recommended work RVUs. For the debridement of one to five nails, the RUC recommended 0.45 RVUs, which

represents a 41 percent increase over the work RVUs assigned to the current codes used to report the debridement of one to five nails. For the debridement of six or more nails, the RUC recommended 0.60 work RVUs.

Depending on which pair of current codes is used to report the debridement of six or more nails (CPT codes 11700 plus 11701 or 11710 plus 11711), this represents an increase of 9 or 20 percent, respectively, in work RVUs. We believe these increases are unjustified especially since the codes were not identified as undervalued at the beginning of the 5-year review.

When valuing new and revised codes that replace deleted codes, we typically have used Medicare frequency data and used the work RVUs of the deleted codes to arrive at weighted average values for the new codes in a budget-neutral fashion. We have used this method to arrive at the work RVUs for new CPT codes 11720 and 11721. The work RVUs for CPT code 11720 are being established as 0.32, which are the same work RVUs assigned to both of the predecessor codes. The work RVUs for CPT code 11721 are being established as 0.54, which is a weighted average of the sum of the work RVUs of the codes used to report the debridement of six or more nails in the past.

CPT code 20962 (Bone graft with microvascular anastomosis; other than fibula, iliac crest, or metatarsal).

This code was revised slightly for CPT 1997. It is currently carrier-priced, and the RUC recommended that it remain carrier-priced. This is a very low-volume service in a family of low-volume services. For two other codes in the family, CPT codes 20956 and 20957, we received RUC recommendations of 37.00 and 38.33 work RVUs, respectively. We believe the work of CPT code 20962 is comparable to these other codes, and we are assigning 37.00 interim work RVUs.

CPT code 33234 (Removal of transvenous pacemaker electrode(s), single lead system, atrial or ventricular) and CPT code 33235 (Removal of transvenous pacemaker electrode(s), dual lead system).

In CPT 1996, the pacemaker removal codes are structured so that the removal of a pulse generator is reported with a single code (CPT code 33233), and the removal of a pulse generator and a lead system is reported with a single code (CPT code 33234 or 33235). There is not a separate code for the removal of a lead system only. For 1997, the CPT Editorial Panel revised the pacemaker section to

allow physicians to report the removal of a pacemaker lead system only. The removal of a pulse generator and a lead system will now be reported with two codes (CPT codes 33233 and 33234 or CPT codes 33233 and 33235).

The RUC recommendations for CPT code 33234 (Removal of transvenous pacemaker electrodes; single lead system, atrial or ventricular) and CPT code 33235 (Dual lead system) were calculated by subtracting 2.97 work RVUs from the work RVUs currently assigned to these two codes. The subtraction of 2.97 work RVUs was necessary because these are the work RVUs assigned to CPT code 33233, which now will be used to report separately the removal of a permanent pacemaker pulse generator. Thus, the RUC revised the work RVUs for CPT codes 33234 and 33235 downward so that the coding change would not result in a net increase in the total work RVUs associated with the removal of a pulse generator and a lead system at the same time.

We agree that the work RVUs should be decreased but we believe the RUC's recommendations were too low because they failed to take into account the fact that the pacemaker removal codes are subject to our multiple surgical reduction policy. If a physician performs the removal of a pulse generator and a lead system at the same time, the lower valued service (in this case, the removal of the pulse generator) will be paid at 50 percent of the current value. Thus, the sum of the recommended work RVUs that would be recognized (as a result of the multiple surgery reduction), if both procedures were performed, would be less than the work RVUs that were in place before the coding change. We do not believe this effect is consistent with the RUC's intent.

To overcome this problem, we made the following adjustments. First, we estimate that 80 percent of the time a lead system is removed, the pulse generator will be removed. We then used the following mathematical formula to calculate RVUs: $0.8(x + \frac{1}{2} \times 2.97 \text{ RVUs}) + 0.2x = y$ where x equals the new value for CPT code 33234 or CPT code 33235 and y equals the current value of CPT code 33234 or CPT code 33235. As a result of these calculations, we are increasing the RVUs above the RUC's recommendation for CPT code 33234 from 5.72 to 7.50 work RVUs and the recommendation for

CPT code 33235 from 6.06 to 8.74 work RVUs.

CPT codes 37250, 37251; 75945, 75946, 92978, and 92979 (Intravascular ultrasound).

CPT 1997 will include two new codes for intravascular ultrasound of non-coronary vessels during therapeutic interventions (CPT codes 37250 and 37251) and two new codes for intravascular ultrasound of coronary vessels during therapeutic interventions (CPT codes 92978 and 92979). In addition, two new codes for the reporting of radiological supervision and interpretation were created (CPT codes 75945 and 75946). They will be reported only with the codes for intravascular ultrasound of non-coronary vessels.

The RUC based its recommendation for intravascular ultrasound on the ultrasound portion of CPT code 43259 (Upper gastrointestinal endoscopy with endoscopic ultrasound examination), with 4.89 work RVUs. If the work RVUs for CPT code 43235 (Upper gastrointestinal endoscopy without ultrasound), with 2.39 work RVUs, are subtracted from the work RVUs assigned to CPT code 43259, the result is 2.50. The RUC suggested that the value of coronary intravascular ultrasound (CPT code 92978) be set equal to this calculated value for the ultrasound portion of CPT code 43259. For non-coronary intravascular ultrasound, the RUC recommended 2.10 work RVUs for CPT code 37250 and 0.40 work RVUs for CPT code 75946 (for radiologic supervision and interpretation). The sum of these recommendations equals the 2.50 work RVUs recommended for CPT code 92978. The RUC intended the work RVUs of CPT code 92978 to be equal to the sum of the work RVUs of CPT codes 37250 and 75946 because the work of CPT code 92978 includes radiologic supervision and interpretation. Thus, for coronary ultrasound, only one code is reported while two codes are reported for non-coronary ultrasound.

We do not agree with the reference procedure used by the RUC because we do not view the work associated with intravascular ultrasound to be as great as it is for endoscopic ultrasound. First, the number of anatomic structures to be studied and the diagnostic possibilities are fewer for intravascular ultrasound. Second, physician work is reduced since access to the vessels has been established and angiographic studies have often been performed.

We believe more appropriate reference procedures would be CPT code 78465 (Myocardial perfusion imaging (SPECT), multiple studies at rest and/or stress), with 1.46 work RVUs, and CPT code 70541 (Magnetic resonance angiography, head and/or neck, with or without contrast material), with 1.81 work RVUs. Therefore, for CPT code 92978, we are assigning 1.80 work RVUs. This value is 72 percent of the RUC-recommended 2.50 work RVUs.

Although we disagree with the recommended work RVUs, we do agree with the relative relationship established by the RUC for the codes in this family, and we have reduced the remaining codes by 28 percent, consistent with the RUC recommendations. Therefore, the interim work RVUs for the six intravascular ultrasound codes are as shown in Table 3.

CPT code 49021 (Drainage of peritoneal abscess, percutaneous).

We received no recommendation from the RUC on this code. The procedure currently is being reported with CPT code 49020 (Drainage of peritoneal abscess, transabdominal), with 9.06 work RVUs. We decided to value CPT code 49021 at 9.06 work RVUs and keep these as interim work RVUs until we receive a recommendation from the RUC.

CPT code 56300 (Laparoscopy (peritoneoscopy), diagnostic (separate procedure)) and CPT code 56305 (Laparoscopy (peritoneoscopy); with biopsy, single or multiple).

CPT 1996 includes separate codes for reporting diagnostic laparoscopic procedures and separate codes for reporting diagnostic peritoneoscopic procedures. The peritoneoscopy codes were deleted from CPT 1997 because they describe the same services as the corresponding laparoscopic procedures. The RUC recommended 5.00 work RVUs for CPT code 56300 and 5.30 work RVUs for CPT code 56305 (Laparoscopy with or without biopsy; respectively). We disagree with these recommendations for two reasons. First, we view the CPT change as editorial. Second, the RUC recommendations would put the work RVUs for CPT codes 56300 and 56305 higher than the work RVUs for CPT codes 56362 and 56363 (Laparoscopy with guided transhepatic cholangiography without or with biopsy, respectively). We believe this would significantly distort the relative relationships within the laparoscopy family since CPT codes 56362 and

56363 are higher-level, more work-intensive procedures.

We believe that the work RVUs should be based on an average of the work RVUs assigned to the laparoscopic and peritoneoscopic codes weighted by the frequency with which they are performed. By calculating a weighted average, we can assure that the coding changes will be work-neutral within the family of codes. These calculations result in 3.65 work RVUs for CPT code 56300 and 3.97 work RVUs for CPT code 56305. In addition, we have reduced the global period for CPT codes 56300 and 56305 from 10 days to 0 days to correspond to the 0 day global period assigned to the peritoneoscopy codes.

CPT codes 93303 through 93317 (Pediatric echocardiography).

We did not receive RUC recommendations for CPT code 93303 (Trans thoracic echocardiography for congenital cardiac anomalies; complete) or CPT code 93304 (Trans thoracic echocardiography for congenital cardiac anomalies; follow up or limited study). The RUC tabled the issue of pediatric echocardiography at the request of the American Academy of Pediatrics and the American College of Cardiology pending review of the nomenclature of these codes by the CPT Editorial Panel. The societies view modifications made by the CPT Editorial Panel to the nomenclature of the proposed pediatric echocardiography codes as greatly altering the original intent and proposed application of the codes. Until the coding issue is resolved and a survey conducted, the RUC will not submit recommended work RVUs for these services.

Regardless of the outcome of the nomenclature debate, we believe it is essential that the new CPT codes have work RVUs assigned to them at this time because they are the only codes available to report these services. To assign work RVUs to these codes, we looked to a paper entitled "Resource Based Relative Value Scale for Children—Comparison of Pediatric and Adult Cardiology Work Values" published by Garson et al. in *Cardiology in the Young* in 1995 (Vol. 5:210-216). Work RVUs for cardiology were found to be different between adults and children in 75 percent of the 20 CPT codes (echocardiography, cardiac catheterization, etc.) that were assessed. For echocardiography, the pediatric median work RVUs were an average of 90 percent higher than the adult work RVUs for CPT code 93307, the CPT code used to report echocardiography. In

rating the work of pediatric echocardiography, the codes for cross-sectional echocardiography (CPT code 93307), Doppler echocardiography (CPT code 93320), and Doppler color flow velocity mapping (CPT code 93325) were combined into a single procedure, and panelists provided a single rating for a complex pediatric echocardiogram.

To arrive at work RVUs for the new pediatric echocardiography codes, we looked first to the new work RVUs for echocardiography (CPT code 93307) that emerged from the 5-year refinement. Based on the individual ratings of the members of a refinement panel that reviewed echocardiography services, the new work RVUs for CPT code 93307 will be 0.92. We first increased this value by 90 percent based on the study results described above to arrive at 1.75 work RVUs. We next subtracted the work RVUs for Doppler echocardiography (CPT code 93320) and Doppler color flow velocity mapping (CPT code 93325), which are 0.38 and 0.07, respectively. These work RVUs need to be subtracted because, under the new codes, they will be separately reported in addition to the pediatric echocardiography. Thus, our proposed interim work RVUs for CPT code 93303 (Trans thoracic echocardiography for congenital cardiac anomalies; complete) are established as 1.36.

For CPT code 93304 (Trans thoracic echocardiography for congenital cardiac anomalies; follow up or limited study), we looked to the relationship of the work RVUs for CPT code 93307 (Complete adult echocardiography) to the work RVUs for CPT code 93308 (Follow up or limited adult echocardiography code). The current work RVUs for CPT code 93308 are 0.53. This code was not identified as undervalued as part of the 5-year review. The 0.53 work RVUs for CPT code 93308 are 58 percent of the new work RVUs for CPT code 93307, which are established as 0.92. To maintain this relationship in the pediatric codes, we calculated 0.75 interim work RVUs for CPT code 93304 by multiplying the proposed work RVUs for CPT code 93303 (1.36) by 58 percent.

CPT 1997 will also include three new codes for transesophageal echocardiography. The codes are CPT code 93315 (Transesophageal echocardiography for congenital cardiac anomalies including probe placement, image acquisition, interpretation and report); CPT code 93316 (Transesophageal echocardiography for

congenital cardiac anomalies, placement of transesophageal probe only); and CPT code 93317 (Transesophageal echocardiography for congenital cardiac anomalies, image acquisition, interpretation and report only).

In order to understand how we arrived at the work RVUs for the three new pediatric transesophageal echocardiography codes, it is first necessary to explain the assignment of work RVUs to the three existing codes for adult transesophageal echocardiography that emerged from the 5-year refinement. Based on the individual ratings of the members of a refinement panel that reviewed adult echocardiography services, the new work RVUs for CPT code 93312 (Transesophageal echocardiography, including probe placement, image acquisition, interpretation and report) are established as 2.20. This was the only adult transesophageal echocardiography reviewed by the panel.

We received no comments as part of the 5-year review that the work RVUs for the code used to report only the placement of a transesophageal probe (CPT code 93313) should be revised. Therefore, we have maintained the current 0.95 work RVUs. By subtracting these work RVUs from the new work RVUs for CPT code 93312, we can calculate new work RVUs for CPT code 93314, which is used to report image acquisition, interpretation and report only. The result is 1.25 work RVUs.

It was necessary to calculate these work RVUs because the refinement panel did not specifically address CPT code 93314. However, it was clear during the discussions of the refinement panel that the service considered by the American College of Cardiology and the American Society of Echocardiography to be undervalued was the image acquisition, interpretation and report and not the probe placement.

We also revised the relationship of the three codes in this family so that the work RVUs for CPT code 93312 will equal the sum of the work RVUs for CPT codes 93313 and 93314. When we first assigned work RVUs to these codes, we assigned 20 percent more work RVUs to both CPT codes 93313 and 93314 because two different physicians were often involved in the procedure and each would have a certain amount of preservice and postservice work that could not be considered duplicative. Consequently, the sum of these two codes exceeded the work RVUs assigned to CPT code 93312. We now believe that

most transesophageal echocardiographies are done by a single physician. Therefore, we have adjusted the work RVUs so that the work RVUs for CPT code 93312 equal the sum of the work RVUs for CPT codes 93313 and 93314. To summarize, the 1997 work RVUs for the adult echocardiography CPT codes 93312, 93313, and 93314 are 2.20, 0.95, and 1.25, respectively. These work RVUs are the basis for the work RVUs we propose for the three pediatric transesophageal echocardiography codes (CPT codes 93315, 93316, and 93317).

The paper by Garson et al. in *Cardiology in the Young* did not address the issue of transesophageal echocardiography. To establish interim work RVUs for image acquisition, interpretation and report only (CPT code 93317), we looked to a "Survey of Physician Work in Pediatric Cardiology" prepared for the American Academy of Pediatrics and the American College of Cardiology by Lewin-VHI in 1993. That survey found that the work of pediatric transesophageal echocardiography was 46 percent more than the work of adult transesophageal echocardiography. To arrive at work RVUs for the new pediatric transesophageal echocardiography CPT code 93317, we increased the work RVUs we assigned to the adult code (CPT code 93314), with 1.25 work RVUs, by 46 percent. This results in 1.83 interim work RVUs for CPT code 93317.

For CPT code 93316, which is the pediatric code used to report only the placement of the transesophageal probe, we looked to CPT code 93313, which is the code used to report the same service in an adult. The 1997 work RVUs for CPT code 93313 are established as 0.95. We have assigned these same work RVUs to CPT code 93316 because the work of placement of a transesophageal probe in a child was not included in the surveys described above.

For CPT code 93315, which is the pediatric code used to report the complete procedure, we calculated interim proposed work RVUs by adding the work RVUs for CPT codes 93316 and 93317. This results in 2.78 work RVUs.

We look forward to receiving recommendations from the RUC for these services once the coding issues are settled and survey data has been considered.

CPT codes 95921 through 95923 (Testing of autonomic nervous system function).

CPT 1997 will include three new codes to report the testing of autonomic nervous system function. The RUC recommendations for these codes were as follows: CPT code 95921, 0.90 work RVUs; CPT code 95922, 0.96 work RVUs; and CPT code 95923, 0.90 work RVUs.

We believe that the RUC recommendations are too high compared to other services on the fee schedule. The RUC compared the service to needle electromyography (CPT code 95860), with 0.96 work RVUs. We disagree with that comparison because we do not believe the autonomic testing codes involve the extensive physician involvement required during electromyography. We believe more appropriate reference codes would be nerve conduction testing (CPT code 95900), with 0.42 work RVUs; visual field examination (CPT code 92083), with 0.50 work RVUs; and a 24 hour EKG monitor (CPT code 93224), with 0.52 work RVUs. In addition, we believe the vignettes used in the survey may have led to overestimating the amount of work because they describe evaluation and management services that can be separately reported. The autonomic testing codes have a global status of XXX, which means the evaluation and management services can be separately reported since codes with XXX status are not subject to our global surgery policies.

Although we disagree with the recommended work RVUs, we agree with the relative relationship established by the RUC for the three codes in this family. We are reducing the RUC recommendations for the codes by 50 percent so that the work RVUs will be valued appropriately relative to the referenced procedures identified above. Therefore, the interim work RVUs are established as follows: CPT code 95921, 0.45 work RVUs; CPT code 95922, 0.48 work RVUs; and CPT code 95923, 0.45 work RVUs.

d. New HCFA Common Procedure Coding System Codes.

In this final rule, we have created new HCPCS codes that are to be used in lieu of existing CPT codes for four categories of services furnished on or after January 1, 1997. Three of the categories are discussed elsewhere in this rule. The three categories of services and the sections of this rule where they are discussed are: destruction of benign and premalignant skin lesions (section II.D.2.b.); psychotherapy (section IV.A.14.); and care plan oversight

(section IV.B.1.). The fourth category, bone mineral density studies, is discussed below.

For the 1997 physician fee schedule, we are establishing several new alphanumeric HCPCS codes and related work RVUs for the reporting of peripheral and central skeletal bone mineral density services that are not clearly described by existing CPT codes. We view these codes as temporary since we will be referring them to the CPT Editorial Panel for possible inclusion in future editions of the CPT. The related interim RVUs will, like other interim values, be subject to comment during the 60-day public comment period following publication of this rule; however, like other interim values, they will be used for payment purposes for procedures furnished after December 31, 1996. We will address the public comments on these interim codes in the final rule for the 1998 physician fee schedule.

Currently, there is only one CPT code 76070 for computerized tomography bone mineral density studies, only one CPT code 76075 for dual energy x-ray absorptiometry bone mineral density studies, and only one CPT code 78350 for single photon absorptiometry bone mineral density studies. While computerized tomography, dual energy x-ray absorptiometry, and single photon absorptiometry studies may be performed on the peripheral skeleton, new less expensive devices are now being marketed (for example, p-Dexa) that perform studies of peripheral (forearm, wrist, or heel) skeletal bones only. The RVUs assigned to the existing CPT codes that could be used to report these services are excessive when compared to the resources associated with their use.

Recently, a manufacturer, representative of a specialty society, and our Technical Advisory Committee have recommended that we establish separate bone mineral density codes to distinguish peripheral scans from general pelvic scans because of the belief that Medicare payment for CPT codes 76070, 76075, and 78350 is too high when only a peripheral scan is done to determine bone density. We agree with the recommendation and, thus, are issuing new HCPCS codes for both peripheral and general bone mineral density studies as well as assigning the appropriate RVUs as outlined below.

With the issuance of the interim peripheral and central skeletal bone mineral density codes and the related work RVUs beginning January 1, 1997,

physicians and providers must report all peripheral or skeletal bone mineral density studies under the interim codes for those services. To eliminate the

possibility of confusion regarding whether to use the existing CPT codes for these procedures, we will no longer recognize the existing codes (CPT codes

76070, 76075, and 78350) for Medicare reporting purposes.

HCPCS code	Work RVUs	Practice expense RVUs	Malpractice RVUs	Total RVUs
G0062—Peripheral Skeletal Bone Mineral Density Study (e.g. radius, wrist, heel)	0.22	0.82	0.07	1.11
G0062-26	0.22	0.10	0.02	0.34
G0062-TC	0.00	0.72	0.05	0.77
G0063—Central Skeletal Bone Mineral Density Study (e.g. spine, pelvis)	0.30	3.07	0.21	3.58
G0063-26	0.30	0.12	0.02	0.44
G0063-TC	0.00	2.95	0.19	3.14

We have assigned 0.22 work RVUs to HCPCS code G0062, based on the work RVUs assigned to CPT code 78350, which was used to report a single photon absorptiometry bone mineral density study. We have assigned 0.82 practice expense RVUs to HCPCS code G0062, based on the practice expense RVUs assigned to CPT code 78350, single photon absorptiometry bone mineral density study. HCPCS code G0062 is the only code to be used for reporting peripheral bone mineral density studies.

We have assigned 0.30 work RVUs to HCPCS code G0063, based on the work RVUs assigned to CPT code 76075, which is used to report dual energy x-ray absorptiometry studies. We have assigned 3.07 practice expense RVUs to HCPCS code G0063, based on the practice expense RVUs assigned to CPT code 76075, dual energy x-ray absorptiometry studies.

We would like to emphasize that this is a change in coding policy rather than a change in coverage policy. The coverage policy on bone density studies in section 50-44 of the Medicare Coverage Issues Manual (HCFA-Pub. 6) remains in effect. Under that policy:

- Single photon absorptiometry (CPT code 78350) is covered when used in assessing changes in bone density of patients with osteodystrophy or osteoporosis when performed on the same individual at intervals of 6 to 12 months. Under this coding change, HCPCS code G0062 would be used to report a single photo absorptiometry on the peripheral skeleton, and HCPCS code G0063 would be used to report the procedure when performed on the central skeleton.

- Bone biopsy, a physiologic test that is a surgical, invasive procedure, is covered when used for the qualitative evaluation of bone. Billing for this procedure is unaffected by this change.

- Photodensitometry, a noninvasive radiological procedure that attempts to assess bone mass by measuring the optical density of extremity radiographs with a photodensitometer, would be reported by HCPCS code G0062 under this change.

- Dual photon absorptiometry (CPT code 78351) remains a 1 noncovered service under Medicare and may not be reported under HCPCS code G0062 or HCPCS code G0063. Dual photon absorptiometry should be reported with CPT code 78351.

- The coverage of computerized tomography bone mineral density studies (CPT code 76070) and dual energy x-ray absorptiometry bone mineral density studies (CPT code 76075) is a matter of individual carrier discretion. If covered, HCPCS code G0062 would be used to report a peripheral skeleton study by either method, and HCPCS code G0063 would be used to report either procedure when performed on the central skeleton.

We recognize that the use of these temporary codes for destruction of benign and premalignant skin lesions, psychotherapy, care plan oversight and bone mineral density studies will place an administrative burden on both physicians and payers. However, we do not believe the burden will be significant. Also, we believe that our responsibility to publish a relative value scale for physician work and to use codes with a minimal potential for misuse outweighs our concerns regarding the potential administrative burden associated with temporary codes.

We view these codes as temporary, and we plan to forward them to the CPT Editorial Panel as soon as possible. Our statutory responsibility to publish the physician fee schedule each year with an effective date of January 1 occasionally conflicts with the annual

CPT publication cycle that precludes consideration of new and revised CPT codes later than February before publication of the next year's book. Thus, for these four categories of temporary codes, we were unable to submit requested new and revised codes to CPT in time for the 1996 book.

VI. Provisions of the Final Rule

The provisions of this final rule, for the most part, restate the provisions of the July 1996 proposed rule with the exception of changes to the regulations text in § 410.32 ("Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions"). We are also making final the provisions of the May 3, 1996 proposed notice with the exception of those issues identified elsewhere in the preamble of this final rule.

VII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Regulatory Impact Analysis

A. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, all physicians are considered to be small entities.

This final rule will have an economic impact on a substantial number of small entities. A substantial number of physicians will experience some change in Medicare revenue as a result of one or more provisions of this final rule, however, for most physicians the change will not be significant. Under the Regulatory Flexibility Act, we consider a change to be significant if it results in a difference in Medicare payments to a substantial number of entities that equals or exceeds from 3 to 5 percent of each of the entities' total revenue. Where such effect occurs, we must explain the alternatives considered to demonstrate that we considered minimizing adverse effects. However, adverse payment effects result from the application of the budget neutrality requirements (as described below in section IX.B. of this final rule).

The provisions of this rule are expected to have varying effects on Medicare physician payments across specialties and across geographic areas. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries will be affected by one or more provisions of this rule. As illustrated in accompanying charts, some specialties experience greater change in income from Medicare than others. While we present our estimate of the effect of the changes made by this rule on each specialty taken as a whole, practicing members of that specialty may experience quite different effects, depending on the extent to which their billing patterns coincide with changes to codes encompassed by the specialty as a whole, and the Medicare percentage of their practice. (This is further explained in section L.3. of this impact statement.) In addition, physicians who are paid by private insurers for non-Medicare services will be affected to the extent that they are paid by private insurers that choose to use the RVUs.

With few exceptions, we expect that an impact on an individual medical practitioner of more than 5 percent of

practice income will be limited. In instances where there is a likelihood of some practitioners' practice income being affected, such as in some localities being realigned, we discuss in detail elsewhere in this preamble alternate considerations and our conclusions for the policies adopted.

B. Budget Neutrality

Section 1848(c)(2)(B) of the Act requires that adjustments in a year may not cause the amount of expenditures for the year to differ by more than \$20 million from what expenditures would have been in the absence of these changes. If this threshold is exceeded, we make adjustments to preserve this budget neutrality.

This year budget neutrality adjustments are required by changes in fees resulting from the 5-year refinement and revisions in payment policies, including the establishment of interim and final RVUs for CPT coding changes.

In past years, we have made budget neutrality adjustments across the entire physician fee schedule: to all relative values (initially) and, beginning in 1996, to the CFs. As is discussed in section IV.C.1. of this final rule, we are making the budget neutrality adjustment required for changes in fees resulting from the 5-year review through a temporary separate adjuster to the work RVUs in 1997. We plan on eliminating this adjuster in 1998 when we implement the resource-based practice expense RVUs. The budget neutrality adjustment required for all other changes will be applied to the CF, as in prior years.

The components of the budget neutrality adjustment to the CFs required by payment policy changes are discussed in sections IX.C. through IX.J. below. The impact of the changes resulting from the 5-year refinement is discussed in section IX.K. below.

C. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes

As mentioned earlier, our policy change will reduce existing urban/rural payment differences. Overall, urban areas will experience an average decrease in payments of -0.14 percent, while rural areas will experience an increase in payments of 1 percent. We analyzed the effects of these changes on physicians by specialty. The changes are quite small and follow the expected pattern. We estimate that overall, physicians in family practice and general practice will experience modest

increases of about 0.3 percent in payments, while most medical and surgical specialties will experience negligible decreases of about -0.1 to -0.2 percent. This pattern results from the tendency of specialists to be disproportionately concentrated in urban areas, which are estimated to experience a slight decrease in payments under our policy change.

The impact on beneficiaries is likewise minor. We examined the impact by beneficiary age, gender, race, and income level. Roughly 20 percent of beneficiaries reside in areas in which payments decrease by less than 5 percent, roughly 50 percent live in areas that experience no change in payments, roughly 25 percent live in areas where payments will increase by less than 5 percent, and about 2 percent live in areas where payments will rise by 5 to 10 percent.

The distribution of beneficiaries by age and gender and of Caucasian beneficiaries are nearly identical to this overall distribution. Minority beneficiaries are more heavily concentrated in areas that experience no change in payments; a lower proportion of minority beneficiaries live both in areas experiencing a loss and areas experiencing a gain than do Caucasian beneficiaries. For example, 14.4 percent of minority beneficiaries live in an area experiencing a loss compared to 21 percent of all beneficiaries who live in these areas. Beneficiaries living below the poverty level are less likely than all beneficiaries to be living in an area experiencing a payment decrease under our policy change, 16 percent compared to 21 percent. It does not appear that vulnerable Medicare groups—minorities, the very old, or the poor—will suffer decreases in access resulting from our policy change.

D. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures

One policy change will require that, to be covered under Medicare, diagnostic tests, including diagnostic radiologic procedures, must be ordered by the physician who treats a beneficiary or furnishes a consultation to the physician who treats the beneficiary. Under § 410.22(b)(2) ("Limitations on services of a chiropractor"), no payment can be made to a chiropractor who orders diagnostic tests. However, we are allowing an exception for x-rays that demonstrate subluxation of the spine that are ordered for a chiropractor. We are allowing

payment for these x-rays when ordered by a physician who will not be treating the patient for subluxation of the spine. Nonphysician practitioners functioning within the scope of their State licensure and Medicare benefit will be considered a physician treating the beneficiary for the purpose of the regulation. The regulation (§ 410.31 "Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions") codifies our current manual instruction. Implementing this policy by regulation may result in some program savings due to the denial of payment for tests that may not be medically necessary because they were ordered by a physician who was not treating the beneficiary. However, we do not have sufficient data to furnish any reliable estimates of savings.

E. Transportation in Connection With Furnishing Diagnostic Tests

We are eliminating separate payment for the transportation of EKG equipment (HCPCS code R0076) by all suppliers. In 1995, we allowed 236,051 services and paid \$10,700,974. Therefore, were it not for our budget-neutrality adjustment, we estimate that this policy change would result in approximately a \$9.2 million reduction in Medicare payments.

F. Bundled Services

1. Hot or Cold Packs

We are changing the status indicator for CPT code 97010 (Application of a modality to one or more areas; hot or cold packs) to "B" to indicate that the service is covered under Medicare but payment for it is bundled into payment for other services. Separate payment for CPT code 97010 will not be permitted under this policy change. The annual expenditures for CPT code 97010 under our current policy are approximately \$41.2 million. Because the RVUs for this procedure will be redistributed across all physician fee schedule services in a budget neutral manner, there will be no measurable impact from this proposal.

2. Dermatology Procedures

a. Bundling of Repair Codes Into Excision Codes

As a result of our review of the comments related to our proposal to bundle the dermatology repair codes into the excision codes, we have decided not to implement this proposal. We have clarified the definitions of simple and intermediate skin repair codes to reflect the differences in physician work for these procedures.

These clarifications will reduce the potential for misuse of the intermediate repair codes but will have no significant impact on Medicare expenditures.

b. Skin Lesion Destruction Codes

We are changing the way Medicare pays for the destruction of benign or premalignant skin lesions. Currently there are several CPT codes that describe a variety of ways of reporting the destruction of skin lesions. We are assigning a "G" status code to CPT codes 17000 through 17105 and create three HCPCS codes to report the destruction of skin lesions. Because we will use a weighted average of the final RVUs that emerged from the 5-year review process that are assigned to the CPT codes for the destruction of benign or premalignant skin lesions in valuing the three new codes, this policy change will have no significant impact on Medicare expenditures.

G. Change of Coverage Status for Screening and Obsolete Procedures

1. Vital Capacity Testing

We are changing the status for vital capacity tests (CPT code 94150) from "active" to "bundled." To the extent that these tests are still being performed in medical practice today, we understand that they are often performed as a part of a comprehensive evaluation. Therefore, we are bundling Medicare payment for these tests into Medicare payment for evaluation and management services. We do not believe that the change in status will have a significant impact on Medicare expenditures.

2. Certain Cardiovascular Procedures

We are discontinuing coverage for certain cardiovascular procedures (CPT codes 93201, 93202, 93204, 93205, 93208, 93209, 93210, 93220, 93221, and 93222). These codes have been deleted from the CPT because they are considered to be obsolete. Because there has been a decline in the billing of these services in recent years and in 1994, we only allowed a total of 17,925 services with \$680,326 in allowed charges for all 10 diagnostic tests. We do not believe that the change in coverage status will have a significant impact on Medicare expenditures.

H. Payments for Supervising Physicians in Teaching Settings

This final rule is making a technical change to § 415.152 ("Definitions") to make the definition of an approved

graduate medical education program consistent with the definition in § 413.86(b) ("Direct graduate medical education payments"). Because this is only a technical change to standardize almost identical definitions, it will have no budgetary impact on Medicare expenditures.

We are making a technical change to remove the word "gender" from § 415.174(a)(4)(iii) ("Exception: Evaluation and management services furnished in certain centers"). We did not include the reference to gender with the intention of excluding obstetric and gynecological or other women's care residency programs solely because of patient gender. This technical change will make clear that the exception criteria will not be applied in such a manner. There will be no budgetary effect.

I. Change in Global Period for Four Percutaneous Biliary Procedures

We are maintaining the current global period of 90 days and the current RVUs for these four percutaneous biliary procedures. There will be no budgetary effect.

J. Impact of Payment Policy Changes, Including Establishment of Interim and Final RVUs for CPT Coding Changes

We have estimated the net increase in program costs in CY 1997 resulting from all payment policy changes, prior to application of an adjustment factor in order to comply with the budget neutrality requirement, to be approximately \$250 million. This is a net figure in that savings from the reductions for some changes partially offset the costs associated with others. This figure requires a reduction of 0.6 percent in the CFs for all services to comply with the statutory limitation on increases in expenditures. Although a \$20 million tolerance is permitted under the law, this 0.6 percent reduction to all CFs is designed to approximate budget neutrality as closely as possible, without creating any increase or decrease in expenditures as a result of the changes.

K. Effect of Changes Resulting From the Five-Year Review of Work Relative Value Units

Because the new work RVUs resulting from the 5-year review of work relative values cause an increase in total estimated payments under the physician fee schedule, we must reduce payments in order to maintain budget neutrality as required by section 1848(c)(2)(B)(ii)(II) of the Act. As is discussed in section

IV.C.1. of this final rule, we are making a budget neutrality adjustment for changes in fees resulting from the 5-year review through a separate adjuster to the work RVUs. We plan on eliminating this adjuster in 1998 when we implement the resource-based practice expense RVUs.

The separate budget neutrality work adjuster required by changes in fees resulting from the 5-year refinement is 8.3 percent. The impact of this adjustment on the fees for any individual service will vary depending on what percentage the work RVUs represent of the total RVUs for the service. The smaller the percentage represented by work, the smaller the fee impact. As an extreme example, the payment for CPT code 96408 (Chemotherapy administration, intravenous; push technique) will be unaffected by this adjuster because the service has no work RVUs, only practice and malpractice expense RVUs. At the other extreme, the average payment for CPT 36500 (Venous catheterization for selective organ blood sampling) will decrease by 8.1 percent since the work RVUs currently represent almost 98 percent of the total RVUs. On average, the fee schedule work RVUs represent approximately 55 percent of the total RVUs. A service with work RVUs representing 55 percent of its total RVUs will see a 4.6 percent decrease in fees because of the separate 8.3 percent budget neutrality adjustment on work.

We anticipate that the reduction of net Medicare revenues for some physician practices due to the changes contained in this regulation will result in a volume and intensity response that will cause overall physician expenditures to increase by 0.9 percent, requiring an offsetting 0.9 percent reduction in the CFs to maintain budget neutrality. Although we always take into account anticipated volume and intensity responses in our impact analyses, in some prior years the magnitude of the CF updates has been sufficient to offset any loss in Medicare revenues resulting from fee schedule changes.

As in previous years, we increased the Medicare Volume Performance Standard (MVPS) targets for physician spending by the anticipated 0.9 volume and intensity response. Because we increased the targets, if the anticipated volume and intensity response does not occur, the MVPS system will return the 0.9 percent reduction to the CFs in the form of higher future updates.

L. Net Impact of Changes on Medicare Specialties

1. Impact Estimation Methodology

Physician fee schedule impacts were estimated by comparing predicted physician payments under a continuation of the current RVUs and policies to the estimated payments under the new RVUs and policies described above.

2. Overall Fee Schedule Impact

As described above, we are making the budget neutrality adjustment required for changes in fees resulting from the 5-year review through a separate adjuster to the work RVUs. The budget neutrality adjustment for all other changes is being applied to the CFs. In the discussion below of differential impacts by specialty, we have incorporated the separate 8.3 percent downward adjustment on the work RVUs and the 1.5 percent downward adjustment on the CFs.

3. Specialty Level Effect (Includes Table 4—Five-Year Review Impact on Medicare Payments by Specialty)

Table 4, "Five-Year Review Impact on Medicare Payments by Specialty," shows the estimated percentage change in Medicare physician fees from the current RVUs and policies to the new RVUs and policies by specialty. The specialties are ranked according to the impact of the changes to Medicare fees. The impact of the changes contained in this regulation on the total revenue (Medicare and non-Medicare) for a given specialty is less than impact displayed in Table 4 since physicians provide services to Medicare and non-Medicare patients.

The magnitude of the Medicare impact depends on the mix of services the specialty provides. In general, because of the changes to the evaluation and management services, those specialties that account for more visits and fewer procedures are expected to experience larger increases in Medicare payments than procedurally oriented specialties, including surgical specialties.

Because the budget neutrality adjustment reduces fees for services with work RVUs that did not experience any change as a result of the 5-year review, specialties that primarily perform these services will experience a negative impact. For example, although the work RVUs for the majority of procedures performed by radiologists remained unchanged (with the

exception of the increase in work RVUs for mammography), fees for services provided by radiologists will, on average, experience a 4.4 percent decrease due to the budget neutrality adjustments.

TABLE 4.—IMPACT ON MEDICARE PAYMENTS BY SPECIALTY

Specialty	Impact of changes (percent)
Chiropractor	15.5
Anesthesiology	5.2
Psychiatry	3.6
Family Practice	2.5
Internal Medicine	2.1
Hematology Oncology	1.9
Emergency Medicine	1.7
Pulmonary	1.6
General Practice	1.4
Rheumatology	1.2
All Other Physician	0.8
Neurology	0.6
Obstetrics/Gynecology	0.3
Clinics	-0.1
Cardiology	-0.5
Otolaryngology	-0.8
Nonphysician Practitioner	-0.9
Vascular Surgery	-1.0
Gastroenterology	-1.6
Neurosurgery	-1.7
General Surgery	-2.5
Oral Surgery	-3.0
Suppliers	-3.1
Plastic Surgery	-3.2
Urology	-3.2
Orthopedic Surgery	-3.4
Nephrology	-3.4
Thoracic Surgery	-3.5
Cardiac Surgery	-4.0
Podiatry	-4.3
Dermatology	-4.3
Radiology	-4.4
Radiation Oncology	-4.8
Optometrist	-5.1
Ophthalmology	-5.5
Pathology	-5.7
Total	-0.9

M. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the Regulatory Flexibility Act. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule will have little direct effect on payments to rural hospitals, since this rule will change only

payments made to physicians and certain other practitioners under Part B of the Medicare program and will make no change in payments to hospitals under Part A. We do not believe the changes will have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise indicated.

2. In § 410.32 paragraphs (a) and (b) are redesignated as paragraphs (d) and (e), respectively, and new paragraphs (a), (b), and (c) are added to read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(a) *Ordering diagnostic tests.* All diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who treats the beneficiary, that is, the physician who is actively furnishing a consultation or treating a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem.

(b) *Exception.* A physician may order an x-ray to be used by a chiropractor to demonstrate the subluxation of the

spine that is the basis for a beneficiary to receive manual manipulation treatments even though the physician does not treat the beneficiary.

(c) *Application to non-physician practitioners.* Non-physician practitioners (that is, clinical nurse specialists, clinical psychologists, clinical social workers, nurse-midwives, nurse practitioners, and physician assistants) who provide services that would be physician services if furnished by a physician, and who are operating within the scope of their authority under State law and within the scope of their Medicare statutory benefit, may be treated the same as physicians treating beneficiaries for the purpose of this section.

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

B. Part 415 is amended as set forth below:

1. The authority citation for part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 415.152 the introductory text is republished, and the definition of "approved graduate medical education (GME) program" is revised to read as follows:

§ 415.152 Definitions.

As used in this subpart—

Approved graduate medical education (GME) program means one of the following:

(1) A residency program approved by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatric Medicine Education of the American Podiatric Medical Association.

(2) A program otherwise recognized as an "approved medical residency program" under § 413.86(b) of this chapter.

§ 415.174 [Amended]

3. In § 415.174, in paragraph (a)(4)(iii), the phrase "system, diagnosis, or

gender" is removed, and the phrase "system or diagnosis" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 7, 1996.

Bruce C. Viadeck,
Administrator, Health Care Financing
Administration.

Dated: November 12, 1996.

Donna E. Shalek,
Secretary.

Note: These addenda will not appear in the Code of Federal Regulations.

Addendum A—Explanation and Use of Addenda B Through E

The addenda on the following pages provide various data pertaining to the Medicare fee schedule for physician services furnished in 1997. Addendum B contains the RVUs for work, practice expense, and malpractice expense, and other information for all services included in the physician fee schedule. Addendum C provides interim RVUs and related information for codes that are subject to comment. Each code listed in Addendum C is also included in Addendum B. Further explanations of the information in these addenda are provided at the beginning of each addendum.

To compute a fee schedule amount according to the formula provided in the final rule, use the RVUs listed in Addendum B and the GPCIs for 1997 listed in Addendum D of this final rule. In applying the formula, use the appropriate CF: For services designated as surgical, use a CF of \$40.9603. For primary care services, use a CF of \$35.7671. For other nonsurgical services, use a CF of \$33.8454. The work adjuster for 1997 is 0.917.

Addendum B—1997 Relative Value Units and Related Information Used in Determining Medicare Payments for 1997

This addendum contains the following information for each CPT code and alphanumeric HCPCS code, except for alphanumeric codes beginning with B (enteral and parenteral therapy), E (durable medical equipment), K (temporary codes for nonphysician services or items), or L (orthotics), and codes for anesthesiology.

1. *CPT/HCPCS code.* This is the CPT or alphanumeric HCPCS number for the service. Alphanumeric HCPCS codes are included at the end of this addendum.

2. *Modifier.* A modifier is shown if there is a technical component (modifier TC) and a professional component (PC) (modifier -26) for the service. If there is a PC and a TC for the service, Addendum B contains three entries for the code: One for the global values (both professional and technical); one for modifier -26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PC and the TC of the service.

Modifier -53 is shown for a discontinued procedure. There will be RVUs for the code (CPT code 45378) with this modifier.

3. *Status indicator.* This indicator shows whether the CPT/HCPCS code is in the physician fee schedule and whether it is separately payable if the service is covered.

A=Active code. These codes are separately payable under the fee schedule if covered. There will be RVUs for codes with this status. The presence of an "A" indicator does not mean that Medicare has made a national decision regarding the coverage of the service. Carriers remain responsible for coverage decisions in the absence of a national Medicare policy.

B=Bundled code. Payment for covered services is always bundled into payment for other services not specified. If RVUs are shown, they are not used for Medicare payment. If these services are covered, payment for them is subsumed by the payment for the services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient.)

C=Carrier-priced code. Carriers will establish RVUs and payment amounts for these services, generally on a case-by-case basis following review of documentation, such as an operative report.

D=Deleted code. These codes are deleted effective with the beginning of the calendar year.

E=Excluded from physician fee schedule by regulation. These codes are for items or services that we chose to exclude from the physician fee schedule payment by regulation. No RVUs are

shown, and no payment may be made under the physician fee schedule for these codes. Payment for them, if they are covered, continues under reasonable charge or other payment procedures.

G=Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for reporting of, and payment for, these services.

N=Noncovered service. These codes are noncovered services. Medicare payment may not be made for these codes. If RVUs are shown, they are not used for Medicare payment.

P=Bundled or excluded code. There are no RVUs for these services. No separate payment should be made for them under the physician fee schedule.

—If the item or service is covered as incident to a physician service and is furnished on the same day as a physician service, payment for it is bundled into the payment for the physician service to which it is incident (an example is an elastic bandage furnished by a physician incident to a physician service).

—If the item or service is covered as other than incident to a physician service, it is excluded from the physician fee schedule (for example, colostomy supplies) and is paid under the other payment provisions of the Act.

R=Restricted coverage. Special coverage instructions apply. If the service is covered and no RVUs are shown, it is carrier-priced.

T=Injections. There are RVUs for these services, but they are only paid if there are no other services payable under the physician fee schedule billed on the same date by the same provider. If any other services payable under the physician fee schedule are billed on the same date by the same provider, these services are bundled into the service(s) for which payment is made.

X=Exclusion by law. These codes represent an item or service that is not within the definition of "physician services" for physician fee schedule payment purposes. No RVUs are shown for these codes, and no payment may be made under the physician fee schedule.

(Examples are ambulance services and clinical diagnostic laboratory services.)

4. *Description of code.* This is an abbreviated version of the narrative description of the code.

5. *Physician work RVUs.* These are the RVUs for the physician work for this service in 1997. Codes that are not used for Medicare payment are identified with a "+."

6. *Practice expense RVUs.* These are the RVUs for the practice expense for the service for 1997.

7. *Malpractice expense RVUs.* These are the RVUs for the malpractice expense for the service for 1997.

8. *Total RVUs.* This is the sum of the work, practice expense, and malpractice expense RVUs for 1997.

9. *Global period.* This indicator shows the number of days in the global period for the code (0, 10, or 90 days). An explanation of the alpha codes follows:

MMM=The code describes a service furnished in uncomplicated maternity cases including antepartum care, delivery, and postpartum care. The usual global surgical concept does not apply. See the 1997 Physicians' Current Procedural Terminology for specific definitions.

XXX=The global concept does not apply.

YYY=The global period is to be set by the carrier (for example, unlisted surgery codes).

ZZZ=The code is part of another service and falls within the global period for the other service.

10. *Update indicator.* This column indicates whether the update for surgical procedures, primary care services, or other nonsurgical services applies to the CPT/HCPCS code in column 1. A "0" appears in this field for codes that are deleted in 1997 or are not paid under the physician fee schedule. A "P" in this column indicates that the update and CF for primary care services applies to this code. An "N" in this column indicates that the update and CF for other nonsurgical services applies to this code. An "S" in this column indicates that the separate update and CF for surgical procedures applies.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
10040		A	Acne surgery of skin abscess	1.15	0.32	0.03	1.50	010	S
10050		A	Drainage of skin abscess	1.12	0.44	0.04	1.60	010	S
10061		A	Drainage of skin abscess	2.24	0.64	0.06	2.94	010	S
10080		A	Drainage of pilonidal cyst	1.12	0.50	0.05	1.67	010	N
10081		A	Drainage of pilonidal cyst	2.40	1.11	0.16	3.67	010	S
10120		A	Remove foreign body	1.19	0.46	0.05	1.70	010	S
10121		A	Remove foreign body	2.64	1.00	0.12	3.76	010	S
10140		A	Drainage of hematoma/fluid	1.48	0.48	0.05	2.01	010	S
10160		A	Puncture drainage of lesion	1.15	0.38	0.05	1.58	010	S
10180		A	Complex drainage, wound	2.20	1.05	0.16	3.43	010	S
11000		A	Debride infected skin	0.60	0.40	0.04	1.04	000	S
11001		A	Debride infect skin add	0.30	0.26	0.02	0.58	ZZZ	S
11010		A	Debride skin, fx	4.15	3.96	0.65	8.76	010	S
11011		A	Debride skin/muscle, fx	4.95	4.72	0.77	10.44	000	S
11012		A	Debride skin/muscle/bone, fx	6.88	6.56	1.07	14.51	000	S
11040		A	Debride skin partial	0.50	0.40	0.04	0.94	000	S
11041		A	Debride skin full	0.82	0.56	0.06	1.44	000	S
11042		A	Debride skin/tissue	1.12	0.65	0.08	1.85	000	S
11043		A	Debride tissue/muscle	1.83	1.81	0.34	3.98	010	S
11044		A	Debride tissue/muscle/bone	2.28	2.82	0.49	5.59	010	S
11050		A	Trim skin lesion	0.43	0.37	0.03	0.83	000	S
11051		A	Trim 2 to 4 skin lesions	0.66	0.50	0.05	1.21	000	S
11052		A	Trim over 4 skin lesions	0.86	0.41	0.04	1.31	000	S
11100		A	Biopsy of skin lesion	0.81	0.51	0.04	1.36	000	S
11101		A	Biopsy, each added lesion	0.41	0.29	0.02	0.72	ZZZ	S
11200		A	Removal of skin tags	0.69	0.43	0.04	1.16	010	S
11201		A	Removal of added skin tags	0.26	0.17	0.02	0.45	ZZZ	S
11300		A	Shave skin lesion	0.51	0.53	0.05	1.09	000	S
11301		A	Shave skin lesion	0.85	0.67	0.06	1.58	000	S
11302		A	Shave skin lesion	1.05	0.89	0.09	2.03	000	S
11303		A	Shave skin lesion	1.24	1.36	0.17	2.77	000	S
11305		A	Shave skin lesion	0.87	0.52	0.05	1.24	000	S
11306		A	Shave skin lesion	0.99	0.71	0.07	1.77	000	S
11307		A	Shave skin lesion	1.14	0.94	0.10	2.18	000	S
11308		A	Shave skin lesion	1.41	1.40	0.17	2.98	000	S
11310		A	Shave skin lesion	0.73	0.69	0.06	1.48	000	S
11311		A	Shave skin lesion	1.05	0.85	0.08	1.98	000	S
11312		A	Shave skin lesion	1.20	1.12	0.11	2.43	000	S
11313		A	Shave skin lesion	1.62	1.49	0.15	3.26	000	S
11400		A	Removal of skin lesion	0.86	0.53	0.05	1.44	010	S
11401		A	Removal of skin lesion	1.27	0.67	0.06	2.00	010	S
11402		A	Removal of skin lesion	1.56	0.89	0.09	2.54	010	S
11403		A	Removal of skin lesion	1.87	1.17	0.13	3.17	010	S
11404		A	Removal of skin lesion	2.15	1.38	0.17	3.70	010	S
11406		A	Removal of skin lesion	2.71	1.88	0.33	4.92	010	S
11420		A	Removal of skin lesion	1.01	0.52	0.05	1.58	010	S
11421		A	Removal of skin lesion	1.48	0.71	0.07	2.26	010	S
11422		A	Removal of skin lesion	1.71	0.94	0.10	2.75	010	S
11423		A	Removal of skin lesion	2.12	1.31	0.15	3.58	010	S
11424		A	Removal of skin lesion	2.57	1.39	0.16	4.12	010	S
11425		A	Removal of skin lesion	3.73	1.83	0.29	5.85	010	S
11440		A	Removal of skin lesion	1.10	0.69	0.08	1.85	010	S
11441		A	Removal of skin lesion	1.56	0.85	0.08	2.49	010	S
11442		A	Removal of skin lesion	1.82	1.12	0.11	3.05	010	S
11443		A	Removal of skin lesion	2.44	1.45	0.15	4.04	010	S
11444		A	Removal of skin lesion	3.37	1.47	0.14	4.98	010	S
11445		A	Removal of skin lesion	4.44	1.78	0.18	6.40	010	S
11450		A	Removal, sweat gland lesion	2.58	2.68	0.44	5.70	090	S
11451		A	Removal, sweat gland lesion	3.80	2.90	0.46	7.16	090	S
11482		A	Removal, sweat gland lesion	2.36	2.41	0.36	5.13	090	S
11483		A	Removal, sweat gland lesion	3.80	2.00	0.34	6.14	090	S
11470		A	Removal, sweat gland lesion	3.10	2.78	0.45	6.33	090	S
11471		A	Removal, sweat gland lesion	4.25	2.46	0.48	7.20	090	S
11600		A	Removal of skin lesion	1.36	1.13	0.10	2.59	010	S
11601		A	Removal of skin lesion	1.88	1.39	0.12	3.39	010	S
11602		A	Removal of skin lesion	2.04	1.82	0.16	4.02	010	S
11603		A	Removal of skin lesion	2.30	2.25	0.21	4.76	010	S

¹ All CPT codes and descriptors copyright 1996 American Medical Association.² Copyright 1994 American Dental Association. All rights reserved.

* Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
11604		A	Removal of skin lesion	2.53	2.59	0.26	5.38	010	S
11605		A	Removal of skin lesion	3.36	3.11	0.49	6.96	010	S
11620		A	Removal of skin lesion	1.29	1.34	0.12	2.75	010	S
11621		A	Removal of skin lesion	1.92	1.75	0.16	3.83	010	S
11622		A	Removal of skin lesion	2.29	2.20	0.19	4.68	010	S
11623		A	Removal of skin lesion	2.68	2.56	0.25	5.71	010	S
11624		A	Removal of skin lesion	3.38	3.21	0.32	6.91	010	S
11626		A	Removal of skin lesion	4.20	3.41	0.51	8.12	010	S
11640		A	Removal of skin lesion	1.48	1.65	0.15	3.28	010	S
11641		A	Removal of skin lesion	2.39	2.09	0.18	4.66	010	S
11642		A	Removal of skin lesion	2.88	2.57	0.23	5.68	010	S
11643		A	Removal of skin lesion	3.45	3.01	0.28	6.74	010	S
11644		A	Removal of skin lesion	4.50	3.51	0.33	8.34	010	S
11646		A	Removal of skin lesion	5.85	4.32	0.60	10.77	010	S
11700		D	Scraping of 1-5 nails	0.00	0.00	0.00	0.00	000	S
11701		D	Scraping of additional nails	0.00	0.00	0.00	0.00	ZZZ	S
11710		D	Scraping of 1-5 nails	0.00	0.00	0.00	0.00	000	S
11711		D	Scraping of additional nails	0.00	0.00	0.00	0.00	ZZZ	S
11720		A	Debride nail, 1-5	0.32	0.32	0.09	0.67	000	S
11721		A	Debride nail, 6 or more	0.54	0.54	0.05	1.13	000	S
11730		A	Removal of nail plate	1.13	0.45	0.04	1.62	000	S
11731		A	Removal of second nail plate	0.57	0.51	0.05	1.13	ZZZ	S
11732		A	Remove additional nail plate	0.57	0.25	0.02	0.84	ZZZ	S
11740		A	Drain blood from under nail	0.37	0.39	0.04	0.80	000	S
11750		A	Removal of nail bed	1.66	2.10	0.19	3.95	010	S
11752		A	Remove nail bed/finger tip	2.37	2.82	0.36	5.55	010	S
11755		A	Biopsy, nail unit	1.31	0.99	0.12	2.42	000	S
11760		A	Reconstruction of nail bed	1.53	0.93	0.09	2.55	010	S
11762		A	Reconstruction of nail bed	2.84	2.57	0.24	5.65	010	S
11765		A	Excision of nail fold, toe	0.64	0.51	0.05	1.20	010	S
11770		A	Removal of pilonidal lesion	2.56	2.67	0.44	5.67	010	S
11771		A	Removal of pilonidal lesion	5.15	4.52	0.92	10.59	090	S
11772		A	Removal of pilonidal lesion	6.36	4.82	1.01	12.19	090	S
11900		A	Injection into skin lesions	0.52	0.25	0.02	0.79	000	S
11901		A	Added skin lesions injection	0.60	0.41	0.03	1.04	000	S
11920		R	Correct skin color defects	1.61	1.18	0.23	3.02	000	S
11921		R	Correct skin color defects	1.93	1.40	0.28	3.61	000	S
11922		R	Correct skin color defects	0.49	0.36	0.07	0.92	ZZZ	S
11950		R	Therapy for contour defects	0.84	1.19	0.11	2.14	000	S
11951		R	Therapy for contour defects	1.19	1.19	0.11	2.49	000	S
11952		R	Therapy for contour defects	1.69	1.19	0.11	2.99	000	S
11954		R	Therapy for contour defects	1.85	1.19	0.11	3.15	000	S
11960		A	Insert tissue expander(s)	8.00	7.73	1.48	17.21	090	S
11970		A	Replace tissue expander	6.65	6.51	1.61	16.77	090	S
11971		A	Remove tissue expander(s)	1.51	2.30	0.82	4.63	090	S
11975		N	Insert contraceptive cap	+1.48	1.06	0.25	2.79	XXX	0
11976		R	Removal of contraceptive cap	1.78	1.28	0.30	3.36	XXX	N
11977		N	Removal/reinsert contra cap	+3.30	2.36	0.55	6.21	XXX	0
12001		A	Repair superficial wound(s)	1.65	0.57	0.05	2.27	010	N
12002		A	Repair superficial wound(s)	1.81	0.79	0.07	2.67	010	N
12004		A	Repair superficial wound(s)	2.19	1.14	0.10	3.43	010	N
12005		A	Repair superficial wound(s)	2.81	1.47	0.14	4.42	010	N
12006		A	Repair superficial wound(s)	3.62	1.78	0.18	5.58	010	N
12007		A	Repair superficial wound(s)	4.07	1.80	0.19	6.06	010	S
12011		A	Repair superficial wound(s)	1.71	0.74	0.06	2.51	010	N
12013		A	Repair superficial wound(s)	1.94	1.03	0.06	3.03	010	N
12014		A	Repair superficial wound(s)	2.41	1.19	0.10	3.70	010	N
12015		A	Repair superficial wound(s)	3.14	1.62	0.14	4.90	010	N
12016		A	Repair superficial wound(s)	3.68	2.26	0.19	6.33	010	N
12017		A	Repair superficial wound(s)	4.66	3.36	0.31	8.33	010	N
12018		A	Repair superficial wound(s)	5.48	5.15	0.48	11.11	010	S
12020		A	Closure of split wound	2.57	1.19	0.18	3.94	010	S
12021		A	Closure of split wound	1.79	0.82	0.11	2.52	010	S
12031		A	Layer closure of wound(s)	2.10	0.72	0.07	2.89	010	S
12032		A	Layer closure of wound(s)	2.42	1.05	0.10	3.57	010	S
12034		A	Layer closure of wound(s)	2.87	1.47	0.15	4.49	010	S
12035		A	Layer closure of wound(s)	3.38	1.92	0.23	5.53	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ¹	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
12036		A	Layer closure of wound(s)	4.00	2.32	0.37	6.69	010 S	
12037		A	Layer closure of wound(s)	4.82	3.09	0.48	8.19	010 S	
12041		A	Layer closure of wound(s)	2.32	0.84	0.08	3.24	010 N	
12042		A	Layer closure of wound(s)	2.69	1.17	0.12	3.98	010 N	
12044		A	Layer closure of wound(s)	3.09	1.62	0.17	4.88	010 N	
12045		A	Layer closure of wound(s)	3.59	2.13	0.23	5.95	010 N	
12046		A	Layer closure of wound(s)	4.20	2.82	0.37	7.39	010 S	
12047		A	Layer closure of wound(s)	4.60	4.02	0.56	9.18	010 N	
12051		A	Layer closure of wound(s)	2.42	1.01	0.10	3.53	010 S	
12052		A	Layer closure of wound(s)	2.72	1.47	0.14	4.33	010 S	
12053		A	Layer closure of wound(s)	3.07	1.76	0.17	5.00	010 S	
12054		A	Layer closure of wound(s)	3.41	2.60	0.25	6.26	010 S	
12055		A	Layer closure of wound(s)	4.38	3.24	0.37	7.99	010 S	
12056		A	Layer closure of wound(s)	5.19	4.74	0.62	10.45	010 S	
12057		A	Layer closure of wound(s)	5.91	5.57	0.46	11.96	010 S	
13100		A	Repair of wound or lesion	3.07	1.14	0.13	4.34	010 S	
13101		A	Repair of wound or lesion	3.87	2.08	0.21	6.16	010 S	
13120		A	Repair of wound or lesion	3.25	1.35	0.17	4.77	010 S	
13121		A	Repair of wound or lesion	4.28	2.65	0.33	7.26	010 S	
13131		A	Repair of wound or lesion	3.74	1.98	0.23	5.95	010 S	
13132		A	Repair of wound or lesion	5.75	4.57	0.44	10.76	010 S	
13150		A	Repair of wound or lesion	3.76	1.76	0.23	5.75	010 S	
13151		A	Repair of wound or lesion	4.40	2.45	0.36	7.20	010 S	
13152		A	Repair of wound or lesion	6.28	5.13	0.66	12.09	010 S	
13160		A	Late closure of wound	9.53	3.33	0.58	13.44	090 S	
13300		A	Repair of wound or lesion	5.11	5.71	0.86	11.68	010 S	
14000		A	Skin tissue rearrangement	5.43	3.41	0.38	9.22	090 S	
14001		A	Skin tissue rearrangement	7.78	4.75	0.76	13.29	090 S	
14020		A	Skin tissue rearrangement	6.08	4.90	0.49	11.47	090 S	
14021		A	Skin tissue rearrangement	9.37	6.21	0.94	16.52	090 S	
14040		A	Skin tissue rearrangement	7.18	6.77	0.65	14.60	090 S	
14041		A	Skin tissue rearrangement	10.74	7.88	1.02	19.64	090 S	
14060		A	Skin tissue rearrangement	8.05	7.75	1.04	16.84	090 S	
14061		A	Skin tissue rearrangement	11.42	10.49	1.27	23.18	090 S	
14300		A	Skin tissue rearrangement	10.76	11.31	1.84	23.91	090 S	
14350		A	Skin tissue rearrangement	9.05	6.07	1.06	16.17	090 S	
15000		A	Skin graft procedure	1.95	2.49	0.53	4.97	ZZZ S	
15050		A	Skin pinch graft procedure	3.90	1.79	0.30	5.99	090 S	
15100		A	Skin split graft procedure	8.05	4.54	0.89	13.48	090 S	
15101		A	Skin split graft procedure	1.72	1.59	0.33	3.64	ZZZ S	
15120		A	Skin split graft procedure	9.14	6.05	0.94	16.13	090 S	
15121		A	Skin split graft procedure	2.87	2.91	0.53	6.11	ZZZ S	
15200		A	Skin full graft procedure	7.48	4.13	0.69	12.28	090 S	
15201		A	Skin full graft procedure	1.32	1.68	0.50	3.50	ZZZ S	
15220		A	Skin full graft procedure	7.42	4.84	0.85	13.11	090 S	
15221		A	Skin full graft procedure	1.19	1.59	0.50	3.28	ZZZ S	
15240		A	Skin full graft procedure	5.30	6.10	1.03	15.43	090 S	
15241		A	Skin full graft procedure	1.86	2.38	0.58	4.82	ZZZ S	
15260		A	Skin full graft procedure	9.58	7.48	0.99	18.01	090 S	
15261		A	Skin full graft procedure	2.23	2.85	0.60	5.68	ZZZ S	
15350		A	Skin homograft procedure	3.89	2.15	0.42	6.46	090 S	
15400		A	Skin heterograft procedure	4.91	1.08	0.17	6.14	090 S	
15570		A	Form skin pedicle flap	8.39	5.50	2.08	15.97	090 S	
15572		A	Form skin pedicle flap	8.59	5.38	1.86	15.83	090 S	
15574		A	Form skin pedicle flap	8.97	5.40	1.86	16.03	090 S	
15576		A	Form skin pedicle flap	8.14	3.12	0.60	11.86	090 S	
15580		A	Attach skin pedicle graft	8.84	4.31	1.30	14.45	090 S	
15600		A	Skin graft procedure	1.70	2.51	0.88	5.09	090 S	
15610		A	Skin graft procedure	2.21	2.82	0.80	5.83	090 S	
15620		A	Skin graft procedure	2.89	3.44	0.86	6.99	090 S	
15625		A	Skin graft procedure	1.81	2.41	0.76	5.00	090 S	
15630		A	Skin graft procedure	3.02	3.86	0.99	7.78	090 S	
15650		A	Transfer skin pedicle flap	3.61	4.62	0.93	9.16	090 S	
15732		A	Muscle-skin graft, head/neck	16.52	15.48	3.46	35.46	090 S	
15734		A	Muscle-skin graft, trunk	16.52	18.01	3.24	38.77	090 S	
15735		A	Muscle-skin graft, arm	15.26	16.21	3.02	34.49	090 S	
15738		A	Muscle-skin graft, leg	16.52	12.89	3.29	32.70	090 S	

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ¹	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
15740		A	Island pedicle flap graft	9.45	10.39	1.62	21.46	090 S	
15750		A	Neurovascular pedicle graft	10.61	11.96	2.03	24.60	090 S	
15755		D	Microvascular flap graft	0.00	0.00	0.00	0.00	090 S	
15756		A	Free muscle flap, microvasc	33.23	30.09	5.33	68.65	090 S	
15757		A	Free skin flap, microvasc	33.23	30.09	5.33	68.65	090 S	
15758		A	Free fascial flap, microvasc	33.23	30.09	5.33	68.65	090 S	
15760		A	Composite skin graft	8.28	7.29	1.11	16.68	090 S	
15770		A	Dermis-fat fascia graft	6.85	7.46	0.95	15.26	090 S	
15775		R	Hair transplant punch grafts	3.96	2.88	0.58	7.40	000 S	
15776		R	Hair transplant punch grafts	5.54	4.03	0.79	10.36	000 S	
15780		A	Abrasion treatment of skin	6.73	1.53	0.13	8.39	090 S	
15781		A	Abrasion treatment of skin	4.67	3.77	0.39	8.83	090 S	
15782		A	Abrasion treatment of skin	4.19	1.19	0.13	5.51	090 S	
15783		A	Abrasion treatment of skin	4.16	1.85	0.18	6.20	090 S	
15786		A	Abrasion treatment of lesion	1.98	0.62	0.06	2.66	010 S	
15788		R	Abrasion, added skin lesions	0.33	0.23	0.03	0.59	ZZZ S	
15789		R	Chemical peel, face, epiderm	1.96	1.48	0.12	3.56	090 S	
15792		R	Chemical peel, face, dermal	4.69	1.48	0.12	6.29	090 S	
15793		A	Chemical peel, nonfacial	1.73	0.50	0.05	2.28	090 S	
15810		A	Chemical peel, nonfacial	3.51	0.50	0.05	4.06	090 S	
15811		A	Salabrasion	4.49	3.80	0.29	8.58	090 S	
15819		A	Salabrasion	5.14	3.74	0.73	9.61	090 S	
15820		A	Plastic surgery, neck	8.87	8.01	0.87	17.75	090 S	
15821		A	Revision of lower eyelid	4.80	6.14	0.64	11.58	090 S	
15822		A	Revision of lower eyelid	5.37	6.87	0.68	12.92	090 S	
15823		A	Revision of upper eyelid	4.27	5.47	0.56	10.30	090 S	
15824		R	Revision of upper eyelid	6.65	7.71	0.61	14.97	090 S	
15825		R	Removal of forehead wrinkles	0.00	0.00	0.00	0.00	XXX S	
15826		R	Removal of neck wrinkles	0.00	0.00	0.00	0.00	XXX S	
15828		R	Removal of brow wrinkles	0.00	0.00	0.00	0.00	XXX S	
15829		R	Removal of face wrinkles	0.00	0.00	0.00	0.00	XXX S	
15831		R	Removal of skin wrinkles	0.00	0.00	0.00	0.00	XXX S	
15832		A	Excise excessive skin tissue	11.66	9.84	2.01	23.51	090 S	
15833		A	Excise excessive skin tissue	10.97	8.29	1.33	20.59	090 S	
15834		A	Excise excessive skin tissue	10.02	6.22	1.12	17.36	090 S	
15835		A	Excise excessive skin tissue	10.16	7.18	1.22	18.56	090 S	
15836		A	Excise excessive skin tissue	10.98	7.00	1.22	19.20	090 S	
15837		A	Excise excessive skin tissue	8.83	5.80	1.10	15.73	090 S	
15838		A	Excise excessive skin tissue	8.06	5.97	0.85	14.90	090 S	
15839		A	Excise excessive skin tissue	6.78	5.88	0.73	13.39	090 S	
15840		A	Excise excessive skin tissue	5.92	2.44	0.46	11.82	090 S	
15841		A	Graft for face nerve palsy	12.26	15.54	2.28	30.08	090 S	
15842		A	Graft for face nerve palsy	21.53	16.87	2.76	41.16	090 S	
15845		A	Graft for face nerve palsy	35.98	29.00	2.68	67.66	090 S	
15850		B	Skin and muscle repair, face	11.80	15.10	2.54	29.44	090 S	
15851		A	Removal of sutures	+0.78	0.36	0.04	1.18	XXX D	
15852		A	Removal of sutures	0.86	0.30	0.03	1.19	000 N	
15860		A	Dressing change, not for burn	0.86	0.44	0.07	1.37	000 N	
15876		R	Test for blood flow in graft	1.95	1.35	0.25	3.55	000 S	
15877		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	XXX S	
15878		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	XXX S	
15879		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	XXX S	
15920		A	Removal of tail bone ulcer	7.37	2.95	0.63	10.95	090 S	
15922		A	Removal of tail bone ulcer	9.17	5.98	1.19	16.34	090 S	
15931		A	Remove sacrum pressure sore	8.13	2.93	0.65	11.61	090 S	
15933		A	Remove sacrum pressure sore	9.64	6.82	1.43	17.99	090 S	
15934		A	Remove sacrum pressure sore	11.40	7.46	1.50	20.36	090 S	
15935		A	Remove sacrum pressure sore	13.05	11.24	2.27	26.56	090 S	
15936		A	Remove sacrum pressure sore	11.31	10.27	2.05	23.63	090 S	
15937		A	Remove sacrum pressure sore	12.98	13.47	2.67	29.12	090 S	
15940		A	Removal of pressure sore	8.19	3.55	0.73	12.47	090 S	
15941		A	Removal of pressure sore	10.15	7.05	1.39	18.59	090 S	
15944		A	Removal of pressure sore	10.18	9.26	1.82	21.26	090 S	
15945		A	Removal of pressure sore	11.32	11.14	2.09	24.55	090 S	
15946		A	Removal of pressure sore	19.61	15.81	3.24	38.66	090 S	
15950		A	Remove thigh pressure sore	6.79	3.01	0.58	10.38	090 S	

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
15951		A	Remove thigh pressure sore	9.57	7.65	1.58	18.80	090	S
15952		A	Remove thigh pressure sore	10.18	7.13	1.37	18.68	090	S
15953		A	Remove thigh pressure sore	11.39	9.08	1.87	22.34	090	S
15956		A	Remove thigh pressure sore	13.93	17.17	3.39	34.49	090	S
15958		A	Remove thigh pressure sore	13.89	17.77	3.76	35.42	090	S
15999		C	Removal of pressure sore	0.00	0.00	0.00	0.00	YYY	S
16000		A	Initial treatment of burn(s)	0.89	0.35	0.03	1.27	000	N
16010		A	Treatment of burn(s)	0.87	0.32	0.03	1.22	000	N
16015		A	Treatment of burn(s)	2.35	2.04	0.38	4.77	000	S
16020		A	Treatment of burn(s)	0.80	0.34	0.03	1.17	000	N
16025		A	Treatment of burn(s)	1.85	0.45	0.05	2.35	000	S
16030		A	Treatment of burn(s)	2.08	0.52	0.08	2.68	000	S
16035		A	Incision of burn scab	4.53	1.88	0.34	6.75	090	S
16040		A	Burn wound excision	1.02	1.56	0.53	3.11	000	S
16041		A	Burn wound excision	2.70	3.16	0.53	6.39	000	S
16042		A	Burn wound excision	2.35	3.02	0.53	5.90	000	S
17000		G	Destroy benign/premalignant lesion	+0.56	0.42	0.03	1.01	010	S
17001		G	Destruction of add'l lesions	+0.19	0.19	0.02	0.40	ZZZ	S
17002		G	Destruction of add'l lesions	+0.19	0.10	0.01	0.30	ZZZ	S
17010		G	Destruction of skin lesion(s)	+1.01	0.48	0.04	1.53	010	S
17100		G	Destruction of skin lesion	+0.53	0.37	0.03	0.93	010	S
17101		G	Destruction of 2nd lesion	+0.11	0.18	0.02	0.31	ZZZ	S
17102		G	Destruction of add'l lesions	+0.11	0.08	0.01	0.20	ZZZ	S
17104		G	Destruction of skin lesions	+2.01	0.07	0.01	2.09	010	S
17105		G	Destruction of skin lesions	+0.76	0.31	0.03	1.10	010	S
17106		A	Destruction of skin lesions	4.54	1.93	0.18	6.65	090	S
17107		A	Destruction of skin lesions	9.06	3.70	0.39	13.15	090	S
17108		A	Destruction of skin lesions	13.10	9.32	0.69	23.11	090	S
17110		A	Destruction of skin lesions	0.55	0.40	0.03	0.98	010	S
17200		A	Electrocautery of skin tags	0.59	0.41	0.04	1.04	010	S
17201		A	Electrocautery added lesions	0.38	0.15	0.01	0.54	ZZZ	S
17250		A	Chemical cautery, tissue	0.50	0.34	0.04	0.88	000	S
17260		A	Destruction of skin lesions	0.86	1.13	0.10	2.09	010	S
17261		A	Destruction of skin lesions	1.12	1.39	0.12	2.63	010	S
17262		A	Destruction of skin lesions	1.53	1.82	0.16	3.51	010	S
17263		A	Destruction of skin lesions	1.74	2.25	0.21	4.20	010	S
17264		A	Destruction of skin lesions	1.89	2.59	0.26	4.74	010	S
17266		A	Destruction of skin lesions	2.29	3.11	0.49	5.89	010	S
17270		A	Destruction of skin lesions	1.27	1.34	0.12	2.73	010	S
17271		A	Destruction of skin lesions	1.44	1.75	0.16	3.35	010	S
17272		A	Destruction of skin lesions	1.72	2.20	0.19	4.11	010	S
17273		A	Destruction of skin lesions	2.00	2.58	0.25	4.83	010	S
17274		A	Destruction of skin lesions	2.54	3.21	0.32	6.07	010	S
17276		A	Destruction of skin lesions	3.15	3.41	0.51	7.07	010	S
17290		A	Destruction of skin lesions	1.12	1.65	0.15	2.92	010	S
17281		A	Destruction of skin lesions	1.67	2.09	0.18	3.94	010	S
17282		A	Destruction of skin lesions	1.99	2.57	0.23	4.79	010	S
17283		A	Destruction of skin lesions	2.59	3.01	0.28	5.88	010	S
17284		A	Destruction of skin lesions	3.16	3.51	0.33	7.00	010	S
17286		A	Destruction of skin lesions	4.39	4.32	0.80	9.51	010	S
17304		A	Chemosurgery of skin lesion	7.80	4.02	0.31	11.93	000	S
17305		A	2nd stage chemosurgery	2.85	2.26	0.17	5.28	000	S
17306		A	3rd stage chemosurgery	2.85	1.40	0.11	4.36	000	S
17307		A	Followup skin lesion therapy	2.85	1.47	0.12	4.44	000	S
17310		A	Extensive skin chemosurgery	0.95	0.13	0.01	1.09	000	S
17340		A	Cryotherapy of skin	0.73	0.28	0.02	1.03	010	S
17360		A	Skin peel therapy	1.40	0.27	0.02	1.69	010	S
17380		R	Hair removal by electrolysis	0.00	0.00	0.00	0.00	XXX	S
17999		C	Skin tissue procedure	0.00	0.00	0.00	0.00	YYY	S
19000		A	Drainage of breast lesion	0.84	0.38	0.07	1.29	000	S
19001		A	Drain added breast lesion	0.42	0.24	0.05	0.71	ZZZ	S
19020		A	Incision of breast lesion	3.37	1.40	0.28	5.05	090	S
19030		A	Injection for breast x-ray	1.53	0.49	0.04	2.06	000	N
19100		A	Biopsy of breast	1.27	0.64	0.13	2.04	000	S
19101		A	Biopsy of breast	3.13	2.34	0.45	5.92	010	S
19110		A	Nipple exploration	4.15	2.46	0.51	7.12	090	S
19112		A	Excise breast duct fistula	3.52	2.34	0.35	6.21	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
19120		A	Removal of breast lesion	5.35	2.90	0.80	8.85	090	S
19125		A	Excision, breast lesion	5.95	2.90	0.60	9.35	090	S
19128		A	Excision, add'l breast lesion	2.93	1.45	0.31	4.69	ZZZ	S
19140		A	Removal of breast tissue	4.65	4.29	0.91	10.05	090	S
19160		A	Removal of breast tissue	5.75	4.13	0.88	10.76	090	S
19182		A	Remove breast tissue, nodes	12.81	9.38	1.98	24.15	090	S
19180		A	Removal of breast	8.09	5.61	1.17	14.87	090	S
19182		A	Removal of breast	7.28	6.07	1.27	14.62	090	S
19200		A	Removal of breast	14.23	10.22	2.15	26.60	090	S
19220		A	Removal of breast	14.23	10.73	2.38	27.34	090	S
19240		A	Removal of breast	14.71	9.44	1.99	26.14	090	S
19260		A	Removal of chest wall lesion	13.91	5.05	1.04	20.00	090	S
19271		A	Revision of chest wall	17.07	13.95	2.77	33.79	090	S
19272		A	Extensive chest wall surgery	19.47	12.60	2.56	34.63	090	S
19290		A	Place needle wire, breast	1.27	0.44	0.07	1.78	000	S
19291		A	Place needle wire, breast	0.63	0.25	0.04	0.92	ZZZ	S
19318		A	Suspension of breast	10.07	12.84	2.43	25.34	090	S
19318		A	Reduction of large breast	15.00	14.18	3.23	32.41	090	S
19324		A	Enlarge breast	5.55	3.29	0.67	9.51	090	S
19325		A	Enlarge breast with implant	8.05	5.87	1.13	15.05	090	S
19328		A	Removal of breast implant	5.32	3.76	0.73	9.81	090	S
19330		A	Removal of implant material	7.18	3.88	0.75	11.81	090	S
19340		A	Immediate breast prosthesis	6.33	8.10	2.06	16.49	ZZZ	S
19342		A	Delayed breast prosthesis	10.64	10.81	2.03	23.48	090	S
19350		A	Breast reconstruction	8.52	7.08	1.38	16.98	090	S
19355		A	Correct inverted nipple(s)	7.27	4.93	1.00	13.20	090	S
19357		A	Breast reconstruction	16.72	12.15	2.37	31.24	090	S
19361		A	Breast reconstruction	17.82	20.13	3.88	41.83	090	S
19364		A	Breast reconstruction	27.60	16.68	3.58	47.86	090	S
19366		A	Breast reconstruction	19.64	16.40	3.18	39.42	090	S
19367		A	Breast reconstruction	24.73	20.13	3.88	48.74	090	S
19368		A	Breast reconstruction	31.15	20.13	3.88	55.16	090	S
19369		A	Breast reconstruction	28.68	20.13	3.88	52.69	090	S
19370		A	Surgery of breast capsule	7.59	6.17	1.19	14.95	090	S
19371		A	Removal of breast capsule	8.84	7.91	1.54	18.29	090	S
19380		A	Revise breast reconstruction	8.63	8.11	1.57	18.31	090	S
19396		A	Design custom breast implant	2.17	1.57	0.31	4.05	000	S
19499		C	Breast surgery procedure	0.00	0.00	0.00	0.00	YYY	S
20000		A	Incision of abscess	1.85	0.85	0.08	2.78	010	S
20005		A	Incision of deep abscess	3.02	1.83	0.28	5.13	010	S
20100		A	Explore wound, neck	9.50	4.97	1.16	15.63	010	S
20101		A	Explore wound, chest	3.00	1.57	0.37	4.94	010	S
20102		A	Explore wound, abdomen	3.68	1.92	0.45	6.05	010	S
20103		A	Explore wound, extremity	4.95	2.59	0.80	8.14	010	S
20150		A	Excise epiphyseal bar	13.00	12.40	2.03	27.43	090	S
20200		A	Muscle biopsy	1.48	1.12	0.18	2.78	000	S
20205		A	Deep muscle biopsy	2.35	1.88	0.33	4.56	000	S
20206		A	Needle biopsy, muscle	0.99	0.96	0.14	2.09	000	S
20220		A	Bone biopsy, trocar/needle	1.27	1.31	0.09	2.67	000	N
20225		A	Bone biopsy, trocar/needle	1.87	2.39	0.29	4.54	000	N
20240		A	Bone biopsy, excisional	3.07	1.88	0.18	5.13	010	S
20245		A	Bone biopsy, excisional	3.68	3.58	0.44	7.70	010	S
20250		A	Open bone biopsy	4.83	5.07	0.76	10.46	010	S
20251		A	Open bone biopsy	5.16	5.84	0.92	11.92	010	S
20500		A	Injection of sinus tract	1.18	0.36	0.04	1.58	010	N
20501		A	Inject sinus tract for x-ray	0.78	0.30	0.02	1.08	000	N
20520		A	Removal of foreign body	1.80	0.71	0.08	2.59	010	S
20525		A	Removal of foreign body	3.23	2.23	0.33	5.79	010	S
20550		A	Inj tendon/ligament/cyst	0.66	0.38	0.04	1.28	000	N
20600		A	Drain/inject joint/bursa	0.66	0.47	0.05	1.18	000	S
20605		A	Drain/inject joint/bursa	0.68	0.45	0.05	1.18	000	S
20610		A	Drain/inject joint/bursa	0.79	0.45	0.05	1.29	000	N
20615		A	Treatment of bone cyst	2.23	0.49	0.06	2.78	010	N
20650		A	Insert and remove bone pin	2.07	1.08	0.14	3.29	010	S
20660		A	Apply/remove fixation device	2.51	1.56	0.21	4.28	000	S
20661		A	Application of head brace	4.27	3.82	0.65	8.74	090	S
20662		A	Application of pelvis brace	5.52	6.54	1.03	13.09	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

GPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
20663		A	Application of thigh brace	4.88	4.64	0.76	10.28	090	S
20665		A	Removal of fixation device	1.26	0.50	0.07	1.83	010	S
20670		A	Removal of support implant	1.69	0.74	0.11	2.54	010	S
20680		A	Removal of support implant	3.25	3.33	0.51	7.09	090	S
20690		A	Apply bone fixation device	3.52	3.66	0.58	7.76	ZZZ	S
20692		A	Apply bone fixation device	6.41	5.51	0.89	12.81	ZZZ	S
20693		A	Adjust bone fixation device	5.42	2.49	0.42	8.33	090	S
20694		A	Remove bone fixation device	3.81	2.60	0.41	6.82	090	S
20802		A	Replantation, arm, complete	39.56	37.72	6.17	83.45	090	S
20805		A	Replant forearm, complete	48.41	46.17	7.56	102.14	090	S
20808		A	Replantation, hand, complete	60.19	57.40	9.40	126.99	090	S
20816		A	Replantation digit, complete	29.67	28.30	4.63	62.60	090	S
20822		A	Replantation digit, complete	24.53	23.39	3.83	51.75	090	S
20824		A	Replantation thumb, complete	29.67	28.30	4.63	62.60	090	S
20827		A	Replantation thumb, complete	25.22	24.05	3.94	53.21	090	S
20836		A	Replantation, foot, complete	39.56	37.72	6.17	83.45	090	S
20900		A	Removal of bone for graft	5.03	2.80	0.45	8.28	090	S
20902		A	Removal of bone for graft	6.74	4.95	0.80	12.49	090	S
20910		A	Remove cartilage for graft	5.03	0.79	0.09	5.91	090	S
20912		A	Remove cartilage for graft	5.04	4.62	0.64	11.30	090	S
20920		A	Removal of fascia for graft	4.87	3.93	0.50	9.30	090	S
20922		A	Removal of fascia for graft	6.04	4.39	0.71	11.14	090	S
20924		A	Removal of tendon for graft	6.04	5.45	0.85	12.34	090	S
20926		A	Removal of tissue for graft	5.03	2.59	0.30	8.01	090	S
20930		B	Spinal bone allograft	0.00	0.00	0.00	0.00	XXX	0
20931		A	Spinal bone allograft	1.81	1.73	0.28	3.82	ZZZ	S
20936		B	Spinal bone autograft	0.00	0.00	0.00	0.00	XXX	0
20937		A	Spinal bone autograft	2.79	2.66	0.44	5.89	ZZZ	S
20938		A	Spinal bone autograft	3.02	2.88	0.47	6.37	ZZZ	S
20950		A	Record fluid pressure, muscle	1.26	1.09	0.17	2.52	000	S
20955		A	Fibula bone graft, microvasc	37.58	35.84	5.87	79.29	090	S
20956		A	Iliac bone graft, microvasc	37.00	26.90	5.26	69.16	090	S
20957		A	Mt bone graft, microvasc	38.33	27.87	5.45	71.65	090	S
20960		D	Microvascular rib graft	0.00	0.00	0.00	0.00	090	S
20962		A	Other bone graft, microvasc	37.00	26.90	5.26	69.16	090	S
20969		A	Bone/skin graft, microvasc	42.08	40.13	6.57	88.78	090	S
20970		A	Bone/skin graft, iliac crest	41.22	39.31	6.44	86.97	090	S
20971		D	Bone-skin graft, rib	0.00	0.00	0.00	0.00	090	S
20972		A	Bone-skin graft, metatarsal	41.54	39.61	6.49	87.64	090	S
20973		A	Bone-skin graft, great toe	44.31	42.25	6.91	93.47	090	S
20974		A	Electrical bone stimulation	0.82	3.42	0.53	4.57	ZZZ	S
20975		A	Electrical bone stimulation	2.80	3.33	0.56	6.69	ZZZ	S
20995		C	Musculoskeletal surgery	0.00	0.00	0.00	0.00	YYY	S
21010		A	Incision of jaw joint	9.06	10.24	0.93	20.23	090	S
21015		A	Resection of facial tumor	4.94	6.32	1.13	12.39	090	S
21025		A	Excision of bone, lower jaw	8.98	4.14	0.38	13.50	090	S
21026		A	Excision of facial bone(s)	4.53	3.14	0.26	7.95	090	S
21029		A	Contour of face bone lesion	7.21	9.23	0.78	17.22	090	S
21030		A	Removal of face bone lesion	6.04	3.35	0.28	9.68	090	S
21031		A	Remove exostosis, mandible	3.14	3.68	0.32	7.14	090	S
21032		A	Remove exostosis, maxilla	3.14	3.68	0.35	7.37	090	S
21034		A	Removal of face bone lesion	15.11	6.98	0.89	22.98	090	S
21040		A	Removal of jaw bone lesion	2.01	2.76	0.24	5.01	090	S
21041		A	Removal of jaw bone lesion	6.04	5.75	0.50	12.30	090	S
21044		A	Removal of jaw bone lesion	11.08	9.55	1.11	21.74	090	S
21045		A	Extensive jaw surgery	15.11	13.83	1.58	30.52	090	S
21050		A	Removal of jaw joint	10.07	12.33	1.08	23.48	090	S
21060		A	Remove jaw joint cartilage	9.56	11.59	1.04	22.19	090	S
21070		A	Remove coronoid process	7.66	6.81	0.82	15.29	090	S
21076		A	Prepare face/oral prosthesis	12.54	16.77	1.35	30.66	010	S
21077		A	Prepare face/oral prosthesis	31.54	42.18	3.39	77.11	090	S
21079		A	Prepare face/oral prosthesis	20.88	27.93	2.29	51.06	090	S
21080		A	Prepare face/oral prosthesis	23.46	31.38	2.52	57.36	090	S
21081		A	Prepare face/oral prosthesis	21.38	28.59	2.30	52.27	090	S
21082		A	Prepare face/oral prosthesis	19.50	26.06	2.10	47.66	090	S
21083		A	Prepare face/oral prosthesis	16.04	24.13	1.94	44.11	090	S
21084		A	Prepare face/oral prosthesis	21.04	28.14	2.28	51.46	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
21085		A	Prepare face/oral prosthesis	8.41	11.25	0.90	20.56	010	S
21086		A	Prepare face/oral prosthesis	23.29	31.15	2.51	56.95	090	S
21087		A	Prepare face/oral prosthesis	23.29	31.15	2.51	56.95	090	S
21088		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	090	S
21089		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	090	S
21100		A	Maxillofacial fixation	4.04	1.06	0.11	5.21	090	S
21110		A	Interdental fixation	5.03	5.53	0.46	11.02	090	S
21116		A	Injection, jaw joint x-ray	0.81	0.73	0.06	1.60	090	S
21120		A	Reconstruction of chin	4.75	3.59	0.42	8.76	090	S
21121		A	Reconstruction of chin	7.46	5.65	0.66	13.77	090	S
21122		A	Reconstruction of chin	8.21	6.23	0.73	15.17	090	S
21123		A	Reconstruction of chin	10.74	8.14	0.95	19.83	090	S
21125		A	Augmentation lower jaw bone	10.00	4.72	0.54	15.26	090	S
21127		A	Augmentation lower jaw bone	10.43	7.91	0.82	19.26	090	S
21137		A	Reduction of forehead	9.40	7.11	0.83	17.34	090	S
21138		A	Reduction of forehead	11.72	8.86	1.04	21.62	090	S
21139		A	Reduction of forehead	14.06	10.64	1.25	25.95	090	S
21141		A	Reconstruct midface, left	16.92	14.34	1.68	32.94	090	S
21142		A	Reconstruct midface, left	17.58	14.84	1.74	34.16	090	S
21143		A	Reconstruct midface, left	18.30	15.40	1.81	35.51	090	S
21145		A	Reconstruct midface, left	18.92	14.34	1.68	34.94	090	S
21146		A	Reconstruct midface, left	19.58	14.84	1.74	36.16	090	S
21147		A	Reconstruct midface, left	20.30	15.40	1.81	37.51	090	S
21150		A	Reconstruct midface, left	24.41	18.46	2.17	45.04	090	S
21151		A	Reconstruct midface, left	27.34	20.68	2.42	50.44	090	S
21154		A	Reconstruct midface, left	28.28	22.15	2.59	54.02	090	S
21155		A	Reconstruct midface, left	33.19	25.11	2.94	61.24	090	S
21159		A	Reconstruct midface, left	40.99	31.02	3.63	75.64	090	S
21160		A	Reconstruct midface, left	44.90	33.96	3.98	82.84	090	S
21172		A	Reconstruct orbit/forehead	26.84	20.30	2.37	49.51	090	S
21175		A	Reconstruct orbit/forehead	32.21	24.37	2.85	59.43	090	S
21179		A	Reconstruct entire forehead	21.47	16.24	1.90	39.61	090	S
21180		A	Reconstruct entire forehead	24.41	18.46	2.17	45.04	090	S
21181		A	Contour cranial bone lesion	8.40	7.11	0.83	17.34	090	S
21182		A	Reconstruct cranial bone	31.23	23.63	2.77	57.63	090	S
21183		A	Reconstruct cranial bone	34.17	25.95	3.03	63.05	090	S
21184		A	Reconstruct cranial bone	37.10	28.06	3.26	68.44	090	S
21186		A	Reconstruction of midface	21.47	16.24	1.90	39.61	090	S
21193		A	Reconstruct lower jaw bone	16.23	12.31	1.44	29.98	090	S
21194		A	Reconstruct lower jaw bone	18.81	14.26	1.67	34.74	090	S
21195		A	Reconstruct lower jaw bone	16.27	12.34	1.44	30.05	090	S
21196		A	Reconstruct lower jaw bone	17.94	13.61	1.58	33.13	090	S
21198		A	Reconstruct lower jaw bone	13.38	14.82	1.74	29.92	090	S
21206		A	Reconstruct upper jaw bone	13.36	10.14	1.19	24.69	090	S
21208		A	Augmentation of facial bones	9.56	11.26	1.07	21.89	090	S
21209		A	Reduction of facial bones	6.28	4.59	0.76	11.63	090	S
21210		A	Face bone graft	9.56	12.24	1.29	23.09	090	S
21215		A	Lower jaw bone graft	10.07	12.89	1.42	24.38	090	S
21230		A	Rib cartilage graft	10.07	10.37	1.69	22.13	090	S
21236		A	Ear cartilage graft	6.28	8.04	1.09	15.41	090	S
21240		A	Reconstruction of jaw joint	13.10	16.77	2.09	31.96	090	S
21242		A	Reconstruction of jaw joint	12.10	15.55	2.25	29.90	090	S
21243		A	Reconstruction of jaw joint	18.96	14.40	1.68	35.06	090	S
21244		A	Reconstruction of lower jaw	11.06	14.18	1.93	27.19	090	S
21245		A	Reconstruction of jaw	11.08	11.47	1.31	23.86	090	S
21246		A	Reconstruction of jaw	11.65	8.83	1.04	21.52	090	S
21247		A	Reconstruct lower jaw bone	21.15	27.08	2.27	50.50	090	S
21249		A	Reconstruction of jaw	11.08	14.18	1.75	27.01	090	S
21249		A	Reconstruction of jaw	17.12	23.10	3.29	43.51	090	S
21255		A	Reconstruct lower jaw bone	15.63	20.00	1.88	37.51	090	S
21256		A	Reconstruction of orbit	15.13	19.36	1.63	36.12	090	S
21260		A	Revise eye sockets	15.44	19.78	1.66	36.88	090	S
21261		A	Revise eye sockets	29.43	17.78	1.85	48.86	090	S
21263		A	Revise eye sockets	26.56	34.00	2.86	63.42	090	S
21267		A	Revise eye sockets	17.66	14.61	2.13	34.40	090	S
21268		A	Revise eye sockets	22.88	15.35	3.13	41.36	090	S
21270		A	Augmentation cheek bone	9.56	9.60	1.41	20.57	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
21275		A	Revision orbitofacial bones	10.50	8.95	1.26	20.71	090	S
21280		A	Revision of eyelid	5.84	7.19	0.61	13.44	090	S
21282		A	Revision of eyelid	3.26	4.52	0.79	8.57	090	S
21295		A	Revision of jaw muscle/bone	1.43	0.96	0.13	2.52	090	S
21286		A	Revision of jaw muscle/bone	3.97	3.62	0.22	7.81	090	S
21299		C	Cranio/maxillofacial surgery	0.00	0.00	0.00	0.00	YYY	S
21300		A	Treatment of skull fracture	0.72	0.92	0.11	1.75	000	S
21310		A	Treatment of nose fracture	0.58	0.75	0.09	1.42	000	N
21315		A	Treatment of nose fracture	1.41	1.81	0.21	3.43	010	S
21320		A	Treatment of nose fracture	1.82	2.33	0.34	4.49	010	S
21325		A	Repair of nose fracture	3.52	4.09	0.52	8.13	090	S
21330		A	Repair of nose fracture	5.03	6.45	0.86	12.34	090	S
21335		A	Repair of nose fracture	8.05	10.31	1.56	19.92	090	S
21336		A	Repair nasal septal fracture	5.35	4.09	0.52	9.96	090	S
21337		A	Repair nasal septal fracture	2.52	2.82	0.38	5.72	090	S
21338		A	Repair nasosethmoid fracture	6.04	5.01	0.68	11.71	090	S
21339		A	Repair nasosethmoid fracture	7.58	7.09	0.70	15.35	090	S
21340		A	Repair of nose fracture	10.07	8.91	1.04	20.02	090	S
21343		A	Repair of sinus fracture	12.10	9.17	1.08	22.35	090	S
21344		A	Repair of sinus fracture	18.43	9.17	1.08	28.68	090	S
21345		A	Repair of nose/jaw fracture	7.83	7.90	0.81	16.54	090	S
21346		A	Repair of nose/jaw fracture	9.92	9.40	1.04	20.36	090	S
21347		A	Repair of nose/jaw fracture	11.86	10.38	1.36	23.58	090	S
21348		A	Repair of nose/jaw fracture	15.60	11.34	2.22	29.16	090	S
21355		A	Repair cheek bone fracture	3.52	1.56	0.17	5.25	010	S
21356		A	Repair cheek bone fracture	3.88	4.96	0.89	9.73	010	S
21360		A	Repair cheek bone fracture	6.04	7.28	0.89	14.21	090	S
21365		A	Repair cheek bone fracture	13.97	12.35	1.63	27.95	090	S
21366		A	Repair cheek bone fracture	16.61	12.08	2.36	31.05	090	S
21368		A	Repair eye socket fracture	8.56	9.59	1.13	19.28	090	S
21369		A	Repair eye socket fracture	8.58	9.07	1.25	18.88	090	S
21370		A	Repair eye socket fracture	9.07	7.45	0.96	17.48	090	S
21390		A	Repair eye socket fracture	9.47	11.89	1.37	22.73	090	S
21395		A	Repair eye socket fracture	11.85	9.63	1.37	22.85	090	S
21400		A	Treat eye socket fracture	1.31	1.67	0.17	3.15	090	N
21401		A	Repair eye socket fracture	3.05	2.58	0.32	5.95	090	S
21405		A	Repair eye socket fracture	5.55	5.21	0.74	12.50	090	S
21407		A	Repair eye socket fracture	8.05	7.09	0.78	15.92	090	S
21408		A	Repair eye socket fracture	11.57	8.49	0.89	21.05	090	S
21421		A	Treat mouth roof fracture	4.80	6.14	0.62	11.56	090	S
21422		A	Repair mouth roof fracture	7.78	9.80	1.19	18.77	090	S
21423		A	Repair mouth roof fracture	9.72	9.80	1.19	20.71	090	S
21431		A	Treat craniofacial fracture	6.59	6.02	0.71	13.32	090	S
21432		A	Repair craniofacial fracture	8.05	6.76	0.84	15.65	090	S
21433		A	Repair craniofacial fracture	23.69	17.96	2.10	43.75	090	S
21435		A	Repair craniofacial fracture	16.12	13.25	1.88	31.25	090	S
21436		A	Repair craniofacial fracture	26.21	14.65	2.08	42.94	090	S
21440		A	Repair dental ridge fracture	2.52	3.07	0.28	5.87	090	S
21445		A	Repair dental ridge fracture	5.03	6.11	0.58	11.70	090	S
21450		A	Treat lower jaw fracture	2.78	2.84	0.26	5.88	090	S
21451		A	Treat lower jaw fracture	4.55	5.83	0.74	11.12	090	S
21452		A	Treat lower jaw fracture	1.55	1.39	0.17	3.41	090	S
21453		A	Treat lower jaw fracture	5.18	6.64	0.55	12.37	090	S
21454		A	Treat lower jaw fracture	6.04	8.19	1.42	15.65	090	S
21461		A	Repair lower jaw fracture	7.56	9.67	1.30	18.53	090	S
21462		A	Repair lower jaw fracture	9.15	11.71	1.34	22.20	090	S
21465		A	Repair lower jaw fracture	11.13	8.44	0.99	20.56	090	S
21470		A	Repair lower jaw fracture	14.19	17.13	1.78	33.06	090	S
21480		A	Reset dislocated jaw	0.61	0.78	0.09	1.48	000	S
21485		A	Reset dislocated jaw	3.73	2.19	0.20	6.12	090	S
21490		A	Repair dislocated jaw	11.06	6.31	0.52	17.91	090	S
21493		A	Treat hyoid bone fracture	1.19	1.52	0.10	2.84	090	S
21494		A	Repair hyoid bone fracture	5.87	7.52	0.60	14.02	090	S
21495		A	Repair hyoid bone fracture	5.32	4.82	0.51	10.65	090	S
21497		A	Interdental wiring	3.61	3.97	0.38	7.96	090	S
21499		C	Head surgery procedure	0.00	0.00	0.00	0.00	YYY	S
21501		A	Drain neck/chest lesion	3.52	1.82	0.25	5.60	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
21502		A	Drain chest lesion	6.44	4.22	0.75	11.41	090	S
21510		A	Drainage of bone lesion	5.03	3.82	0.50	9.35	090	S
21550		A	Biopsy of neck/chest	2.01	0.85	0.12	2.98	010	S
21555		A	Remove lesion neck/chest	4.09	1.80	0.25	5.94	090	S
21556		A	Remove lesion neck/chest	5.28	3.80	0.64	9.72	090	S
21557		A	Remove tumor, neck or chest	8.56	8.50	1.41	18.47	090	S
21600		A	Partial removal of rib	6.27	4.50	0.88	11.65	090	S
21610		A	Partial removal of rib	13.86	5.17	0.76	19.59	090	S
21615		A	Removal of rib	9.03	10.13	1.96	21.12	090	S
21616		A	Removal of rib and nerves	11.11	7.26	1.50	19.87	090	S
21620		A	Partial removal of sternum	6.04	6.95	1.23	14.12	090	S
21627		A	Sternal debridement	6.06	5.03	0.90	11.99	090	S
21630		A	Extensive sternum surgery	15.77	12.69	2.40	31.06	090	S
21632		A	Extensive sternum surgery	16.62	11.54	2.22	30.38	090	S
21700		A	Revision of neck muscle	5.84	4.16	0.50	10.50	090	S
21705		A	Revision of neck muscle/rib	9.03	4.85	0.96	14.84	090	S
21720		A	Revision of neck muscle	5.44	3.84	0.52	9.80	090	S
21725		A	Revision of neck muscle	6.55	4.84	0.74	12.13	090	S
21740		A	Reconstruction of sternum	15.42	8.99	1.64	26.05	090	S
21750		A	Repair of sternum separation	10.07	7.33	1.43	18.83	090	S
21800		A	Treatment of rib fracture	0.91	0.77	0.07	1.75	090	N
21805		A	Treatment of rib fracture	2.82	1.35	0.17	4.14	090	S
21810		A	Treatment of rib fracture(s)	6.88	7.33	0.61	14.82	090	N
21820		A	Treat sternum fracture	1.20	1.36	0.17	2.73	090	S
21825		A	Repair sternum fracture	6.82	6.90	1.12	14.84	090	S
21899		C	Neck/chest surgery procedure	0.00	0.00	0.00	0.00	YYY	S
21920		A	Biopsy soft tissue of back	2.01	0.79	0.11	2.91	010	S
21925		A	Biopsy soft tissue of back	4.23	1.95	0.32	6.50	090	S
21930		A	Remove lesion, back or flank	4.82	2.72	0.49	8.03	090	S
21935		A	Remove tumor of back	17.12	6.59	1.30	25.01	090	S
22100		A	Remove part of neck vertebra	9.05	7.64	1.09	17.78	090	S
22101		A	Remove part, thorax vertebra	9.00	8.01	1.38	18.39	090	S
22102		A	Remove part, lumbar vertebra	9.00	4.50	0.87	14.17	090	S
22103		A	Remove extra spine segment	2.34	2.23	0.37	4.94	ZZZ	S
22110		A	Remove part of neck vertebra	11.59	9.72	1.64	22.95	090	S
22112		A	Remove part, thorax vertebra	11.59	9.90	1.83	23.12	090	S
22114		A	Remove part, lumbar vertebra	11.59	7.25	1.17	20.01	090	S
22116		A	Remove extra spine segment	2.32	2.21	0.36	4.89	ZZZ	S
22210		A	Revision of neck spine	22.51	13.83	2.43	38.77	090	S
22212		A	Revision of thorax spine	18.14	17.29	2.83	38.26	090	S
22214		A	Revision of lumbar spine	18.14	15.11	2.68	35.93	090	S
22215		A	Revis, extra spine segment	6.04	5.07	0.89	12.00	ZZZ	S
22220		A	Revision of neck spine	20.15	16.64	2.83	39.62	090	S
22222		A	Revision of thorax spine	20.15	13.61	1.58	35.34	090	S
22224		A	Revision of lumbar spine	20.15	14.68	2.68	37.49	090	S
22226		A	Revis, extra spine segment	6.04	5.07	0.89	12.00	ZZZ	S
22305		A	Treat spine process fracture	1.86	2.38	0.37	4.61	090	S
22310		A	Treat spine fracture	1.86	2.52	0.60	5.07	090	S
22315		A	Treat spine fracture	8.38	5.51	0.86	14.73	090	S
22325		A	Repair of spine fracture	17.19	8.32	1.34	26.85	090	S
22326		A	Repair neck spine fracture	18.43	15.93	2.74	37.10	090	S
22327		A	Repair thorax spine fracture	17.56	15.95	2.35	35.86	090	S
22328		A	Repair each add spine fx	4.61	4.40	0.72	9.73	ZZZ	S
22505		A	Manipulation of spine	1.77	1.31	0.17	3.25	010	N
22548		A	Neck spine fusion	24.08	22.74	3.82	50.64	090	S
22554		A	Neck spine fusion	17.24	19.81	3.52	40.57	090	S
22556		A	Thorax spine fusion	22.27	21.88	3.58	47.53	090	S
22558		A	Lumbar spine fusion	21.22	20.17	3.38	44.77	090	S
22565		A	Additional spinal fusion	5.53	5.40	0.93	11.86	ZZZ	S
22560		A	Spine & skull spinal fusion	19.50	21.57	3.44	44.51	090	S
22565		A	Neck spinal fusion	18.19	22.46	3.87	44.52	090	S
22600		A	Neck spine fusion	14.74	19.36	3.32	37.42	090	S
22610		A	Thorax spine fusion	14.62	17.87	2.75	35.24	090	S
22612		A	Lumbar spine fusion	20.19	20.00	3.33	44.12	090	S
22614		A	Spine fusion, extra segment	6.44	5.65	0.92	13.01	ZZZ	S
22630		A	Lumbar spine fusion	20.03	18.44	3.15	41.62	090	S
22632		A	Spine fusion, extra segment	5.23	4.99	0.82	11.04	ZZZ	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
22600		A	Fusion of spine	16.92	21.66	3.58	42.16	090	S
22602		A	Fusion of spine	29.74	28.32	4.61	62.67	090	S
22604		A	Fusion of spine	35.00	28.32	4.61	67.93	090	S
22606		A	Fusion of spine	25.00	18.41	3.15	46.56	090	S
22610		A	Fusion of spine	29.00	18.41	3.15	50.56	090	S
22612		A	Fusion of spine	31.00	25.93	4.24	61.17	090	S
22630		A	Exploration of spinal fusion	10.22	13.07	2.18	25.47	090	S
22640		A	Insert spine fixation device	12.54	5.88	0.98	19.50	ZZZ	S
22641		B	Insert spine fixation device	0.00	0.00	0.00	0.00	XXX	O
22642		A	Insert spine fixation device	12.58	6.86	1.12	20.56	ZZZ	S
22643		A	Insert spine fixation device	13.46	8.55	1.40	23.41	ZZZ	S
22644		A	Insert spine fixation device	16.44	10.45	1.71	28.60	ZZZ	S
22645		A	Insert spine fixation device	11.96	5.70	0.93	18.59	ZZZ	S
22646		A	Insert spine fixation device	12.42	7.90	1.29	21.61	ZZZ	S
22647		A	Insert spine fixation device	13.80	8.77	1.44	24.01	ZZZ	S
22648		A	Insert pelvic fixation device	6.00	5.72	0.94	12.66	ZZZ	S
22649		A	Reinsert spinal fixation	17.55	11.76	1.97	31.28	090	S
22650		A	Remove spine fixation device	8.98	9.17	1.50	19.65	090	S
22651		A	Apply spine prosth device	6.71	6.40	1.06	14.16	ZZZ	S
22652		A	Remove spine fixation device	8.40	9.80	1.57	19.77	090	S
22655		A	Remove spine fixation device	14.11	7.46	1.25	22.82	090	S
22699		C	Spine surgery procedure	0.00	0.00	0.00	0.00	YYY	S
22900		A	Remove abdominal wall lesion	5.13	3.03	0.60	8.76	090	S
22999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	YYY	S
23000		A	Removal of calcium deposits	4.12	3.24	0.47	7.83	090	S
23020		A	Release shoulder joint	8.25	7.27	1.09	16.61	090	S
23030		A	Drain shoulder lesion	3.16	2.16	0.35	5.67	010	S
23031		A	Drain shoulder bursa	2.69	0.50	0.05	3.24	010	S
23035		A	Drain shoulder bone lesion	7.80	6.22	1.04	15.06	090	S
23040		A	Exploratory shoulder surgery	8.39	9.27	1.47	19.13	090	S
23044		A	Exploratory shoulder surgery	6.40	6.91	1.18	14.49	090	S
23065		A	Biopsy shoulder tissues	2.24	0.86	0.09	2.99	010	S
23066		A	Biopsy shoulder tissues	4.01	1.18	0.10	5.29	090	S
23075		A	Removal of shoulder lesion	2.34	1.68	0.29	4.31	010	S
23076		A	Removal of shoulder lesion	7.12	3.54	0.65	11.31	090	S
23077		A	Remove tumor of shoulder	14.65	7.38	1.38	23.41	090	S
23100		A	Biopsy of shoulder joint	5.63	7.20	1.24	14.07	090	S
23101		A	Shoulder joint surgery	5.21	6.88	1.21	13.10	090	S
23105		A	Remove shoulder joint lining	7.74	9.91	1.73	19.38	090	S
23106		A	Incision of collarbone joint	5.56	4.75	0.80	11.11	090	S
23107		A	Explore/treat shoulder joint	8.13	6.59	1.60	16.32	090	S
23120		A	Partial removal, collar bone	6.65	4.81	0.74	12.00	090	S
23125		A	Removal of collarbone	8.90	8.49	1.27	18.66	090	S
23130		A	Partial removal, shoulderbone	7.10	7.05	1.14	15.29	090	S
23140		A	Removal of bone lesion	6.43	4.16	0.73	11.32	090	S
23145		A	Removal of bone lesion	8.54	6.13	1.33	15.00	090	S
23146		A	Removal of bone lesion	7.34	5.23	1.01	13.58	090	S
23150		A	Removal of humerus lesion	7.80	6.84	1.01	15.65	090	S
23155		A	Removal of humerus lesion	9.58	8.80	1.37	19.75	090	S
23156		A	Removal of humerus lesion	8.00	7.64	1.25	16.89	090	S
23170		A	Remove collarbone lesion	6.27	4.81	0.78	11.86	090	S
23172		A	Remove shoulder blade lesion	6.24	5.16	0.73	12.13	090	S
23174		A	Remove humerus lesion	8.71	8.55	1.21	18.47	090	S
23180		A	Remove collar bone lesion	7.82	4.30	0.67	12.79	090	S
23182		A	Remove shoulder blade lesion	7.44	6.57	1.13	15.14	090	S
23184		A	Remove humerus lesion	8.61	8.83	1.48	18.92	090	S
23190		A	Partial removal of scapula	6.78	6.07	0.98	13.83	090	S
23195		A	Removal of head of humerus	9.00	8.91	1.45	19.36	090	S
23200		A	Removal of collar bone	11.05	9.17	1.28	21.48	090	S
23210		A	Removal of shoulderblade	11.39	9.01	1.41	21.81	090	S
23220		A	Partial removal of humerus	13.31	12.05	2.03	27.39	090	S
23221		A	Partial removal of humerus	16.62	18.13	1.19	35.94	090	S
23222		A	Partial removal of humerus	22.78	15.02	2.30	40.10	090	S
23330		A	Remove shoulder foreign body	1.80	0.55	0.07	2.42	010	S
23331		A	Remove shoulder foreign body	6.89	2.26	0.38	9.53	090	S
23332		A	Remove shoulder foreign body	10.59	9.72	1.57	21.88	090	S
23560		A	Injection for shoulder x-ray	1.00	0.52	0.05	1.57	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
23365		A	Muscle transfer, shoulder/arm	16.00	11.13	1.84	28.97	090	S
23367		A	Muscle transfers	15.23	13.97	2.34	31.54	090	S
23400		A	Fixation of shoulder blade	12.96	9.84	1.68	24.48	090	S
23405		A	Incision of tendon & muscle	7.97	7.49	0.99	16.45	090	S
23406		A	Incise tendon(s) & muscle(s)	10.33	9.41	1.58	21.32	090	S
23410		A	Repair of tendon(s)	11.80	10.94	1.75	24.59	090	S
23412		A	Repair of tendon(s)	12.69	13.37	2.16	28.22	090	S
23415		A	Release of shoulder ligament	9.51	5.18	0.83	15.52	090	S
23420		A	Repair of shoulder	12.60	14.69	2.34	29.62	090	S
23430		A	Repair biceps tendon	9.56	7.34	1.19	18.09	090	S
23440		A	Removal/transplant tendon	10.08	7.17	1.17	18.42	090	S
23450		A	Repair shoulder capsule	12.85	12.75	2.04	27.64	090	S
23455		A	Repair shoulder capsule	13.82	15.56	2.50	31.88	090	S
23460		A	Repair shoulder capsule	14.68	14.07	2.24	30.97	090	S
23462		A	Repair shoulder capsule	14.62	15.13	2.48	32.23	090	S
23465		A	Repair shoulder capsule	15.14	14.15	2.27	31.56	090	S
23466		A	Repair shoulder capsule	13.65	16.53	2.67	32.85	090	S
23470		A	Reconstruct shoulder joint	16.12	16.76	2.65	35.53	090	S
23472		A	Reconstruct shoulder joint	16.09	20.60	4.89	41.58	090	S
23480		A	Revision of collarbone	10.56	6.59	1.02	18.17	090	S
23485		A	Revision of collar bone	12.68	11.35	1.87	25.90	090	S
23490		A	Reinforce clavicle	11.31	9.98	0.80	22.09	090	S
23491		A	Reinforce shoulder bones	13.63	12.70	2.11	28.44	090	S
23500		A	Treat clavicle fracture	1.95	1.85	0.21	3.81	090	S
23505		A	Treat clavicle fracture	3.54	2.57	0.38	6.49	090	S
23515		A	Repair clavicle fracture	7.01	6.93	1.12	15.06	090	S
23520		A	Treat clavicle dislocation	2.03	1.38	0.19	3.60	090	S
23530		A	Treat clavicle dislocation	3.40	1.98	0.27	5.65	090	S
23532		A	Repair clavicle dislocation	7.02	6.58	0.91	14.51	090	S
23540		A	Treat clavicle dislocation	7.59	7.23	1.19	16.01	090	S
23545		A	Treat clavicle dislocation	2.10	1.55	0.19	3.84	090	S
23550		A	Repair clavicle dislocation	3.07	1.98	0.29	5.34	090	S
23552		A	Repair clavicle dislocation	6.65	6.51	1.46	14.62	090	S
23570		A	Repair clavicle dislocation	7.83	7.29	1.17	16.29	090	S
23575		A	Treat shoulderblade fracture	2.10	1.70	0.25	4.05	090	S
23585		A	Treat shoulderblade fracture	3.88	2.75	0.43	7.06	090	S
23600		A	Repair scapula fracture	8.41	7.70	1.29	17.40	090	S
23605		A	Treat humerus fracture	2.75	2.90	0.43	6.08	090	S
23615		A	Treat humerus fracture	4.56	4.76	0.76	10.08	090	S
23616		A	Repair humerus fracture	8.38	10.72	1.78	20.88	090	S
23620		A	Treat humerus fracture	19.88	22.32	3.54	45.74	090	S
23625		A	Treat humerus fracture	2.25	2.88	0.46	5.59	090	S
23630		A	Repair humerus fracture	3.84	3.82	0.60	8.06	090	S
23650		A	Treat shoulder dislocation	6.89	6.82	1.40	17.11	090	S
23655		A	Treat shoulder dislocation	3.24	2.10	0.24	5.58	090	S
23660		A	Repair shoulder dislocation	4.26	2.93	0.44	7.63	090	S
23665		A	Treat dislocation/fracture	7.09	9.07	1.40	17.56	090	S
23670		A	Repair dislocation/fracture	4.16	3.35	0.51	8.02	090	S
23675		A	Treat dislocation/fracture	7.44	9.52	1.85	18.81	090	S
23680		A	Repair dislocation/fracture	5.60	3.93	0.61	10.14	090	S
23700		A	Fixation of shoulder	9.44	12.09	2.13	23.66	090	S
23800		A	Fusion of shoulder joint	2.47	2.09	0.34	4.90	010	S
23802		A	Fusion of shoulder joint	13.32	16.35	2.63	32.30	090	S
23900		A	Amputation of arm & girdle	15.62	14.07	2.24	31.93	090	S
23920		A	Amputation at shoulder joint	18.40	12.57	2.40	33.37	090	S
23921		A	Amputation follow-up surgery	13.60	13.85	2.54	29.99	090	S
23929		C	Shoulder surgery procedure	5.03	4.27	0.74	10.04	090	S
23930		A	Drainage of arm lesion	0.00	0.00	0.00	0.00	YYY	S
23931		A	Drainage of arm bursa	2.78	1.61	0.24	4.63	010	S
23935		A	Drain arm/elbow bone lesion	1.63	0.75	0.11	2.49	010	S
24000		A	Exploratory elbow surgery	5.55	4.69	0.78	11.03	090	S
24006		A	Release elbow joint	5.32	5.81	1.44	13.57	090	S
24065		A	Biopsy arm/elbow soft tissue	8.70	7.14	1.17	17.01	090	S
24066		A	Biopsy arm/elbow soft tissue	2.03	0.79	0.10	2.92	010	S
24075		A	Remove arm/elbow lesion	4.95	2.71	0.41	8.07	090	S
24076		A	Remove arm/elbow lesion	3.79	1.88	0.35	6.12	090	S
24078		A	Remove arm/elbow lesion	6.01	3.68	0.67	10.36	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
24077		A	Remove tumor of arm/elbow	11.18	9.79	1.87	22.84	090	S
24100		A	Biopsy elbow joint lining	4.67	4.23	0.69	9.59	090	S
24101		A	Explore/treat elbow joint	5.84	7.47	1.41	14.72	090	S
24102		A	Remove elbow joint lining	7.57	9.58	1.81	19.06	090	S
24105		A	Removal of elbow bursa	3.43	3.77	0.63	7.83	090	S
24110		A	Remove humerus lesion	7.08	7.69	1.22	15.99	090	S
24115		A	Remove/graft bone lesion	8.86	7.68	1.33	17.89	090	S
24116		A	Remove/graft bone lesion	11.13	9.72	1.47	22.32	090	S
24120		A	Remove elbow lesion	8.36	6.02	0.98	15.36	090	S
24125		A	Remove/graft bone lesion	7.40	6.79	0.81	15.00	090	S
24126		A	Remove/graft bone lesion	7.76	7.40	1.21	16.37	090	S
24130		A	Removal of head of radius	5.96	6.72	1.08	13.76	090	S
24134		A	Removal of arm bone lesion	8.98	8.69	1.24	18.91	090	S
24136		A	Remove radius bone lesion	7.33	8.78	0.92	17.03	090	S
24138		A	Remove elbow bone lesion	7.36	6.39	1.06	14.81	090	S
24140		A	Partial removal of arm bone	8.66	8.77	1.45	18.78	090	S
24145		A	Partial removal of radius	7.12	6.38	1.03	14.53	090	S
24147		A	Partial removal of elbow	7.00	6.61	1.08	14.69	090	S
24148		A	Radical resection of elbow	13.25	12.64	2.07	27.96	090	S
24150		A	Extensive humerus surgery	12.43	14.06	2.24	28.73	090	S
24151		A	Extensive humerus surgery	14.85	13.83	2.11	30.59	090	S
24152		A	Extensive radius surgery	9.51	6.90	1.16	17.47	090	S
24153		A	Extensive radius surgery	10.96	10.44	1.71	23.11	090	S
24155		A	Removal of elbow joint	11.11	10.75	1.72	23.58	090	S
24160		A	Remove elbow joint implant	7.43	4.84	0.80	13.07	090	S
24184		A	Remove radius head implant	5.79	5.53	0.90	12.22	090	S
24200		A	Removal of arm foreign body	1.71	0.56	0.06	2.33	010	N
24201		A	Removal of arm foreign body	4.30	3.08	0.49	7.86	090	S
24220		A	Injection for elbow x-ray	1.31	0.51	0.05	1.87	000	N
24301		A	Muscle/tendon transfer	9.78	7.90	1.23	18.91	090	S
24305		A	Arm tendon lengthening	7.16	3.08	0.29	10.53	090	S
24310		A	Revision of arm tendon	5.72	2.95	0.48	9.15	090	S
24320		A	Repair of arm tendon	10.01	9.20	1.29	20.50	090	S
24330		A	Revision of arm muscles	9.18	8.74	1.43	19.35	090	S
24331		A	Revision of arm muscles	10.10	9.62	1.67	21.29	090	S
24340		A	Repair of biceps tendon	7.58	7.00	1.13	15.71	090	S
24341		A	Repair tendon/muscle arm	7.33	6.99	1.14	15.46	090	S
24342		A	Repair of ruptured tendon	10.13	10.38	1.76	22.27	090	S
24350		A	Repair of tennis elbow	5.05	4.23	0.69	9.97	090	S
24351		A	Repair of tennis elbow	5.73	4.57	0.73	11.03	090	S
24352		A	Repair of tennis elbow	6.14	5.89	0.93	12.76	090	S
24354		A	Repair of tennis elbow	6.19	5.81	0.94	12.74	090	S
24356		A	Revision of tennis elbow	6.39	7.28	1.18	14.85	090	S
24360		A	Reconstruct elbow joint	11.76	15.05	2.47	29.28	090	S
24361		A	Reconstruct elbow joint	13.50	13.13	2.00	28.63	090	S
24362		A	Reconstruct elbow joint	14.41	13.14	0.89	28.35	090	S
24363		A	Replace elbow joint	17.66	22.61	4.13	44.40	090	S
24365		A	Reconstruct head of radius	7.93	7.52	1.19	16.64	090	S
24366		A	Reconstruct head of radius	8.67	11.05	1.80	21.52	090	S
24400		A	Revision of humerus	10.55	8.43	1.37	20.35	090	S
24410		A	Revision of humerus	14.28	14.04	2.06	30.38	090	S
24420		A	Revision of humerus	12.90	12.30	2.01	27.21	090	S
24430		A	Repair of humerus	12.26	14.66	2.34	29.26	090	S
24435		A	Repair humerus with graft	12.19	15.61	2.84	30.64	090	S
24470		A	Revision of elbow joint	6.32	7.92	1.30	17.54	090	S
24495		A	Decompression of forearm	7.59	5.75	1.10	14.44	090	S
24496		A	Reinforce humerus	11.30	10.37	1.62	23.29	090	S
24500		A	Treat humerus fracture	3.01	2.54	0.36	5.91	090	S
24505		A	Treat humerus fracture	4.83	4.50	0.71	10.04	090	S
24515		A	Repair humerus fracture	10.92	9.65	1.54	22.11	090	S
24516		A	Repair humerus fracture	10.92	9.85	1.54	22.11	090	S
24530		A	Treat humerus fracture	3.30	2.73	0.42	6.45	090	S
24535		A	Treat humerus fracture	6.51	4.85	0.78	12.14	090	S
24538		A	Treat humerus fracture	8.85	7.98	1.26	18.09	090	S
24545		A	Repair humerus fracture	9.65	9.97	1.58	21.21	090	S
24546		A	Repair humerus fracture	14.66	9.97	1.58	26.21	090	S
24560		A	Treat humerus fracture	2.82	2.16	0.30	5.08	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
24565		A	Treat humerus fracture	5.22	3.45	0.54	9.21	090	S
24566		A	Treat humerus fracture	7.17	6.06	0.98	14.19	090	S
24575		A	Repair humerus fracture	9.91	7.79	1.24	18.94	090	S
24576		A	Treat humerus fracture	2.66	2.16	0.33	5.15	090	S
24577		A	Treat humerus fracture	5.45	4.00	0.61	10.06	090	S
24579		A	Repair humerus fracture	10.85	8.37	1.35	20.57	090	S
24582		A	Treat humerus fracture	7.83	6.62	1.06	15.51	090	S
24586		A	Repair elbow fracture	14.37	14.72	2.38	31.45	090	S
24587		A	Repair elbow fracture	14.28	13.72	2.17	30.15	090	S
24600		A	Treat elbow dislocation	4.08	1.95	0.26	6.29	090	S
24605		A	Treat elbow dislocation	5.06	2.29	0.37	7.74	090	S
24615		A	Repair elbow dislocation	8.78	9.29	1.48	19.53	090	S
24620		A	Treat elbow fracture	6.62	3.76	0.57	10.97	090	S
24635		A	Repair elbow fracture	12.42	11.06	1.78	25.26	090	S
24640		A	Treat elbow dislocation	1.15	1.01	0.08	2.24	010	N
24650		A	Treat radius fracture	2.01	2.25	0.33	4.59	090	S
24655		A	Treat radius fracture	4.17	3.01	0.45	7.63	090	S
24665		A	Repair radius fracture	7.69	7.13	1.14	15.96	090	S
24666		A	Repair radius fracture	8.87	10.27	1.60	20.74	090	S
24670		A	Treatment of ulna fracture	2.39	1.95	0.27	4.61	090	S
24675		A	Treatment of ulna fracture	4.52	3.51	0.54	8.57	090	S
24685		A	Repair ulna fracture	8.34	8.40	1.34	18.08	090	S
24800		A	Fusion of elbow joint	10.75	10.59	1.55	22.89	090	S
24802		A	Fusion/graft of elbow joint	12.79	12.18	1.99	26.96	090	S
24900		A	Amputation of upper arm	8.76	7.58	1.39	17.73	090	S
24920		A	Amputation of upper arm	6.69	6.78	1.19	14.66	090	S
24925		A	Amputation follow-up surgery	6.61	6.27	0.75	13.63	090	S
24930		A	Amputation follow-up surgery	9.40	8.16	1.17	18.73	090	S
24931		A	Amputate upper arm & implant	11.71	11.17	1.84	24.72	090	S
24935		A	Revision of amputation	14.37	13.70	2.24	30.31	090	S
24940		A	Revision of upper arm	0.00	0.00	0.00	0.00	090	S
24999		C	Upper arm/elbow surgery	0.00	0.00	0.00	0.00	YYY	S
25000		A	Incision of tendon sheath	3.20	3.94	0.62	7.76	090	S
25023		A	Decompression of forearm	5.55	4.35	0.77	10.67	090	S
25026		A	Decompression of forearm	11.80	5.44	0.94	18.18	090	S
25028		A	Drainage of forearm lesion	4.88	2.06	0.36	7.30	090	S
25031		A	Drainage of forearm bursa	3.90	0.66	0.09	4.65	090	S
25035		A	Treat forearm bone lesion	6.83	6.30	1.01	14.14	090	S
25040		A	Explore/treat wrist joint	5.61	5.69	0.90	13.20	090	S
25065		A	Biopsy forearm soft tissues	1.94	0.75	0.09	2.78	010	S
25066		A	Biopsy forearm soft tissues	3.87	1.54	0.22	5.63	090	S
25075		A	Removal of forearm lesion	3.61	2.19	0.37	6.17	090	S
25076		A	Removal of forearm lesion	4.77	3.77	0.67	9.21	090	S
25077		A	Remove tumor, forearm/wrist	9.25	8.48	1.67	19.40	090	S
25085		A	Incision of wrist capsule	5.13	4.62	0.71	10.46	090	S
25100		A	Biopsy of wrist joint	3.66	4.69	0.79	9.14	090	S
25101		A	Explore/treat wrist joint	4.43	5.61	0.98	11.02	090	S
25105		A	Remove wrist joint lining	5.56	7.11	1.19	13.86	090	S
25107		A	Remove wrist joint cartilage	5.89	5.28	0.89	12.06	090	S
25110		A	Remove wrist tendon lesion	3.79	2.80	0.46	7.05	090	S
25111		A	Remove wrist tendon lesion	3.24	3.22	0.55	7.01	090	S
25112		A	Remove wrist tendon lesion	4.38	3.72	0.66	8.76	090	S
25115		A	Remove wrist/forearm lesion	8.00	7.14	1.23	16.37	090	S
25116		A	Remove wrist/forearm lesion	6.44	8.17	1.38	15.99	090	S
25118		A	Excise wrist tendon sheath	4.11	5.26	1.02	10.39	090	S
25119		A	Partial removal of ulna	5.64	7.22	1.32	14.18	090	S
25120		A	Removal of forearm lesion	5.70	6.53	1.14	13.37	090	S
25125		A	Remove/graft forearm lesion	7.06	6.84	1.04	14.94	090	S
25126		A	Remove/graft forearm lesion	7.13	6.80	1.12	15.05	090	S
25130		A	Removal of wrist lesion	5.08	4.21	0.67	9.96	090	S
25135		A	Remove & graft wrist lesion	6.58	5.46	0.97	13.01	090	S
25136		A	Remove & graft wrist lesion	5.68	4.74	0.85	11.27	090	S
25145		A	Remove forearm bone lesion	5.97	5.95	0.75	12.67	090	S
25150		A	Partial removal of ulna	6.56	6.67	1.12	14.35	090	S
25151		A	Partial removal of radius	6.86	5.75	1.02	13.63	090	S
25170		A	Extensive forearm surgery	10.45	9.79	1.51	21.75	090	S
25210		A	Removal of wrist bone	5.55	4.88	0.80	11.23	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
25215		A	Removal of wrist bones	7.40	8.68	1.42	17.50	090	S
25230		A	Partial removal of radius	4.86	5.57	0.85	11.28	090	S
25240		A	Partial removal of ulna	4.91	5.30	0.88	11.07	090	S
25246		A	Injection for wrist x-ray	1.45	0.50	0.05	2.00	000	N
25248		A	Remove forearm foreign body	4.96	2.16	0.37	7.51	090	S
25250		A	Removal of wrist prosthesis	5.31	5.63	0.91	12.85	090	S
25251		A	Removal of wrist prosthesis	9.08	8.25	1.39	18.72	090	S
25260		A	Repair forearm tendon/muscle	7.33	4.61	0.78	12.72	090	S
25263		A	Repair forearm tendon/muscle	7.37	5.77	1.03	14.17	090	S
25265		A	Repair forearm tendon/muscle	9.54	7.93	1.41	18.88	090	S
25270		A	Repair forearm tendon/muscle	5.71	3.36	0.55	9.62	090	S
25272		A	Repair forearm tendon/muscle	6.75	3.44	0.54	10.73	090	S
25274		A	Repair forearm tendon/muscle	8.44	6.62	1.13	16.19	090	S
25280		A	Revises wrist/forearm tendon	6.82	4.22	0.69	11.73	090	S
25290		A	Incise wrist/forearm tendon	5.03	2.47	0.41	7.91	090	S
25295		A	Release wrist/forearm tendon	6.26	3.05	0.52	9.83	090	S
25300		A	Fusion of tendons at wrist	8.46	7.36	1.19	17.01	090	S
25301		A	Fusion of tendons at wrist	8.09	6.77	1.18	16.04	090	S
25310		A	Transplant forearm tendon	7.68	7.14	1.17	15.99	090	S
25312		A	Transplant forearm tendon	9.08	7.83	1.31	18.02	090	S
25315		A	Revises palsy hand tendon(s)	9.45	8.06	1.34	18.85	090	S
25316		A	Revises palsy hand tendon(s)	11.49	10.58	1.78	23.85	090	S
25320		A	Repair/revise wrist joint	9.89	8.80	1.45	19.94	090	S
25330		D	Revises wrist joint	0.00	0.00	0.00	0.00	090	S
25331		D	Revises wrist joint	0.00	0.00	0.00	0.00	090	S
25332		A	Revises wrist joint	10.83	9.98	1.61	22.42	090	S
25336		A	Realignment of hand	12.11	11.41	1.58	25.08	090	S
25337		A	Reconstruct ulna/radioulnar	9.50	8.60	1.45	19.55	090	S
25350		A	Revision of radius	8.23	7.61	1.26	17.10	090	S
25355		A	Revision of radius	9.55	9.12	1.49	20.16	090	S
25360		A	Revision of ulna	7.88	6.41	0.99	15.28	090	S
25365		A	Revise radius & ulna	11.83	10.31	1.57	23.51	090	S
25370		A	Revise radius or ulna	12.34	11.76	1.82	26.02	090	S
25375		A	Revise radius & ulna	12.27	13.38	0.87	26.52	090	S
25390		A	Shorten radius/ulna	9.05	8.82	1.50	20.17	090	S
25391		A	Lengthen radius/ulna	12.75	11.25	1.93	25.93	090	S
25392		A	Shorten radius & ulna	13.05	12.44	2.04	27.53	090	S
25393		A	Lengthen radius & ulna	14.90	14.21	2.32	31.43	090	S
25400		A	Repair radius or ulna	10.30	10.78	1.75	22.83	090	S
25405		A	Repair/graft radius or ulna	13.48	12.42	2.02	27.92	090	S
25415		A	Repair radius & ulna	12.64	11.42	1.92	25.98	090	S
25420		A	Repair/graft radius & ulna	15.34	14.70	2.28	32.32	090	S
25425		A	Repair/graft radius or ulna	12.44	12.02	1.87	26.33	090	S
25426		A	Repair/graft radius & ulna	14.92	11.72	2.13	28.77	090	S
25440		A	Repair/graft wrist bone	9.85	9.05	1.50	20.50	090	S
25441		A	Reconstruct wrist joint	12.26	11.36	1.89	25.51	090	S
25442		A	Reconstruct wrist joint	10.34	7.06	1.22	18.62	090	S
25443		A	Reconstruct wrist joint	9.88	9.38	1.52	20.78	090	S
25444		A	Reconstruct wrist joint	10.64	10.14	1.86	22.44	090	S
25445		A	Reconstruct wrist joint	9.27	10.38	1.72	21.35	090	S
25446		A	Wrist replacement	15.52	19.86	3.49	38.87	090	S
25447		A	Repair wrist joint(s)	9.86	9.65	1.56	21.07	090	S
25448		A	Remove wrist joint implant	13.78	7.84	1.16	22.78	090	S
25450		A	Revision of wrist joint	7.67	7.31	1.19	16.17	090	S
25455		A	Revision of wrist joint	9.15	8.71	1.42	19.28	090	S
25490		A	Reinforce radius	9.12	8.89	1.42	19.23	090	S
25491		A	Reinforce ulna	9.54	9.10	1.49	20.13	090	S
25492		A	Reinforce radius and ulna	11.75	11.20	1.84	24.79	090	S
25500		A	Treat fracture of radius	2.30	2.33	0.29	4.92	090	S
25505		A	Treat fracture of radius	4.96	3.57	0.51	9.04	090	S
25515		A	Repair fracture of radius	8.63	7.63	1.22	17.48	090	S
25520		A	Repair fracture of radius	6.01	5.74	0.94	12.69	090	S
25525		A	Repair fracture of radius	11.69	11.15	1.83	24.67	090	S
25528		A	Repair fracture of radius	12.43	11.05	1.94	26.22	090	S
25530		A	Treat fracture of ulna	1.94	2.44	0.35	4.73	090	S
25535		A	Treat fracture of ulna	4.91	3.57	0.54	9.02	090	S
25545		A	Repair fracture of ulna	8.35	7.58	1.20	17.13	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
25560		A	Treat fracture radius & ulna	2.29	2.27	0.27	4.83	090	S
25565		A	Treat fracture radius & ulna	5.29	4.66	0.70	10.65	090	S
25574		A	Treat fracture radius & ulna	6.03	7.72	1.73	15.48	090	S
25575		A	Repair fracture radius/ulna	9.47	10.70	1.73	21.90	090	S
25600		A	Treat fracture radius/ulna	2.48	2.84	0.42	5.74	090	S
25605		A	Treat fracture radius/ulna	5.36	3.95	0.61	9.92	090	S
25611		A	Repair fracture radius/ulna	7.11	6.01	0.97	14.09	090	S
25620		A	Repair fracture radius/ulna	8.15	7.13	1.14	16.42	090	S
25622		A	Treat wrist bone fracture	2.43	2.28	0.33	5.04	090	S
25624		A	Repair wrist bone fracture	4.28	3.67	0.57	8.52	090	S
25628		A	Repair wrist bone fracture	7.81	7.13	1.16	16.10	090	S
25630		A	Treat wrist bone fracture	2.73	2.19	0.30	5.22	090	S
25635		A	Repair wrist bone fracture	4.16	3.36	0.50	8.02	090	S
25645		A	Repair wrist bone fracture	6.65	6.66	0.95	14.48	090	S
25650		A	Treat wrist dislocation	2.67	2.66	0.36	5.69	090	S
25660		A	Repair wrist dislocation	4.53	1.82	0.28	6.61	090	S
25670		A	Treat wrist dislocation	7.52	7.08	1.12	15.72	090	S
25675		A	Repair wrist dislocation	4.44	2.28	0.34	7.06	090	S
25676		A	Treat wrist fracture	7.55	7.32	1.11	15.98	090	S
25680		A	Repair wrist fracture	5.63	2.44	0.36	8.43	090	S
25685		A	Treat wrist dislocation	9.23	8.79	1.44	19.46	090	S
25690		A	Repair wrist dislocation	5.16	4.89	0.73	10.78	090	S
25695		A	Fusion of wrist joint	7.94	7.04	1.17	16.15	090	S
25800		A	Fusion/graft of wrist joint	9.21	10.94	1.80	21.95	090	S
25805		A	Fusion/graft of wrist joint	10.57	12.85	2.09	25.51	090	S
25810		A	Fusion of hand bones	9.79	12.53	2.06	24.38	090	S
25820		A	Fusion hand bones with graft	7.14	8.91	1.48	17.53	090	S
25825		A	Amputation of forearm	8.60	11.02	1.99	21.61	090	S
25830		A	Amputation of forearm	9.50	8.60	1.45	19.55	090	S
25900		A	Amputation of forearm	8.15	7.08	1.31	16.54	090	S
25905		A	Amputation follow-up surgery	8.40	7.11	1.15	16.66	090	S
25907		A	Amputation follow-up surgery	7.27	5.74	1.00	14.01	090	S
25909		A	Amputation of forearm	8.37	5.55	1.06	14.98	090	S
25915		A	Amputate hand at wrist	16.61	15.83	2.59	35.03	090	S
25920		A	Amputate hand at wrist	8.09	7.00	1.20	16.29	090	S
25922		A	Amputation follow-up surgery	6.96	5.55	1.02	13.53	090	S
25924		A	Amputation of hand	7.87	7.50	1.22	16.59	090	S
25927		A	Amputation follow-up surgery	8.27	6.29	1.22	15.78	090	S
25929		A	Amputation follow-up surgery	7.13	4.74	0.96	12.83	090	S
25931		A	Forearm or wrist surgery	7.35	4.54	0.90	12.79	090	S
25999		C	Drainage of finger abscess	0.00	0.00	0.00	0.00	YYY	N
26010		A	Drainage of finger abscess	1.49	0.48	0.05	2.02	010	N
26020		A	Drain hand tendon sheath	2.14	1.54	0.24	3.92	010	S
26025		A	Drainage of palm bursa	4.01	3.72	0.63	8.36	090	S
26030		A	Drainage of palm bursa(s)	4.32	4.51	0.76	9.59	090	S
26034		A	Treat hand bone lesion	5.36	5.73	0.98	12.07	090	S
26035		A	Decompress fingers/hand	5.59	4.23	0.71	10.53	090	S
26037		A	Decompress fingers/hand	8.38	5.17	0.86	14.41	090	S
26040		A	Release palm contracture	6.68	6.37	1.05	14.10	090	S
26045		A	Release palm contracture	3.09	2.86	0.49	6.44	090	S
26055		A	Incise finger tendon sheath	5.27	4.83	0.61	10.91	090	S
26060		A	Incision of finger tendon	2.56	3.28	0.56	6.40	090	S
26070		A	Explore/treat hand joint	2.71	1.13	0.17	4.01	090	S
26075		A	Explore/treat finger joint	3.34	2.76	0.42	6.52	090	S
26080		A	Explore/treat finger joint	3.44	3.78	0.62	7.84	090	S
26100		A	Biopsy hand joint lining	3.76	3.14	0.51	7.43	090	S
26105		A	Biopsy finger joint lining	3.54	2.99	0.45	6.98	090	S
26110		A	Biopsy finger joint lining	3.58	4.17	0.67	8.42	090	S
26115		A	Removal of hand lesion	3.40	2.93	0.50	6.83	090	S
26116		A	Removal of hand lesion	3.68	2.01	0.34	6.03	090	S
26117		A	Remove tumor, hand/finger	5.19	3.71	0.62	9.52	090	S
26121		A	Release palm contracture	8.24	5.07	0.91	14.22	090	S
26123		A	Release palm contracture	7.34	9.40	1.61	18.35	090	S
26125		A	Release palm contracture	8.64	9.10	1.53	19.27	090	S
26130		A	Remove wrist joint lining	4.61	2.62	0.45	7.68	ZZZ	S
26135		A	Revises finger joint, each	5.13	5.01	0.86	11.00	090	S
				6.67	4.86	0.82	12.35	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
26140		A	Revise finger joint, each	5.88	4.40	0.75	11.03	090	S
26145		A	Tendon excision, palm/finger	6.03	4.71	0.80	11.54	090	S
26180		A	Remove tendon sheath lesion	3.00	2.32	0.40	5.72	090	S
26170		A	Removal of palm tendon, each	4.62	2.83	0.45	7.90	090	S
26180		A	Removal of finger tendon	5.00	4.01	0.71	9.72	090	S
26185		A	Remove finger bone	5.00	4.24	0.41	9.65	090	S
26200		A	Remove hand bone lesion	5.25	4.48	0.72	10.45	090	S
26205		A	Remove/graft bone lesion	7.24	6.40	1.03	14.67	090	S
26210		A	Removal of finger lesion	4.97	3.90	0.64	9.51	090	S
26215		A	Remove/graft finger lesion	6.81	5.55	0.94	13.30	090	S
26230		A	Partial removal of hand bone	5.96	4.26	0.69	10.91	090	S
26235		A	Partial removal, finger bone	5.82	4.17	0.71	10.70	090	S
26236		A	Partial removal, finger bone	4.95	3.86	0.66	9.47	090	S
26250		A	Extensive hand surgery	7.26	6.00	1.07	14.33	090	S
26255		A	Extensive hand surgery	11.66	8.94	1.54	22.14	090	S
26260		A	Extensive finger surgery	6.74	5.73	0.97	13.44	090	S
26261		A	Extensive finger surgery	8.54	7.70	1.31	17.55	090	S
26262		A	Partial removal of finger	5.41	4.75	0.76	10.92	090	S
26320		A	Removal of implant from hand	3.74	3.54	0.57	7.85	090	S
26360		A	Repair finger/hand tendon	5.76	5.74	0.99	12.49	090	S
26362		A	Repair/graft hand tendon	7.26	6.80	1.10	14.96	090	S
26362		A	Repair finger/hand tendon	7.05	7.21	1.24	15.50	090	S
26366		A	Repair finger/hand tendon	8.16	6.58	1.19	15.93	090	S
26367		A	Repair/graft hand tendon	8.69	7.40	1.27	17.36	090	S
26370		A	Repair finger/hand tendon	6.71	6.71	1.13	14.55	090	S
26372		A	Repair/graft hand tendon	8.27	6.39	1.15	15.81	090	S
26373		A	Repair finger/hand tendon	7.67	6.85	1.11	15.63	090	S
26380		A	Revise hand/finger tendon	8.73	7.95	1.23	17.91	090	S
26392		A	Repair/graft hand tendon	9.77	8.61	1.28	19.64	090	S
26410		A	Repair hand tendon	4.37	3.29	0.51	8.17	090	S
26412		A	Repair/graft hand tendon	5.91	6.01	0.97	12.89	090	S
26415		A	Excision, hand/finger tendon	8.05	6.75	0.90	15.70	090	S
26416		A	Graft hand or finger tendon	9.06	8.84	1.41	19.31	090	S
26418		A	Repair finger tendon	4.02	3.58	0.59	8.19	090	S
26420		A	Repair/graft finger tendon	6.37	5.68	0.96	13.01	090	S
26426		A	Repair finger/hand tendon	5.86	6.31	1.07	13.24	090	S
26428		A	Repair/graft finger tendon	6.90	5.50	1.00	13.40	090	S
26432		A	Repair finger tendon	3.87	3.15	0.51	7.53	090	S
26433		A	Repair finger tendon	4.41	3.94	0.66	9.01	090	S
26434		A	Repair/graft finger tendon	5.80	4.95	0.84	11.59	090	S
26437		A	Realignment of tendons	5.63	4.05	0.68	10.26	090	S
26440		A	Release palm/finger tendon	4.76	3.57	0.59	8.92	090	S
26442		A	Release palm & finger tendon	7.45	3.37	0.59	11.41	090	S
26445		A	Release hand/finger tendon	4.16	3.25	0.54	7.95	090	S
26449		A	Release forearm/hand tendon	6.39	5.57	0.98	12.92	090	S
26450		A	Incision of palm tendon	3.54	2.28	0.36	6.18	090	S
26455		A	Incision of finger tendon	3.51	1.89	0.33	5.73	090	S
26460		A	Incise hand/finger tendon	3.33	1.72	0.30	5.35	090	S
26471		A	Fusion of finger tendons	5.55	4.15	0.67	10.37	090	S
26474		A	Fusion of finger tendons	5.14	4.61	0.75	10.50	090	S
26476		A	Tendon lengthening	5.00	2.89	0.27	8.16	090	S
26477		A	Tendon shortening	4.97	3.99	0.73	9.69	090	S
26478		A	Lengthening of hand tendon	5.62	4.30	0.72	10.64	090	S
26479		A	Shortening of hand tendon	5.56	5.29	0.86	11.71	090	S
26480		A	Transplant hand tendon	6.49	6.53	1.11	14.13	090	S
26483		A	Transplant/graft hand tendon	7.87	8.50	1.40	17.77	090	S
26485		A	Transplant palm tendon	7.28	6.50	1.08	14.86	090	S
26489		A	Transplant/graft palm tendon	8.00	3.40	0.51	12.91	090	S
26490		A	Revise thumb tendon	7.99	7.80	1.28	17.07	090	S
26492		A	Tendon transfer with graft	9.17	8.75	1.21	19.13	090	S
26494		A	Hand tendon/muscle transfer	8.05	7.28	1.23	16.56	090	S
26496		A	Revise thumb tendon	9.17	8.73	1.53	19.43	090	S
26497		A	Finger tendon transfer	9.15	8.02	1.38	18.55	090	S
26498		A	Finger tendon transfer	13.55	11.78	2.04	27.37	090	S
26499		A	Revision of finger	8.56	7.75	1.25	17.56	090	S
26500		A	Hand tendon reconstruction	5.67	3.49	0.60	9.76	090	S
26502		A	Hand tendon reconstruction	6.74	5.27	0.95	12.96	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
26504		A	Hand tendon reconstruction	7.05	6.72	1.11	14.88	090	S
26508		A	Release thumb contracture	5.61	4.15	0.72	10.48	090	S
26510		A	Thumb tendon transfer	5.03	4.15	0.68	9.86	090	S
26516		A	Fusion of knuckle joint	6.75	4.16	0.67	11.58	090	S
26517		A	Fusion of knuckle joints	8.34	7.07	1.23	16.64	090	S
26518		A	Fusion of knuckle joints	8.63	6.51	1.22	16.36	090	S
26520		A	Release knuckle contracture	5.01	4.48	0.71	10.20	090	S
26525		A	Release knuckle contracture	5.04	3.64	0.82	9.50	090	S
26530		A	Revise knuckle joint	6.38	5.16	0.85	12.39	090	S
26531		A	Revise knuckle with implant	7.57	6.65	1.11	15.33	090	S
26535		A	Revise finger joint	4.95	4.84	0.56	10.37	090	S
26536		A	Revise/implant finger joint	6.06	7.21	1.19	14.46	090	S
26540		A	Repair hand joint	6.03	6.64	1.12	13.79	090	S
26541		A	Repair hand joint with graft	8.20	8.94	1.47	18.61	090	S
26542		A	Repair hand joint with graft	6.38	5.67	0.97	13.02	090	S
26545		A	Reconstruct finger joint	6.50	5.27	0.94	12.71	090	S
26546		A	Repair non-union hand	8.50	8.11	1.33	17.94	090	S
26548		A	Reconstruct finger joint	7.81	5.79	1.00	14.60	090	S
26550		A	Construct thumb replacement	20.77	19.81	3.24	43.82	090	S
26551		A	Great toe-hand transfer	44.31	42.25	6.92	93.48	090	S
26552		D	Construct thumb replacement	0.00	0.00	0.00	0.00	090	S
26553		A	Single toe-hand transfer	44.00	41.96	6.87	92.83	090	S
26554		A	Double toe-hand transfer	52.50	50.06	8.20	110.76	090	S
26555		A	Positional change of finger	16.16	15.41	2.52	34.09	090	S
26556		A	Toe joint transfer	44.75	42.67	6.99	94.41	090	S
26557		D	Construct finger replacement	0.00	0.00	0.00	0.00	090	S
26558		D	Added finger surgery	0.00	0.00	0.00	0.00	090	S
26559		D	Added finger surgery	0.00	0.00	0.00	0.00	090	S
26560		A	Repair of web finger	5.23	4.65	0.66	10.54	090	S
26561		A	Repair of web finger	10.50	8.89	1.56	20.95	090	S
26562		A	Repair of web finger	9.23	10.97	0.82	21.02	090	S
26565		A	Correct metacarpal flex	6.45	5.82	0.85	13.12	090	S
26566		A	Correct finger deformity	6.53	4.28	0.67	11.48	090	S
26568		A	Lengthen metacarpal/finger	8.66	8.45	1.06	18.17	090	S
26569		A	Repair hand deformity	17.71	16.89	2.76	37.36	090	S
26570		C	Repair finger deformity	13.58	12.95	2.12	28.65	090	S
26571		A	Reconstruct extra finger	0.00	0.00	0.00	0.00	090	S
26572		A	Repair finger deformity	17.44	16.63	2.72	36.79	090	S
26573		A	Repair muscles of hand	2.90	2.29	0.39	5.58	090	S
26574		A	Release muscles of hand	4.88	4.12	0.70	9.71	090	S
26575		A	Excision constricting tissue	8.64	8.24	1.35	18.23	090	S
26576		A	Release of scar contracture	9.37	8.02	1.37	18.76	090	S
26600		A	Treat metacarpal fracture	1.81	1.54	0.22	3.57	090	S
26605		A	Treat metacarpal fracture	2.67	2.29	0.36	5.32	090	S
26607		A	Treat metacarpal fracture	5.12	3.55	0.57	9.24	090	S
26608		A	Repair metacarpal fracture	5.12	3.55	0.57	9.24	090	S
26615		A	Treat thumb dislocation	5.18	4.87	0.80	10.85	090	S
26641		A	Treat thumb fracture	3.74	1.11	0.14	4.99	090	S
26645		A	Repair thumb fracture	4.23	2.20	0.33	6.76	090	S
26665		A	Repair thumb fracture	5.49	4.01	0.64	10.14	090	S
26670		A	Treat hand dislocation	7.14	6.39	1.09	14.62	090	S
26675		A	Treat hand dislocation	3.54	0.96	0.10	4.60	090	S
26676		A	Treat hand dislocation	4.44	4.34	0.60	9.38	090	S
26678		A	Pin hand dislocation	5.29	4.88	0.67	10.82	090	S
26685		A	Repair hand dislocation	6.54	5.76	0.91	13.21	090	S
26686		A	Repair hand dislocation	7.48	6.31	1.04	14.83	090	S
26700		A	Treat knuckle dislocation	3.54	0.88	0.10	4.52	090	S
26705		A	Treat knuckle dislocation	3.99	1.78	0.27	6.04	090	S
26706		A	Pin knuckle dislocation	4.92	4.68	0.75	10.35	090	S
26715		A	Repair knuckle dislocation	5.48	4.13	0.66	10.27	090	S
26720		A	Treat finger fracture, each	1.56	1.10	0.15	2.81	090	S
26725		A	Treat finger fracture, each	3.18	1.54	0.23	4.95	090	S
26727		A	Treat finger fracture, each	4.92	2.45	0.36	7.73	090	S
26735		A	Repair finger fracture, each	5.72	3.73	0.61	10.06	090	S
26740		A	Treat finger fracture, each	1.81	1.16	0.16	3.13	090	S
26742		A	Treat finger fracture, each	3.70	1.98	0.32	6.00	090	S
26746		A	Repair finger fracture, each	5.55	4.75	0.80	11.10	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
26750		A	Treat finger fracture, each	1.60	0.83	0.10	2.53	090	S
26755		A	Treat finger fracture, each	2.97	1.08	0.15	4.20	090	S
26756		A	Pin finger fracture, each	4.19	1.90	0.33	6.42	090	S
26765		A	Repair finger fracture, each	4.04	2.66	0.45	7.15	090	S
26770		A	Treat finger dislocation	2.89	0.78	0.08	3.75	090	S
26775		A	Treat finger dislocation	3.51	1.13	0.17	4.81	090	S
26776		A	Pin finger dislocation	4.60	2.08	0.35	7.03	090	S
26785		A	Repair finger dislocation	4.08	2.97	0.48	7.53	090	S
26820		A	Thumb fusion with graft	7.84	6.85	1.05	15.54	090	S
26841		A	Fusion of thumb	6.79	6.17	1.00	13.96	090	S
26842		A	Thumb fusion with graft	7.75	6.58	1.37	17.70	090	S
26843		A	Fusion of hand joint	7.21	6.37	1.10	14.68	090	S
26844		A	Fusion/graft of hand joint	8.24	7.35	1.19	16.78	090	S
26850		A	Fusion of knuckle	6.57	4.63	0.75	11.95	090	S
26852		A	Fusion of knuckle with graft	7.97	5.72	1.00	14.69	090	S
26860		A	Fusion of finger joint	4.49	4.30	0.68	9.47	090	S
26861		A	Fusion of finger joint, added	1.74	2.23	0.43	4.40	ZZZ	S
26862		A	Fusion/graft of finger joint	7.06	5.16	0.85	13.07	090	S
26863		A	Fuse/graft added joint	3.90	3.57	0.57	7.94	ZZZ	S
26910		A	Amputate metacarpal bone	7.18	5.16	0.93	13.27	090	S
26951		A	Amputation of finger/thumb	4.41	2.67	0.49	7.57	090	S
26952		A	Amputation of finger/thumb	5.02	4.00	0.69	10.71	090	S
26989		C	Hand/finger surgery	0.00	0.00	0.00	0.00	YYY	S
26990		A	Drainage of pelvis lesion	6.76	3.10	0.51	10.37	090	S
26991		A	Drainage of pelvis bursa	6.05	1.81	0.29	8.15	090	S
26992		A	Drainage of bone lesion	12.30	6.38	1.05	19.73	090	S
27000		A	Incision of hip tendon	5.27	1.85	0.24	7.36	090	S
27001		A	Incision of hip tendon	6.50	2.34	0.38	9.22	090	S
27003		A	Incision of hip tendon	6.62	6.77	1.08	14.47	090	S
27005		A	Incision of hip tendon	9.00	3.37	0.54	12.91	090	S
27006		A	Incision of hip tendons	9.00	4.64	0.77	14.41	090	S
27025		A	Incision of hip/thigh fascia	10.16	8.12	1.02	17.30	090	S
27030		A	Drainage of hip joint	12.09	11.42	1.86	25.37	090	S
27033		A	Exploration of hip joint	12.38	11.52	1.85	25.75	090	S
27035		A	Denervation of hip joint	15.72	11.86	2.21	29.79	090	S
27036		A	Excision of hip joint/muscle	12.00	11.44	1.87	25.31	090	S
27040		A	Biopsy of soft tissues	2.71	0.72	0.11	3.54	010	N
27041		A	Biopsy of soft tissues	9.36	2.67	0.44	12.47	090	S
27047		A	Remove hip/pelvis lesion	7.16	1.89	0.32	9.37	090	S
27048		A	Remove hip/pelvis lesion	5.70	4.33	0.82	10.85	090	S
27049		A	Remove tumor, hip/pelvis	12.52	10.14	1.87	24.53	090	S
27050		A	Biopsy of sacroiliac joint	3.73	4.78	0.90	9.41	090	S
27052		A	Biopsy of hip joint	5.45	6.97	1.59	14.01	090	S
27054		A	Removal of hip joint lining	7.60	9.72	2.26	19.58	090	S
27060		A	Removal of ischial bursa	4.73	3.93	0.68	9.34	090	S
27062		A	Remove femur lesion/bursa	4.74	4.23	0.70	9.67	090	S
27065		A	Removal of hip bone lesion	4.98	5.59	0.90	11.47	090	S
27066		A	Removal of hip bone lesion	9.17	7.90	1.30	18.37	090	S
27067		A	Remove/graft hip bone lesion	12.64	11.63	1.93	26.20	090	S
27070		A	Partial removal of hip bone	9.58	7.41	1.21	18.20	090	S
27071		A	Partial removal of hip bone	10.23	8.50	1.45	20.18	090	S
27075		A	Extensive hip surgery	15.85	13.54	2.32	31.71	090	S
27076		A	Extensive hip surgery	20.23	16.37	2.61	39.21	090	S
27077		A	Extensive hip surgery	21.29	18.98	3.24	43.51	090	S
27078		A	Extensive hip surgery	11.86	9.20	1.67	22.73	090	S
27079		A	Extensive hip surgery	12.11	8.64	1.66	22.41	090	S
27080		A	Removal of tail bone	5.63	4.78	0.87	11.28	090	S
27086		A	Remove hip foreign body	1.82	0.58	0.07	2.47	010	S
27087		A	Remove hip foreign body	8.01	3.62	0.60	12.23	090	S
27090		A	Removal of hip prosthesis	10.34	9.09	1.46	20.89	090	S
27091		A	Removal of hip prosthesis	20.48	19.81	3.16	43.45	090	S
27093		A	Injection for hip x-ray	1.30	0.82	0.11	2.23	000	S
27095		A	Injection for hip x-ray	1.50	0.93	0.13	2.56	000	N
27097		A	Revision of hip tendon	8.08	7.71	1.25	17.05	090	S
27098		A	Transfer tendon to pelvis	8.08	7.71	1.25	17.05	090	S
27100		A	Transfer of abdominal muscle	10.57	7.88	1.42	19.87	090	S
27105		A	Transfer of spinal muscle	11.26	5.89	1.36	18.51	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
27110		A	Transfer of iliopectus muscle	12.49	10.61	1.86	24.96	090	S
27111		A	Transfer of iliopectus muscle	11.44	11.63	1.85	24.92	090	S
27120		A	Reconstruction of hip socket	16.43	18.10	2.95	37.48	090	S
27122		A	Reconstruction of hip socket	13.58	17.35	2.94	33.86	090	S
27125		A	Partial hip replacement	13.21	16.91	3.01	33.13	090	S
27130		A	Total hip replacement	18.58	23.91	4.56	47.17	090	S
27132		A	Total hip replacement	21.44	27.44	5.09	53.97	090	S
27134		A	Revises hip joint replacement	27.00	31.41	5.96	64.37	090	S
27137		A	Revises hip joint replacement	20.00	23.90	4.82	48.72	090	S
27138		A	Revises hip joint replacement	21.00	24.23	4.58	49.81	090	S
27140		A	Transplant of femur ridge	11.43	11.05	1.71	24.19	090	S
27146		A	Incision of hip bone	16.55	10.88	1.35	28.78	090	S
27147		A	Revision of hip bone	19.70	16.97	2.76	39.43	090	S
27151		A	Incision of hip bones	21.50	17.71	2.90	42.11	090	S
27156		A	Revision of hip bones	23.62	18.32	3.08	45.02	090	S
27158		A	Revision of pelvis	16.10	14.42	2.64	33.16	090	S
27161		A	Incision of neck of femur	15.20	14.31	2.31	31.82	090	S
27165		A	Incision/fixation of femur	16.20	16.76	2.83	35.59	090	S
27170		A	Repair/graft femur head/neck	14.90	16.41	2.65	33.96	090	S
27175		A	Treat slipped epiphysis	7.24	1.18	0.18	8.60	090	S
27176		A	Treat slipped epiphysis	10.89	10.39	1.70	22.98	090	S
27177		A	Repair slipped epiphysis	13.76	12.39	2.05	28.20	090	S
27178		A	Repair slipped epiphysis	10.76	10.48	1.55	22.77	090	S
27179		A	Revises head/neck of femur	11.09	11.16	1.83	24.07	090	S
27181		A	Repair slipped epiphysis	13.80	13.14	2.16	29.10	090	S
27185		A	Revision of femur epiphysis	8.30	2.77	0.87	11.94	090	S
27187		A	Reinforce hip bones	12.57	16.09	2.76	31.42	090	S
27193		A	Treat pelvic ring fracture	4.64	2.41	0.39	7.44	090	S
27194		A	Treat pelvic ring fracture	8.73	3.90	0.50	13.13	090	S
27200		A	Treat tail bone fracture	1.76	1.49	0.17	3.42	090	S
27202		A	Repair tail bone fracture	6.62	5.15	0.89	13.56	090	S
27215		A	Pelvic fracture(s) treatment	9.39	12.02	2.33	23.74	090	S
27216		A	Treat pelvic ring fracture	14.20	4.30	0.86	19.16	090	S
27217		A	Treat pelvic ring fracture	13.19	14.55	2.33	30.07	090	S
27218		A	Treat pelvic ring fracture	18.83	14.55	2.33	35.71	090	S
27220		A	Treat hip socket fracture	5.26	4.26	0.64	10.16	090	S
27222		A	Treat hip socket fracture	10.95	6.37	1.03	18.35	090	S
27226		A	Treat hip wall fracture	13.93	15.78	2.52	32.23	090	S
27227		A	Treat hip fracture(s)	22.00	19.70	3.20	44.90	090	S
27230		A	Treat hip fracture(s)	25.59	19.95	3.20	48.74	090	S
27232		A	Treat fracture of thigh	4.95	3.30	0.41	8.66	090	S
27235		A	Treat fracture of thigh	9.32	8.98	1.46	19.76	090	S
27236		A	Repair of thigh fracture	11.02	14.10	2.60	27.72	090	S
27238		A	Repair of thigh fracture	14.14	16.91	2.71	33.76	090	S
27240		A	Treatment of thigh fracture	5.06	4.91	0.71	10.68	090	S
27244		A	Repair of thigh fracture	10.86	9.70	1.53	22.09	090	S
27245		A	Repair of thigh fracture	14.35	16.30	2.62	33.27	090	S
27246		A	Treatment of thigh fracture	18.72	16.30	2.62	37.64	090	S
27248		A	Repair of thigh fracture	4.38	3.87	0.60	8.83	090	S
27250		A	Treat hip dislocation	9.73	12.46	2.11	24.30	090	S
27252		A	Treat hip dislocation	8.31	3.19	0.46	9.96	090	S
27253		A	Repair of hip dislocation	9.47	4.34	0.66	14.49	090	S
27254		A	Repair of hip dislocation	11.98	13.14	2.11	27.23	090	S
27256		A	Treatment of hip dislocation	17.29	13.47	2.27	33.03	090	S
27257		A	Treatment of hip dislocation	3.72	1.88	0.31	5.91	010	S
27258		A	Repair of hip dislocation	4.82	4.82	0.73	10.17	010	S
27259		A	Repair of hip dislocation	14.40	13.73	2.25	30.38	090	S
27265		A	Treatment of hip dislocation	20.50	17.20	2.82	40.52	090	S
27266		A	Treatment of hip dislocation	4.74	3.46	0.54	8.74	090	S
27275		A	Manipulation of hip joint	6.96	4.45	0.71	12.12	090	S
27280		A	Fusion of sacroiliac joint	2.00	1.88	0.30	4.18	010	S
27282		A	Fusion of pubic bones	11.81	10.06	1.77	23.64	090	S
27284		A	Fusion of hip joint	10.57	9.01	1.69	21.27	090	S
27286		A	Fusion of hip joint	15.62	14.50	2.40	32.52	090	S
27290		A	Amputation of leg at hip	15.85	15.20	2.26	33.11	090	S
27295		A	Amputation of leg at hip	21.68	25.40	4.70	51.78	090	S
				17.32	16.54	2.95	36.81	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
27299		C	Pelvis/hip joint surgery	0.00	0.00	0.00	0.00	YYY	S
27301		A	Drain thigh/knee lesion	5.96	2.48	0.40	8.82	090	S
27303		A	Drainage of bone lesion	7.69	5.86	0.96	14.51	090	S
27306		A	Incise thigh tendon & fascia	5.42	3.80	0.68	9.90	090	S
27306		A	Incision of thigh tendon	4.27	1.99	0.32	6.58	090	S
27307		A	Incision of thigh tendons	5.30	3.01	0.48	8.79	090	S
27310		A	Exploration of knee joint	8.26	9.60	1.51	19.37	090	S
27315		A	Partial removal, thigh nerve	6.51	5.36	0.96	12.85	090	S
27320		A	Partial removal, thigh nerve	5.90	5.16	0.78	11.81	090	S
27323		A	Biopsy thigh soft tissues	2.23	0.91	0.18	3.27	010	S
27324		A	Biopsy thigh soft tissues	4.53	2.63	0.45	7.61	090	S
27327		A	Removal of thigh lesion	4.32	2.29	0.40	7.01	090	S
27328		A	Removal of thigh lesion	5.31	4.07	0.73	10.11	090	S
27329		A	Remove tumor, thigh/knee	13.00	11.69	2.14	26.83	090	S
27330		A	Biopsy knee joint lining	4.71	0.02	1.19	11.92	090	S
27331		A	Explore/treat knee joint	5.51	7.05	1.49	14.05	090	S
27332		A	Removal of knee cartilage	7.85	10.05	1.73	19.63	090	S
27333		A	Removal of knee cartilage	6.81	9.01	2.52	18.34	090	S
27334		A	Remove knee joint lining	7.95	10.18	1.77	19.90	090	S
27335		A	Remove knee joint lining	9.19	11.78	2.05	23.00	090	S
27340		A	Removal of kneecap bursa	3.92	3.85	0.62	8.39	090	S
27345		A	Removal of knee cyst	5.83	5.63	0.95	12.21	090	S
27350		A	Removal of kneecap	7.42	9.49	1.54	18.45	090	S
27355		A	Remove femur lesion	7.06	7.58	1.23	15.87	090	S
27356		A	Remove femur lesion/graft	8.60	8.20	1.34	18.14	090	S
27357		A	Remove femur lesion/graft	9.85	8.60	1.43	19.88	090	S
27358		A	Remove femur lesion/fixation	4.74	4.55	0.72	10.01	ZZZ	S
27360		A	Partial removal leg bone(s)	9.25	8.55	1.40	19.19	090	S
27365		A	Extensive leg surgery	15.00	13.94	2.43	31.37	090	S
27370		A	Injection for knee x-ray	0.96	0.60	0.05	1.61	000	N
27372		A	Removal of foreign body	4.81	3.42	0.54	8.77	090	S
27380		A	Repair of kneecap tendon	6.63	7.94	1.29	15.86	090	S
27381		A	Repair/graft kneecap tendon	9.68	11.27	1.82	22.75	090	S
27385		A	Repair of thigh muscle	7.17	8.84	1.42	17.43	090	S
27386		A	Repair/graft of thigh muscle	9.72	12.44	2.02	24.18	090	S
27390		A	Incision of thigh tendon	4.89	4.38	0.71	9.96	090	S
27391		A	Incision of thigh tendons	6.67	5.42	0.90	12.99	090	S
27392		A	Incision of thigh tendons	8.52	7.67	1.28	17.47	090	S
27393		A	Lengthening of thigh tendon	5.95	5.07	0.93	12.55	090	S
27394		A	Lengthening of thigh tendons	7.97	5.73	0.94	14.64	090	S
27395		A	Lengthening of thigh tendons	10.96	10.48	1.65	23.09	090	S
27396		A	Transplant of thigh tendon	7.33	7.08	1.11	15.50	090	S
27397		A	Transplants of thigh tendons	10.53	8.88	1.45	20.86	090	S
27400		A	Revise thigh muscles/tendons	8.47	7.89	1.24	17.60	090	S
27403		A	Repair of knee cartilage	7.80	8.79	1.44	18.03	090	S
27405		A	Repair of knee ligament	7.97	10.17	1.67	19.81	090	S
27407		A	Repair of knee ligament	9.44	8.87	1.42	19.73	090	S
27409		A	Repair of knee ligaments	11.80	15.10	2.48	29.38	090	S
27418		A	Repair degenerated kneecap	9.82	12.23	1.85	23.90	090	S
27420		A	Revision of unstable kneecap	8.15	10.99	1.74	21.88	090	S
27422		A	Revision of unstable kneecap	9.10	11.45	1.83	22.38	090	S
27424		A	Revision/removal of kneecap	9.13	11.68	1.89	22.70	090	S
27425		A	Lateral retinacular release	5.04	8.46	1.06	12.56	090	S
27427		A	Reconstruction, knee	8.68	11.12	2.25	22.05	090	S
27428		A	Reconstruction, knee	13.28	13.67	2.71	29.66	090	S
27429		A	Reconstruction, knee	14.67	11.27	1.83	27.77	090	S
27430		A	Revision of thigh muscles	8.92	8.36	1.50	19.78	090	S
27435		A	Incision of knee joint	8.74	7.03	1.13	16.90	090	S
27437		A	Revise kneecap	7.74	9.91	1.55	19.20	090	S
27438		A	Revise kneecap with implant	10.29	13.13	2.14	25.56	090	S
27440		A	Revision of knee joint	9.49	11.83	2.10	23.42	090	S
27441		A	Revision of knee joint	9.81	9.14	1.51	20.46	090	S
27442		A	Revision of knee joint	11.14	14.25	3.05	28.44	090	S
27443		A	Revision of knee joint	10.18	13.03	3.34	26.55	090	S
27445		A	Revision of knee joint	16.39	20.98	4.21	41.58	090	S
27446		A	Revision of knee joint	15.03	19.25	3.87	38.15	090	S
27447		A	Total knee replacement	19.69	25.20	4.95	49.84	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
27448		A	Incision of thigh	10.25	12.87	2.09	25.21	090	S
27450		A	Incision of thigh	13.08	14.84	2.36	30.28	090	S
27454		A	Realignment of thigh bone	16.55	15.70	2.82	35.07	090	S
27455		A	Realignment of knee	12.01	12.01	1.95	25.97	090	S
27457		A	Realignment of knee	12.80	13.30	2.14	28.04	090	S
27465		A	Shortening of thigh bone	12.84	12.24	2.00	27.08	090	S
27466		A	Lengthening of thigh bone	15.08	13.43	2.27	30.78	090	S
27468		A	Shorten/lengthen thighs	17.65	16.84	2.75	37.24	090	S
27470		A	Repair of thigh	14.82	16.67	2.60	34.09	090	S
27472		A	Repair/graft of thigh	16.40	19.87	3.16	39.43	090	S
27475		A	Surgery to stop leg growth	8.11	7.74	1.27	17.12	090	S
27477		A	Surgery to stop leg growth	8.32	11.93	2.57	23.82	090	S
27479		A	Surgery to stop leg growth	12.18	11.63	1.89	25.70	090	S
27485		A	Surgery to stop leg growth	8.31	7.91	1.30	17.52	090	S
27486		A	Revise knee joint replace	18.00	21.28	4.26	43.54	090	S
27487		A	Revise knee joint replace	24.00	27.76	5.97	57.73	090	S
27488		A	Removal of knee prosthesis	14.48	16.16	2.58	33.22	090	S
27495		A	Reinforce thigh	14.26	17.63	2.82	34.71	090	S
27496		A	Decompression of thigh/knee	4.75	4.53	0.74	10.02	090	S
27497		A	Decompression of thigh/knee	5.81	5.55	0.91	12.27	090	S
27498		A	Decompression of thigh/knee	6.63	6.32	1.04	13.99	090	S
27499		A	Decompression of thigh/knee	7.84	7.26	1.19	16.11	090	S
27500		A	Treatment of thigh fracture	5.29	5.41	0.82	11.52	090	S
27501		A	Treatment of thigh fracture	9.51	7.67	1.21	18.39	090	S
27502		A	Treatment of thigh fracture	9.51	7.67	1.21	18.39	090	S
27503		A	Treatment of thigh fracture	15.93	16.02	2.56	34.51	090	S
27506		A	Treatment of thigh fracture	12.85	16.02	2.56	31.43	090	S
27507		A	Treatment of thigh fracture	5.21	4.22	0.85	10.08	090	S
27508		A	Treatment of thigh fracture	6.77	4.22	0.85	11.84	090	S
27509		A	Treatment of thigh fracture	8.19	6.82	1.09	16.10	090	S
27510		A	Treatment of thigh fracture	12.50	16.00	2.56	31.06	090	S
27511		A	Treatment of thigh fracture	16.78	16.02	2.56	35.36	090	S
27513		A	Repair of thigh fracture	15.98	15.76	2.53	34.27	090	S
27514		A	Repair of thigh growth plate	4.92	4.82	0.71	10.45	090	S
27516		A	Repair of thigh growth plate	8.20	7.82	1.28	17.30	090	S
27517		A	Repair of thigh growth plate	13.82	12.88	2.05	28.55	090	S
27519		A	Treat kneecap fracture	2.68	3.04	0.45	6.17	090	S
27520		A	Repair of kneecap fracture	9.38	10.34	1.65	21.37	090	S
27524		A	Treatment of knee fracture	3.23	3.40	0.51	7.14	090	S
27530		A	Treatment of knee fracture	6.81	5.88	0.91	13.40	090	S
27532		A	Treatment of knee fracture	10.36	11.69	1.88	23.93	090	S
27535		A	Repair of knee fracture	14.51	11.69	1.88	28.08	090	S
27536		A	Treat knee fracture(s)	4.54	3.37	0.51	8.52	090	S
27538		A	Repair of knee fracture	12.38	10.95	1.74	25.07	090	S
27540		A	Treat knee dislocation	5.53	2.57	0.36	8.46	090	S
27552		A	Treat knee dislocation	7.39	3.43	0.53	11.35	090	S
27556		A	Repair of knee dislocation	13.47	12.48	1.95	27.90	090	S
27557		A	Repair of knee dislocation	15.80	14.60	2.43	32.83	090	S
27558		A	Repair of knee dislocation	16.75	14.60	2.43	33.78	090	S
27560		A	Treat kneecap dislocation	3.84	1.43	0.16	5.23	090	S
27562		A	Treat kneecap dislocation	5.48	5.18	0.76	11.42	090	S
27566		A	Repair kneecap dislocation	11.48	10.68	1.67	23.73	090	S
27570		A	Fixation of knee joint	1.69	1.72	0.28	3.69	010	S
27580		A	Fusion of knee	18.20	15.70	2.56	36.46	090	S
27590		A	Amputate leg at thigh	10.24	9.11	1.80	21.15	090	S
27591		A	Amputate leg at thigh	11.09	11.77	2.11	24.97	090	S
27592		A	Amputate leg at thigh	8.75	8.11	1.61	18.47	090	S
27594		A	Amputation follow-up surgery	6.30	3.85	0.68	10.83	090	S
27596		A	Amputation follow-up surgery	9.63	7.37	1.42	18.42	090	S
27598		A	Amputate lower leg at knee	9.56	10.04	1.78	21.38	090	S
27599		C	Leg surgery procedure	0.00	0.00	0.00	0.00	YYY	S
27600		A	Decompression of lower leg	5.02	3.39	0.64	9.05	090	S
27601		A	Decompression of lower leg	4.98	3.36	0.67	9.03	090	S
27602		A	Decompression of lower leg	6.63	4.05	0.77	11.45	090	S
27603		A	Drain lower leg lesion	4.41	2.38	0.41	7.20	090	S
27604		A	Drain lower leg bursa	4.23	1.02	0.14	5.39	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
27606		A	Incision of achilles tendon	2.82	1.18	0.14	4.14	010	S
27606		A	Incision of achilles tendon	3.87	2.12	0.35	6.34	010	S
27607		A	Treat lower leg bone lesion	7.05	6.01	0.98	14.04	090	S
27610		A	Explore/treat ankle joint	7.27	7.43	1.13	15.83	090	S
27612		A	Exploration of ankle joint	6.23	7.97	1.30	15.50	090	S
27613		A	Biopsy lower leg soft tissue	2.12	0.67	0.10	2.89	010	S
27614		A	Biopsy lower leg soft tissue	5.29	2.26	0.38	7.93	090	S
27615		A	Remove tumor, lower leg	11.79	8.23	1.42	21.44	090	S
27616		A	Remove lower leg lesion	4.94	2.10	0.32	7.36	090	S
27618		A	Remove lower leg lesion	7.98	4.13	0.67	12.78	090	S
27619		A	Remove lower leg lesion	5.69	6.03	0.96	12.68	090	S
27620		A	Explore, treat ankle joint	7.88	8.71	1.27	17.86	090	S
27625		A	Remove ankle joint lining	8.49	10.86	1.25	20.60	090	S
27626		A	Remove ankle joint lining	4.85	3.10	0.46	8.21	090	S
27630		A	Removal of tendon lesion	7.29	8.04	1.27	16.60	090	S
27635		A	Remove lower leg bone lesion	9.14	8.47	1.40	19.01	090	S
27637		A	Remove/graft leg bone lesion	8.89	9.15	1.62	20.66	090	S
27638		A	Remove/graft leg bone lesion	10.21	9.81	1.67	21.69	090	S
27640		A	Partial removal of fibula	6.36	7.13	1.18	16.67	090	S
27641		A	Partial removal of fibula	13.14	11.84	1.98	26.76	090	S
27645		A	Extensive lower leg surgery	11.69	10.75	1.71	24.15	090	S
27646		A	Extensive lower leg surgery	11.21	9.95	1.35	22.51	090	S
27647		A	Extensive ankle/heel surgery	0.96	0.52	0.05	1.53	000	N
27648		A	Injection for ankle x-ray	9.07	8.98	1.41	19.46	090	S
27650		A	Repair achilles tendon	9.82	10.41	1.56	21.79	090	S
27652		A	Repair/graft achilles tendon	9.34	10.93	1.95	21.92	090	S
27654		A	Repair of achilles tendon	4.31	3.18	0.54	8.03	090	S
27656		A	Repair leg fascia defect	4.61	4.02	0.80	9.23	090	S
27658		A	Repair of leg tendon, each	6.28	5.87	0.88	13.01	090	S
27659		A	Repair of leg tendon, each	4.33	3.41	0.52	8.26	090	S
27664		A	Repair of leg tendon, each	5.11	4.96	0.76	10.82	090	S
27675		A	Repair lower leg tendons	6.76	6.40	0.94	14.12	090	S
27676		A	Repair lower leg tendons	7.87	7.56	1.14	16.57	090	S
27680		A	Release of lower leg tendon	5.37	4.12	0.81	10.10	090	S
27681		A	Release of lower leg tendons	6.36	5.97	0.86	13.19	090	S
27685		A	Revision of lower leg tendon	6.08	3.83	0.41	10.32	090	S
27686		A	Revis lower leg tendons	6.93	6.66	0.80	14.39	090	S
27687		A	Revision of calf tendon	5.84	5.45	0.76	12.05	090	S
27690		A	Revis lower leg tendon	8.09	6.74	0.88	15.71	090	S
27691		A	Revis lower leg tendon	9.25	7.89	1.23	18.37	090	S
27692		A	Revis additional leg tendon	1.87	2.03	0.29	4.19	ZZZ	S
27695		A	Repair of ankle ligament	6.09	7.79	1.32	15.20	090	S
27696		A	Repair of ankle ligaments	7.72	7.06	1.16	15.94	090	S
27698		A	Repair of ankle ligament	8.87	11.35	1.88	22.08	090	S
27700		A	Revision of ankle joint	8.67	11.11	1.51	21.29	090	S
27702		A	Reconstruct ankle joint	12.64	16.18	3.89	32.81	090	S
27703		A	Reconstruction, ankle joint	14.49	13.82	2.25	30.56	090	S
27704		A	Removal of ankle implant	7.20	5.84	0.98	14.02	090	S
27706		A	Incision of tibia	9.83	10.74	1.76	22.13	090	S
27707		A	Incision of fibula	3.71	4.75	0.79	9.25	090	S
27709		A	Incision of tibia & fibula	9.14	11.70	2.14	22.98	090	S
27712		A	Realignment of lower leg	13.20	10.99	1.83	25.82	090	S
27715		A	Revision of lower leg	12.97	12.61	1.86	27.48	090	S
27720		A	Repair of tibia	10.95	13.97	2.25	27.17	090	S
27722		A	Repair/graft of tibia	10.92	10.50	1.64	23.06	090	S
27724		A	Repair/graft of tibia	13.88	15.50	2.67	32.25	090	S
27725		A	Repair of lower leg	14.50	10.43	1.53	26.46	090	S
27727		A	Repair of lower leg	12.89	9.38	1.84	24.11	090	S
27730		A	Repair of tibia epiphysis	6.88	3.59	0.84	11.31	090	S
27732		A	Repair of fibula epiphysis	5.06	4.84	0.79	10.69	090	S
27734		A	Repair lower leg epiphyses	7.99	7.54	1.23	16.66	090	S
27740		A	Repair of leg epiphyses	8.75	8.36	1.36	18.47	090	S
27742		A	Repair of leg epiphyses	9.72	9.29	1.52	20.53	090	S
27745		A	Reinforce tibia	9.39	8.97	1.39	19.75	090	S
27750		A	Treatment of tibia fracture	2.90	3.45	0.50	6.85	090	S
27752		A	Treatment of tibia fracture	5.16	5.09	0.81	11.06	090	S
27756		A	Repair of tibia fracture	5.84	7.48	1.70	15.02	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
27758		A	Repair of tibia fracture	10.51	13.46	2.22	26.19	090	S
27759		A	Repair of tibia fracture	12.60	13.74	2.22	28.56	090	S
27760		A	Treatment of ankle fracture	2.81	2.58	0.37	5.76	090	S
27762		A	Treatment of ankle fracture	4.80	3.36	0.50	8.66	090	S
27766		A	Repair of ankle fracture	7.61	7.07	1.26	16.74	090	S
27780		A	Treatment of fibula fracture	2.47	1.97	0.26	4.70	090	S
27781		A	Treatment of fibula fracture	4.20	3.29	0.49	7.98	090	S
27784		A	Repair of fibula fracture	6.45	5.59	0.87	12.91	090	S
27786		A	Treatment of ankle fracture	2.68	2.52	0.38	5.58	090	S
27788		A	Treatment of ankle fracture	4.25	3.27	0.50	8.02	090	S
27792		A	Repair of ankle fracture	7.04	7.38	1.17	15.59	090	S
27808		A	Treatment of ankle fracture	2.63	2.79	0.39	5.81	090	S
27810		A	Repair of ankle fracture	4.82	5.05	0.80	10.67	090	S
27814		A	Treatment of ankle fracture	9.87	10.00	1.60	21.47	090	S
27816		A	Treatment of ankle fracture	2.71	3.47	0.55	6.73	090	S
27818		A	Treatment of ankle fracture	5.08	6.51	1.08	12.65	090	S
27822		A	Repair of ankle fracture	5.39	10.73	1.88	21.00	090	S
27823		A	Repair of ankle fracture	10.90	12.79	2.05	25.74	090	S
27824		A	Treat lower leg fracture	2.71	3.47	0.55	6.73	090	S
27825		A	Treat lower leg fracture	5.08	6.51	1.08	12.65	090	S
27826		A	Treat lower leg fracture	7.43	9.50	1.88	18.81	090	S
27827		A	Treat lower leg fracture	12.95	11.71	1.88	26.54	090	S
27828		A	Treat lower leg fracture	15.12	12.79	2.05	29.96	090	S
27829		A	Treat lower leg joint	4.67	6.23	1.37	12.47	090	S
27830		A	Treat lower leg dislocation	3.50	3.25	0.46	7.21	090	S
27831		A	Treat lower leg dislocation	4.27	3.98	0.59	8.84	090	S
27832		A	Repair lower leg dislocation	5.96	5.70	0.89	12.55	090	S
27840		A	Treat ankle dislocation	4.27	1.87	0.21	6.35	090	S
27842		A	Repair ankle dislocation	5.72	2.22	0.34	8.28	090	S
27846		A	Repair ankle dislocation	9.04	8.59	1.37	19.00	090	S
27848		A	Repair ankle dislocation	10.45	8.36	1.32	20.13	090	S
27860		A	Fusion of ankle joint	2.29	1.39	0.23	3.91	010	S
27871		A	Fusion of ankle joint	13.00	13.34	2.22	28.56	090	S
27880		A	Fusion of tibiofibular joint	8.55	7.79	1.21	17.55	090	S
27881		A	Amputation of lower leg	10.69	8.36	1.60	20.65	090	S
27882		A	Amputation of lower leg	10.89	10.82	1.87	23.58	090	S
27884		A	Amputation of lower leg	7.80	7.36	1.42	16.58	090	S
27886		A	Amputation follow-up surgery	7.40	3.37	0.61	11.38	090	S
27888		A	Amputation follow-up surgery	8.35	7.17	1.34	16.86	090	S
27889		A	Amputation of foot at ankle	8.70	9.49	1.65	19.84	090	S
27892		A	Amputation of foot at ankle	8.82	8.43	1.55	18.80	090	S
27893		A	Decompression of leg	6.03	3.39	0.64	10.06	090	S
27894		A	Decompression of leg	5.99	3.38	0.67	10.04	090	S
27899		C	Decompression of leg	9.13	4.05	0.77	13.95	090	S
28001		A	Leg/ankle surgery procedure	0.00	0.00	0.00	0.00	YYY	S
28002		A	Drainage of bursa of foot	2.68	0.52	0.05	3.25	010	S
28003		A	Treatment of foot infection	3.76	2.25	0.33	6.34	010	S
28005		A	Treatment of foot infection	7.49	3.50	0.59	11.58	090	S
28006		A	Treat foot bone lesion	7.65	4.08	0.61	12.34	090	S
28010		A	Incision of foot fascia	4.19	2.68	0.29	7.16	090	S
28011		A	Incision of toe tendon	2.71	3.62	0.33	6.66	090	S
28020		A	Exploration of a foot joint	3.99	1.77	0.19	5.95	090	S
28022		A	Exploration of a foot joint	4.75	4.40	0.56	9.71	090	S
28024		A	Exploration of a toe joint	4.41	2.74	0.31	7.46	090	S
28030		A	Removal of foot nerve	4.12	2.39	0.24	6.75	090	S
28035		A	Decompression of tibia nerve	5.78	3.93	0.42	10.13	090	S
28043		A	Excision of foot lesion	4.83	6.18	0.90	11.91	090	S
28045		A	Excision of foot lesion	3.41	1.73	0.20	5.34	090	S
28046		A	Resection of tumor, foot	4.46	3.99	0.46	8.91	090	S
28050		A	Biopsy of foot joint lining	9.41	5.35	0.79	15.55	090	S
28052		A	Biopsy of foot joint lining	3.99	3.84	0.53	8.36	090	S
28054		A	Biopsy of toe joint lining	3.70	3.82	0.43	7.95	090	S
28060		A	Partial removal foot fascia	3.21	2.24	0.28	5.73	090	S
28062		A	Removal of foot fascia	5.05	4.22	0.53	9.80	090	S
28070		A	Removal of foot joint lining	6.23	7.06	0.86	14.15	090	S
28072		A	Removal of foot joint lining	4.73	4.48	0.48	9.69	090	S
				4.32	3.81	0.42	7.95	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
28080		A	Removal of foot lesion	3.18	4.07	0.45	7.70	090	S
28086		A	Excise foot tendon sheath	4.52	3.12	0.48	8.10	090	S
28088		A	Excise foot tendon sheath	3.62	3.62	0.40	7.64	090	S
28090		A	Removal of foot lesion	4.26	3.02	0.29	7.57	090	S
28092		A	Removal of toe lesions	3.49	2.03	0.25	5.77	090	S
28100		A	Removal of ankle/heel lesion	5.37	4.58	0.56	10.51	090	S
28102		A	Remove/graft foot lesion	7.31	6.84	0.66	15.00	090	S
28103		A	Remove/graft foot lesion	6.10	5.61	0.69	12.40	090	S
28104		A	Removal of foot lesion	4.86	4.33	0.49	9.68	090	S
28106		A	Remove/graft foot lesion	6.74	6.42	0.79	13.95	090	S
28107		A	Remove/graft foot lesion	5.16	4.86	0.48	10.50	090	S
28108		A	Removal of toe lesions	4.01	4.20	0.38	8.59	090	S
28110		A	Part removal of metatarsal	3.82	3.48	0.39	7.69	090	S
28111		A	Part removal of metatarsal	4.64	5.04	0.65	10.33	090	S
28112		A	Part removal of metatarsal	4.23	3.96	0.46	8.64	090	S
28113		A	Part removal of metatarsal	4.23	4.44	0.48	9.15	090	S
28114		A	Removal of metatarsal heads	8.65	9.17	1.42	19.24	090	S
28116		A	Revision of foot	7.00	5.43	0.57	13.05	090	S
28118		A	Removal of heel bone	5.56	5.71	0.68	11.93	090	S
28119		A	Removal of heel spur	5.10	5.44	0.57	11.11	090	S
28120		A	Part removal of ankle/heel	4.81	5.04	0.67	10.52	090	S
28122		A	Partial removal of foot bone	6.62	4.48	0.54	11.64	090	S
28124		A	Partial removal of toe	4.39	4.11	0.37	8.87	090	S
28126		A	Partial removal of toe	3.39	3.98	0.36	7.73	090	S
28130		A	Removal of ankle bone	7.33	7.03	0.88	15.24	090	S
28140		A	Removal of metatarsal	6.45	4.93	0.62	12.00	090	S
28150		A	Removal of toe	3.83	3.29	0.36	7.50	090	S
28153		A	Partial removal of toe	3.40	3.99	0.36	7.75	090	S
28160		A	Partial removal of toe	3.59	4.12	0.38	8.09	090	S
28171		A	Extensive foot surgery	8.98	7.99	0.88	17.85	090	S
28173		A	Extensive foot surgery	8.18	5.74	0.74	14.66	090	S
28175		A	Extensive foot surgery	5.59	5.38	0.58	11.55	090	S
28190		A	Removal of foot foreign body	1.91	0.52	0.05	2.48	010	S
28192		A	Removal of foot foreign body	4.49	1.95	0.28	6.68	090	S
28193		A	Removal of foot foreign body	5.44	2.36	0.30	8.12	090	S
28200		A	Repair of foot tendon	4.45	5.06	0.50	10.01	090	S
28202		A	Repair/graft of foot tendon	6.38	5.82	0.77	12.97	090	S
28206		A	Repair of foot tendon	4.11	2.81	0.28	7.20	090	S
28210		A	Repair/graft of foot tendon	5.95	5.60	0.60	12.15	090	S
28220		A	Release of foot tendon	4.27	3.87	0.43	8.57	090	S
28222		A	Release of foot tendons	5.36	6.40	0.63	12.39	090	S
28225		A	Release of foot tendon	3.42	2.37	0.25	6.04	090	S
28226		A	Release of foot tendons	4.27	3.38	0.40	8.05	090	S
28230		A	Incision of foot tendon(s)	4.00	2.43	0.22	6.65	090	S
28232		A	Incision of toe tendon	3.26	1.60	0.15	5.01	090	S
28234		A	Incision of foot tendon	3.19	1.53	0.14	4.86	090	S
28235		A	Revision of foot tendon	7.27	7.23	0.85	15.35	090	S
28240		A	Release of big toe	4.12	2.13	0.23	6.48	090	S
28250		A	Revision of foot fascia	5.66	4.46	0.50	10.62	090	S
28260		A	Release of midfoot joint	7.50	4.43	0.48	12.41	090	S
28261		A	Revision of foot tendon	10.95	5.91	0.58	17.44	090	S
28262		A	Revision of foot and ankle	15.00	11.91	1.44	28.35	090	S
28264		A	Release of midfoot joint	9.80	9.56	1.17	20.53	090	S
28270		A	Release of foot contracture	4.58	2.63	0.23	7.44	090	S
28272		A	Release of toe joint, each	3.67	2.04	0.18	5.89	090	S
28280		A	Fusion of toes	4.93	2.22	0.30	7.45	090	S
28285		A	Repair of hammer toe	4.41	4.37	0.39	9.17	090	S
28286		A	Repair of hammer toe	4.41	3.58	0.38	8.37	090	S
28288		A	Partial removal of foot bone	4.23	3.75	0.43	8.41	090	S
28290		A	Correction of bunion	5.37	5.36	0.63	11.36	090	S
28292		A	Correction of bunion	6.24	7.05	0.74	14.03	090	S
28293		A	Correction of bunion	8.25	9.55	0.98	18.78	090	S
28294		A	Correction of bunion	8.14	9.16	0.86	18.16	090	S
28296		A	Correction of bunion	8.69	8.81	0.98	18.48	090	S
28297		A	Correction of bunion	8.69	9.02	1.05	18.76	090	S
28298		A	Correction of bunion	7.52	8.89	0.79	17.20	090	S
28299		A	Correction of bunion	8.46	10.14	1.08	19.68	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
28300		A	Incision of heel bone	9.12	5.52	0.79	16.43	090	S
28302		A	Incision of ankle bone	9.13	8.89	1.12	19.14	090	S
28304		A	Incision of midfoot bones	8.67	6.44	0.70	15.81	090	S
28305		A	Incise/graft midfoot bones	9.99	9.85	1.03	20.87	090	S
28306		A	Incision of metatarsal	5.71	4.57	0.47	10.75	090	S
28307		A	Incision of metatarsal	6.04	5.87	0.76	12.67	090	S
28308		A	Incision of metatarsal	5.09	5.71	0.50	11.30	090	S
28309		A	Incision of metatarsals	12.00	6.87	1.00	19.87	090	S
28310		A	Revision of big toe	5.06	4.17	0.42	9.65	090	S
28312		A	Revision of toe	4.29	4.56	0.45	9.30	090	S
28313		A	Repair deformity of toe	4.75	2.57	0.31	7.63	090	S
28315		A	Removal of sesamoid bone	4.60	4.24	0.41	9.25	090	S
28320		A	Repair of foot bones	8.76	8.89	1.03	18.48	090	S
28322		A	Repair of metatarsals	8.03	4.67	0.52	13.22	090	S
28340		A	Resect enlarged toe tissue	6.58	6.34	0.91	13.83	090	S
28341		A	Resect enlarged toe	7.86	7.66	0.96	16.48	090	S
28344		A	Repair extra toe(s)	3.89	3.70	0.60	8.19	090	S
28345		A	Repair webbed toe(s)	5.52	5.34	0.73	11.59	090	S
28360		A	Reconstruct cleft foot	12.49	11.91	1.95	26.35	090	S
28400		A	Treatment of heel fracture	2.01	2.57	0.40	4.98	090	S
28405		A	Treatment of heel fracture	4.28	3.90	0.58	8.76	090	S
28406		A	Treatment of heel fracture	5.82	6.09	0.93	12.84	090	S
28415		A	Repair of heel fracture	15.00	9.02	1.39	25.41	090	S
28420		A	Repair/graft heel fracture	15.80	10.89	1.63	28.32	090	S
28430		A	Treatment of ankle fracture	1.96	2.45	0.35	4.76	090	S
28435		A	Treatment of ankle fracture	3.25	3.36	0.50	7.11	090	S
28436		A	Treatment of ankle fracture	4.40	4.19	0.68	9.27	090	S
28445		A	Repair of ankle fracture	6.78	8.80	1.40	16.98	090	S
28450		A	Treat midfoot fracture, each	1.77	1.87	0.25	3.89	090	S
28455		A	Treat midfoot fracture, each	2.94	2.54	0.34	5.82	090	S
28456		A	Repair midfoot fracture	2.39	2.27	0.38	5.04	090	S
28465		A	Repair midfoot fracture, each	5.55	5.54	0.81	12.90	090	S
28470		A	Treat metatarsal fracture	1.76	1.80	0.23	3.79	090	S
28475		A	Treat metatarsal fracture	2.74	2.34	0.30	5.38	090	S
28476		A	Repair metatarsal fracture	3.15	3.37	0.45	6.97	090	S
28485		A	Repair metatarsal fracture	5.31	4.68	0.60	10.59	090	S
28490		A	Treat big toe fracture	1.01	0.90	0.10	2.01	090	S
28495		A	Treat big toe fracture	1.48	1.12	0.13	2.73	090	S
28496		A	Repair big toe fracture	2.18	2.07	0.31	4.56	090	S
28506		A	Repair big toe fracture	3.55	2.99	0.43	6.97	090	S
28510		A	Treatment of toe fracture	1.01	0.89	0.09	1.99	090	S
28515		A	Treatment of toe fracture	1.36	1.12	0.11	2.59	090	S
28525		A	Repair of toe fracture	3.08	2.06	0.29	5.43	090	S
28530		A	Treat sesamoid bone fracture	1.01	1.00	0.10	2.11	090	S
28531		A	Treat sesamoid bone fracture	2.01	1.91	0.32	4.24	090	S
28540		A	Treat foot dislocation	1.89	0.60	0.06	2.55	090	S
28545		A	Treat foot dislocation	2.19	1.31	0.14	3.64	090	S
28546		A	Treat foot dislocation	2.89	2.74	0.45	6.08	090	S
28555		A	Repair foot dislocation	5.84	5.58	0.73	12.15	090	S
28570		A	Treat foot dislocation	1.56	1.59	0.17	3.32	090	S
28575		A	Treat foot dislocation	2.91	2.77	0.42	6.10	090	S
28576		A	Treat foot dislocation	3.75	2.77	0.42	6.94	090	S
28585		A	Repair foot dislocation	7.46	4.96	0.55	12.97	090	S
28600		A	Treat foot dislocation	1.76	0.68	0.08	2.52	090	S
28605		A	Treat foot dislocation	2.42	2.26	0.34	5.02	090	S
28606		A	Treat foot dislocation	4.45	3.49	0.55	8.52	090	S
28615		A	Repair foot dislocation	6.99	4.96	0.78	12.73	090	S
28630		A	Treat toe dislocation	1.65	1.03	0.11	2.79	010	S
28635		A	Treat toe dislocation	1.86	1.45	0.18	3.49	010	S
28636		A	Treat toe dislocation	2.67	2.56	0.42	5.65	010	S
28645		A	Repair toe dislocation	3.96	3.24	0.38	7.58	090	S
28660		A	Treat toe dislocation	1.18	0.63	0.06	1.87	010	S
28665		A	Treat toe dislocation	1.87	0.98	0.11	2.96	010	S
28666		A	Treat toe dislocation	2.56	2.44	0.40	5.40	010	S
28675		A	Repair of toe dislocation	2.68	3.00	0.41	6.09	090	S
28705		A	Fusion of foot bones	14.23	15.11	2.35	31.69	090	S
28715		A	Fusion of foot bones	12.18	12.33	1.89	26.40	090	S

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³ Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
28725		A	Fusion of foot bones	10.86	9.44	1.44	21.74	090	S
28730		A	Fusion of foot bones	9.91	9.00	1.33	20.24	090	S
28735		A	Fusion of foot bones	10.07	9.76	1.37	21.20	090	S
28737		A	Revision of foot bones	8.89	8.87	1.13	18.89	090	S
28740		A	Fusion of foot bones	7.40	5.14	0.72	13.26	090	S
28750		A	Fusion of big toe joint	6.90	5.32	0.82	13.04	090	S
28755		A	Fusion of big toe joint	4.48	3.69	0.45	8.62	090	S
28760		A	Fusion of big toe joint	7.00	5.40	0.65	13.05	090	S
28800		A	Amputation of midfoot	7.37	5.65	1.19	15.21	090	S
28805		A	Amputation thru metatarsal	7.55	6.32	1.21	15.08	090	S
28810		A	Amputation toe & metatarsal	5.53	3.91	0.75	10.19	090	S
28820		A	Amputation of toe	3.58	2.58	0.46	6.60	090	S
28825		A	Partial amputation of toe	3.13	2.40	0.41	5.94	090	S
28899		C	Foot/toes surgery procedure	0.00	0.00	0.00	0.00	YYY	S
29000		A	Application of body cast	2.25	1.85	0.21	4.31	000	S
29010		A	Application of body cast	2.06	2.33	0.34	4.73	000	S
29015		A	Application of body cast	2.41	2.33	0.33	5.07	000	S
29020		A	Application of body cast	2.11	1.82	0.23	4.16	000	S
29025		A	Application of body cast	2.40	0.75	0.14	3.29	000	S
29035		A	Application of body cast	1.77	1.95	0.32	4.04	000	S
29040		A	Application of body cast	2.22	2.02	0.30	4.54	000	S
29044		A	Application of body cast	2.12	2.09	0.34	4.55	000	S
29046		A	Application of body cast	2.41	2.23	0.36	5.00	000	S
29049		A	Application of figure eight	0.89	0.42	0.08	1.37	000	S
29055		A	Application of shoulder cast	1.78	1.20	0.17	3.15	000	S
29058		A	Application of shoulder cast	1.31	0.65	0.09	2.05	000	S
29065		A	Application of long arm cast	0.87	0.50	0.13	1.50	000	S
29075		A	Application of forearm cast	0.77	0.61	0.10	1.48	000	S
29085		A	Apply hand/wrist cast	0.87	0.50	0.08	1.45	000	S
29105		A	Apply long arm splint	0.87	0.50	0.08	1.45	000	S
29125		A	Apply forearm splint	0.59	0.37	0.05	1.01	000	S
29126		A	Apply forearm splint	0.77	0.40	0.06	1.23	000	S
29130		A	Application of finger splint	0.50	0.17	0.02	0.69	000	S
29131		A	Application of finger splint	0.55	0.39	0.06	1.00	000	S
29200		A	Strapping of chest	0.65	0.27	0.03	0.95	000	N
29220		A	Strapping of low back	0.64	0.38	0.05	1.07	000	S
29240		A	Strapping of shoulder	0.71	0.27	0.03	1.01	000	S
29260		A	Strapping of elbow or wrist	0.55	0.23	0.03	0.81	000	S
29280		A	Strapping of hand or finger	0.51	0.21	0.02	0.74	000	S
29305		A	Application of hip cast	2.03	1.88	0.31	4.22	000	S
29325		A	Application of hip cast	2.32	1.94	0.28	4.54	000	S
29345		A	Application of long leg cast	1.40	1.02	0.16	2.58	000	S
29355		A	Application of long leg cast	1.53	1.10	0.17	2.80	000	S
29358		A	Apply long leg cast brace	1.43	1.84	0.33	3.60	000	S
29365		A	Application of long leg cast	1.18	0.86	0.14	2.18	000	S
29405		A	Apply short leg cast	0.66	0.79	0.12	1.57	000	S
29425		A	Apply short leg cast	1.01	0.97	0.14	2.12	000	S
29435		A	Apply short leg cast	1.18	1.18	0.18	2.54	000	S
29440		A	Addition of walker to cast	0.57	0.23	0.03	0.83	000	S
29445		A	Apply rigid leg cast	1.78	1.70	0.26	3.76	000	S
29450		A	Application of leg cast	1.02	0.39	0.04	1.45	000	S
29505		A	Application long leg splint	0.69	0.57	0.07	1.33	000	S
29515		A	Application lower leg splint	0.73	0.47	0.06	1.26	000	S
29520		A	Strapping of hip	0.54	0.36	0.03	0.93	000	S
29530		A	Strapping of knees	0.57	0.35	0.05	0.97	000	S
29540		A	Strapping of ankle	0.51	0.30	0.03	0.84	000	S
29550		A	Strapping of toes	0.47	0.28	0.03	0.78	000	S
29580		A	Application of paste boot	0.57	0.79	0.04	1.40	000	S
29590		A	Application of foot splint	0.76	0.28	0.03	1.07	000	S
29700		A	Removal/revision of cast	0.57	0.32	0.05	0.94	000	S
29705		A	Removal/revision of cast	0.76	0.35	0.05	1.16	000	S
29710		A	Removal/revision of cast	1.34	0.45	0.07	1.86	000	S
29715		A	Removal/revision of cast	0.94	0.86	0.12	1.92	000	S
29720		A	Repair of body cast	0.88	0.23	0.04	0.95	000	S
29730		A	Windowing of cast	0.75	0.26	0.04	1.05	000	S
29740		A	Wedging of cast	1.12	0.38	0.06	1.56	000	S
29750		A	Wedging of clubfoot cast	1.26	0.50	0.07	1.83	000	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
29799		C	Casting/strapping procedure	0.00	0.00	0.00	0.00	YYY	S
29800		A	Jaw arthroscopy/surgery	5.28	4.01	0.46	9.75	090	S
29804		A	Jaw arthroscopy/surgery	7.99	10.23	1.48	19.68	090	S
29815		A	Shoulder arthroscopy	5.74	4.84	0.76	11.34	090	S
29819		A	Shoulder arthroscopy/surgery	7.33	9.38	1.73	18.44	090	S
29820		A	Shoulder arthroscopy/surgery	6.81	8.72	1.73	17.26	090	S
29821		A	Shoulder arthroscopy/surgery	7.43	9.50	2.13	19.06	090	S
29822		A	Shoulder arthroscopy/surgery	7.14	9.14	1.74	18.02	090	S
29823		A	Shoulder arthroscopy/surgery	7.85	10.07	2.32	20.25	090	S
29825		A	Shoulder arthroscopy/surgery	7.33	9.38	2.05	18.76	090	S
29826		A	Shoulder arthroscopy/surgery	8.70	11.14	2.31	22.15	090	S
29830		A	Elbow arthroscopy	5.83	5.32	0.83	11.78	090	S
29834		A	Elbow arthroscopy/surgery	6.13	5.84	0.96	12.93	090	S
29835		A	Elbow arthroscopy/surgery	6.33	5.83	0.99	13.35	090	S
29836		A	Elbow arthroscopy/surgery	7.37	7.03	1.15	15.55	090	S
29837		A	Elbow arthroscopy/surgery	6.72	6.40	1.06	14.18	090	S
29838		A	Elbow arthroscopy/surgery	7.42	7.05	1.14	15.61	090	S
29840		A	Wrist arthroscopy	5.39	3.29	0.54	9.22	090	S
29843		A	Wrist arthroscopy/surgery	5.86	5.80	0.91	12.37	090	S
29844		A	Wrist arthroscopy/surgery	6.22	5.59	0.95	12.76	090	S
29845		A	Wrist arthroscopy/surgery	7.34	7.00	1.15	15.49	090	S
29846		A	Wrist arthroscopy/surgery	6.60	6.45	2.20	17.25	090	S
29847		A	Wrist arthroscopy/surgery	6.93	6.78	0.97	14.68	090	S
29848		A	Wrist arthroscopy/surgery	5.14	3.85	0.62	9.61	090	S
29850		A	Knee arthroscopy/surgery	7.96	10.19	1.74	19.89	090	S
29851		A	Knee arthroscopy/surgery	12.38	10.95	1.74	25.07	090	S
29855		A	Tibial arthroscopy/surgery	9.48	11.69	1.88	23.05	090	S
29856		A	Tibial arthroscopy/surgery	13.28	11.69	1.68	26.65	090	S
29870		A	Knee arthroscopy, diagnostic	4.94	4.02	0.64	9.60	090	S
29871		A	Knee arthroscopy/drainage	6.29	6.77	0.96	14.02	090	S
29874		A	Knee arthroscopy/surgery	6.79	8.69	1.52	17.00	090	S
29875		A	Knee arthroscopy/surgery	6.16	7.88	1.61	15.65	090	S
29876		A	Knee arthroscopy/surgery	7.51	9.61	1.95	19.07	090	S
29877		A	Knee arthroscopy/surgery	7.05	9.03	1.81	17.89	090	S
29879		A	Knee arthroscopy/surgery	7.63	9.76	2.19	19.58	090	S
29880		A	Knee arthroscopy/surgery	8.09	10.35	2.22	20.66	090	S
29881		A	Knee arthroscopy/surgery	7.46	9.54	1.82	18.82	090	S
29882		A	Knee arthroscopy/surgery	8.24	10.54	1.90	20.68	090	S
29883		A	Knee arthroscopy/surgery	9.00	11.52	2.80	23.32	090	S
29884		A	Knee arthroscopy/surgery	6.82	8.86	1.56	17.34	090	S
29885		A	Knee arthroscopy/surgery	8.53	8.23	1.35	18.21	090	S
29886		A	Knee arthroscopy/surgery	7.13	6.80	1.12	15.05	090	S
29887		A	Knee arthroscopy/surgery	8.58	10.52	1.71	20.81	090	S
29888		A	Knee arthroscopy/surgery	13.25	17.00	3.16	33.46	090	S
29889		A	Knee arthroscopy/surgery	14.41	10.26	1.68	26.35	090	S
29894		A	Ankle arthroscopy/surgery	6.95	8.90	1.47	17.32	090	S
29895		A	Ankle arthroscopy/surgery	6.73	8.60	1.51	16.84	090	S
29897		A	Ankle arthroscopy/surgery	6.92	8.86	1.77	17.55	090	S
29898		A	Ankle arthroscopy/surgery	8.03	10.28	1.91	20.22	090	S
29909		C	Arthroscopy of joint	0.00	0.00	0.00	0.00	YYY	S
30000		A	Drainage of nose lesion	1.38	0.68	0.05	2.01	010	S
30020		A	Drainage of nose lesion	1.38	0.60	0.06	2.04	010	S
30100		A	Intranasal biopsy	0.94	0.69	0.06	1.71	000	S
30110		A	Removal of nose polyp(s)	1.58	1.29	0.14	3.01	010	S
30115		A	Removal of nose polyp(s)	4.25	2.81	0.50	7.56	090	S
30117		A	Removal of intranasal lesion	3.06	2.84	0.31	6.21	090	S
30118		A	Removal of intranasal lesion	9.23	8.01	0.92	18.16	090	S
30120		A	Revision of nose	5.14	6.59	1.00	12.73	090	S
30124		A	Removal of nose lesion	3.00	1.34	0.16	4.50	090	S
30125		A	Removal of nose lesion	6.79	5.55	0.73	13.07	090	S
30130		A	Removal of turbinate bones	3.17	1.67	0.17	5.01	090	S
30140		A	Removal of turbinate bones	3.28	3.04	0.34	6.66	090	S
30150		A	Partial removal of nose	8.48	7.92	1.07	17.47	090	S
30160		A	Removal of nose	8.92	11.42	1.73	22.07	090	S
30200		A	Infection treatment of nose	0.78	0.37	0.04	1.19	000	S
30210		A	Nasal sinus therapy	1.03	0.26	0.03	1.32	010	S
30220		A	Insert nasal septal button	1.49	1.51	0.16	3.16	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
30300		A	Remove nasal foreign body	0.99	0.46	0.05	1.50	010	S
30310		A	Remove nasal foreign body	1.91	1.62	0.18	3.71	010	S
30320		A	Remove nasal foreign body	4.39	4.29	0.43	9.11	090	S
30400		R	Reconstruction of nose	9.24	9.97	1.36	20.57	090	S
30410		R	Reconstruction of nose	12.89	14.54	2.01	29.44	090	S
30420		R	Reconstruction of nose	15.40	17.78	2.22	35.40	090	S
30430		R	Revision of nose	6.73	6.09	0.66	13.48	090	S
30435		R	Revision of nose	11.23	10.17	1.10	22.50	090	S
30450		R	Revision of nose	18.06	11.24	0.91	30.21	090	S
30460		A	Revision of nose	9.48	8.58	0.93	18.99	090	S
30462		A	Revision of nose	18.98	17.16	1.87	38.01	090	S
30520		A	Repair of nasal septum	5.55	7.10	0.96	13.61	090	S
30540		A	Repair nasal defect	7.46	6.63	0.70	14.79	090	S
30545		A	Repair nasal defect	10.86	10.83	0.93	22.65	090	S
30560		A	Release of nasal adhesions	1.21	0.55	0.08	1.82	010	S
30580		A	Repair upper jaw fistula	6.49	6.24	0.57	13.30	090	S
30600		A	Repair mouth/nose fistula	5.87	3.77	0.36	10.00	090	S
30620		A	Intranasal reconstruction	5.55	7.10	1.10	13.75	090	S
30630		A	Repair nasal septum defect	6.83	6.24	0.71	13.78	090	S
30801		A	Cauterization inner nose	1.02	0.47	0.05	1.54	010	S
30802		A	Cauterization inner nose	1.98	0.94	0.11	3.03	010	S
30901		A	Control of nosebleed	1.21	0.56	0.08	1.83	000	S
30903		A	Control of nosebleed	1.54	0.85	0.08	2.47	000	S
30905		A	Control of nosebleed	1.97	1.79	0.17	3.93	000	S
30906		A	Repeat control of nosebleed	2.45	1.08	0.11	3.64	000	S
30915		A	Ligation nasal sinus artery	6.72	4.95	0.52	12.19	090	S
30920		A	Ligation upper jaw artery	8.79	9.54	1.32	19.65	090	S
30930		A	Therapy fracture of nose	1.21	0.71	0.08	2.00	010	S
30999		C	Nasal surgery procedure	0.00	0.00	0.00	0.00	YYY	N
31000		A	Irrigation maxillary sinus	1.10	0.43	0.05	1.58	010	S
31002		A	Irrigation sphenoid sinus	1.86	0.46	0.05	2.37	010	S
31020		A	Exploration maxillary sinus	2.81	2.66	0.29	5.76	090	S
31030		A	Exploration maxillary sinus	5.60	7.16	0.86	13.62	090	S
31032		A	Explore sinus, remove polyp	8.22	7.96	0.98	15.17	090	S
31040		A	Exploration behind upper jaw	8.83	7.96	0.86	17.67	090	S
31050		A	Exploration sphenoid sinus	5.07	5.96	0.54	11.67	090	S
31051		A	Sphenoid sinus surgery	6.85	8.12	0.85	15.82	090	S
31070		A	Exploration of frontal sinus	4.04	4.69	0.50	9.23	090	S
31075		A	Exploration of frontal sinus	8.57	10.51	1.10	20.18	090	S
31080		A	Removal of frontal sinus	10.73	9.21	1.12	21.06	090	S
31081		A	Removal of frontal sinus	11.93	10.32	1.30	23.55	090	S
31084		A	Removal of frontal sinus	12.69	14.79	1.62	29.10	090	S
31085		A	Removal of frontal sinus	13.38	15.85	1.76	30.79	090	S
31086		A	Removal of frontal sinus	11.98	10.87	1.15	24.00	090	S
31087		A	Removal of frontal sinus	12.14	10.39	1.33	23.86	090	S
31090		A	Exploration of sinuses	8.65	11.32	2.12	22.09	090	S
31200		A	Removal of ethmoid sinus	4.88	4.62	0.48	9.78	090	S
31201		A	Removal of ethmoid sinus	7.91	7.01	0.75	15.67	090	S
31205		A	Removal of ethmoid sinus	9.65	8.03	0.81	18.49	090	S
31225		A	Removal of upper jaw	17.50	19.44	2.37	39.31	090	S
31230		A	Removal of upper jaw	20.00	21.74	2.48	44.22	090	S
31231		A	Nasal endoscopy, dx	1.10	1.37	0.16	2.62	000	S
31233		A	Nasal/sinus endoscopy, dx	2.18	2.79	0.31	5.28	000	S
31235		A	Nasal/sinus endoscopy, dx	2.64	2.39	0.26	5.29	000	S
31237		A	Nasal/sinus endoscopy, surg	2.98	3.37	0.37	6.72	090	S
31238		A	Nasal/sinus endoscopy, surg	3.26	4.17	0.45	7.88	000	S
31239		A	Nasal/sinus endoscopy, surg	8.50	10.88	1.18	20.56	010	S
31240		A	Nasal/sinus endoscopy, surg	2.61	3.34	0.37	6.32	000	S
31254		A	Revision of ethmoid sinus	4.65	5.95	0.69	11.29	000	S
31255		A	Removal of ethmoid sinus	6.96	8.91	1.14	17.01	000	S
31256		A	Exploration maxillary sinus	3.29	3.77	0.41	7.47	000	S
31267		A	Endoscopy, maxillary sinus	5.45	5.23	0.81	11.50	000	S
31276		A	Sinus surgical endoscopy	8.85	6.72	0.73	16.30	000	S
31287		A	Nasal/sinus endoscopy, surg	3.92	5.01	0.65	9.58	000	S
31288		A	Nasal/sinus endoscopy, surg	4.58	5.86	0.78	11.22	000	S
31290		A	Nasal/sinus endoscopy, surg	16.05	16.47	1.80	34.32	010	S
31291		A	Nasal/sinus endoscopy, surg	17.00	17.31	1.88	36.19	010	S

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³ Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
31292		A	Nasal/sinus endoscopy, surg	13.83	13.38	1.45	28.66	010	S
31293		A	Nasal/sinus endoscopy, surg	15.15	14.64	1.59	31.38	010	S
31294		A	Nasal/sinus endoscopy, surg	16.00	16.72	1.83	34.55	010	S
31299		C	Sinus surgery procedure	0.00	0.00	0.00	0.00	YYY	S
31300		A	Removal of larynx lesion	13.28	11.58	1.28	26.14	090	S
31320		A	Diagnostic incision larynx	4.54	3.87	0.48	8.89	090	S
31360		A	Removal of larynx	15.19	19.36	2.19	36.74	090	S
31365		A	Removal of larynx	21.83	27.14	3.10	52.07	090	S
31367		A	Partial removal of larynx	18.98	17.22	1.88	38.08	090	S
31368		A	Partial removal of larynx	23.72	26.76	3.06	53.54	090	S
31370		A	Partial removal of larynx	16.50	17.18	1.88	35.56	090	S
31375		A	Partial removal of larynx	18.50	14.84	1.56	34.90	090	S
31380		A	Partial removal of larynx	18.50	17.27	1.88	37.65	090	S
31382		A	Partial removal of larynx	18.50	16.06	1.78	36.34	090	S
31390		A	Removal of larynx & pharynx	25.00	27.08	4.05	56.13	090	S
31395		A	Reconstruct larynx & pharynx	28.00	33.52	4.42	65.94	090	S
31400		A	Revision of larynx	9.06	7.81	0.91	17.78	090	S
31420		A	Removal of epiglottis	9.00	8.08	0.84	17.98	090	S
31500		A	Insert emergency airway	2.33	1.14	0.14	3.61	000	N
31502		A	Change of windpipe airway	0.65	0.58	0.07	1.30	000	S
31510		A	Diagnostic laryngoscopy	0.61	0.43	0.05	1.09	000	S
31511		A	Laryngoscopy with biopsy	1.92	0.55	0.07	2.54	000	S
31512		A	Remove foreign body, larynx	2.16	0.96	0.10	3.22	000	S
31513		A	Removal of larynx lesion	2.07	1.79	0.20	4.06	000	S
31515		A	Injection into vocal cord	2.10	2.68	0.38	5.16	000	S
31515		A	Laryngoscopy for aspiration	1.80	1.13	0.14	3.07	000	S
31520		A	Diagnostic laryngoscopy	2.56	1.64	0.18	4.38	000	S
31525		A	Diagnostic laryngoscopy	2.63	2.20	0.23	5.06	000	S
31526		A	Diagnostic laryngoscopy	2.57	3.29	0.38	6.24	000	S
31527		A	Laryngoscopy for treatment	3.27	2.99	0.30	6.56	000	S
31528		A	Laryngoscopy and dilatation	2.37	2.66	0.30	5.33	000	S
31529		A	Laryngoscopy and dilatation	2.68	2.46	0.25	5.39	000	S
31530		A	Operative laryngoscopy	3.39	3.63	0.39	7.41	000	S
31531		A	Operative laryngoscopy	3.59	4.78	0.60	8.97	000	S
31535		A	Operative laryngoscopy	3.16	4.01	0.45	7.62	000	S
31536		A	Operative laryngoscopy	3.56	4.06	0.59	8.21	000	S
31540		A	Operative laryngoscopy	4.13	5.29	0.61	10.03	000	S
31541		A	Operative laryngoscopy	4.53	4.56	0.75	9.84	000	S
31560		A	Operative laryngoscopy	5.46	4.99	0.51	10.96	000	S
31561		A	Operative laryngoscopy	6.00	6.27	1.06	13.35	000	S
31570		A	Laryngoscopy with injection	3.87	4.95	0.60	9.42	000	S
31571		A	Laryngoscopy with injection	4.27	4.51	0.69	9.47	000	S
31575		A	Diagnostic laryngoscopy	1.10	1.56	0.17	2.83	000	S
31576		A	Laryngoscopy with biopsy	1.97	2.52	0.33	4.82	000	S
31577		A	Remove foreign body, larynx	2.47	3.16	0.37	6.00	000	S
31578		A	Removal of larynx lesion	2.84	3.63	0.48	6.95	000	S
31579		A	Diagnostic laryngoscopy	2.26	2.33	0.26	4.85	000	S
31580		A	Revision of larynx	11.01	14.06	1.83	26.73	090	S
31582		A	Revision of larynx	19.73	17.87	1.94	39.54	090	S
31584		A	Repair of larynx fracture	18.50	12.72	1.34	32.56	090	S
31585		A	Repair of larynx fracture	4.40	3.77	0.40	8.57	090	S
31587		A	Repair of larynx fracture	7.24	6.55	0.71	14.50	090	S
31588		A	Revision of larynx	10.00	7.21	0.79	18.00	090	S
31590		A	Revision of larynx	11.82	10.70	1.16	23.68	090	S
31595		A	Reinnervate larynx	6.36	5.76	0.62	12.74	090	S
31599		C	Larynx nerve surgery	7.58	5.84	0.74	15.16	090	S
31600		A	Larynx surgery procedure	0.00	0.00	0.00	0.00	YYY	S
31601		A	Incision of windpipe	3.62	4.04	0.65	8.31	000	S
31603		A	Incision of windpipe	4.45	5.03	0.66	10.14	000	S
31605		A	Incision of windpipe	4.15	4.23	0.66	9.04	000	S
31610		A	Incision of windpipe	3.58	4.19	0.50	8.27	000	S
31611		A	Incision of windpipe	7.87	6.67	0.82	15.46	090	S
31612		A	Surgery/speech prosthesis	5.03	6.45	1.04	12.52	090	S
31613		A	Puncture/clear windpipe	0.91	1.17	0.12	2.20	000	S
31614		A	Repair windpipe opening	4.24	2.21	0.28	6.73	090	S
31615		A	Repair windpipe opening	6.11	6.74	0.73	13.58	090	S
31615		A	Visualization of windpipe	2.09	1.95	0.22	4.26	000	S

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³ Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
31622		A	Diagnostic bronchoscopy	2.80	3.57	0.34	6.71	000	N
31625		A	Bronchoscopy with biopsy	3.37	3.83	0.35	7.55	000	N
31628		A	Bronchoscopy with biopsy	3.81	4.88	0.38	9.07	000	N
31629		A	Bronchoscopy with biopsy	3.37	4.31	0.34	8.02	000	N
31630		A	Bronchoscopy with repair	3.82	3.72	0.50	8.04	000	S
31631		A	Bronchoscopy with dilation	4.37	3.94	0.48	8.79	000	N
31635		A	Remove foreign body, airway	3.68	4.53	0.53	8.74	000	S
31640		A	Bronchoscopy & remove lesion	4.94	5.02	0.67	10.63	000	S
31641		A	Bronchoscopy, treat blockage	5.03	6.45	0.85	12.33	000	N
31645		A	Bronchoscopy, clear airways	3.16	3.62	0.30	7.08	000	N
31646		A	Bronchoscopy, reclear airways	2.72	3.05	0.27	6.05	000	N
31656		A	Bronchoscopy, inject for xray	2.17	2.77	0.31	5.25	000	N
31700		A	Insertion of airway catheter	1.34	1.38	0.17	2.89	000	N
31708		A	Instill airway contrast dye	1.41	0.77	0.09	2.27	000	N
31710		A	Insertion of airway catheter	1.30	0.90	0.12	2.32	000	N
31715		A	Injection for bronchus x-ray	1.11	0.48	0.04	1.63	000	N
31717		A	Bronchial brush biopsy	2.12	0.73	0.05	2.91	000	N
31720		A	Clearance of airways	1.06	0.74	0.09	1.89	000	N
31725		A	Clearance of airways	1.96	1.41	0.15	3.52	000	N
31730		A	Intro windpipe wire/tube	2.85	2.47	0.23	5.55	000	N
31750		A	Repair of windpipe	11.73	8.88	1.09	21.70	090	S
31755		A	Repair of windpipe	14.69	13.30	1.44	29.43	090	S
31760		A	Reconstruction of windpipe	20.89	10.92	2.55	34.36	090	S
31766		A	Repair/graft of bronchus	28.82	18.40	1.12	48.34	090	S
31770		A	Reconstruct bronchus	21.15	15.07	2.08	38.30	090	S
31775		A	Reconstruct windpipe	22.15	16.37	1.92	40.44	090	S
31780		A	Reconstruct windpipe	16.14	17.33	2.08	35.55	090	S
31781		A	Remove windpipe lesion	22.22	16.86	1.96	41.04	090	S
31785		A	Remove windpipe lesion	16.14	8.92	1.17	26.23	090	S
31786		A	Repair of windpipe injury	22.54	13.30	2.24	38.08	090	S
31800		A	Repair of windpipe injury	6.77	4.90	0.76	12.43	090	S
31805		A	Closure of windpipe lesion	12.59	9.82	1.41	23.82	090	S
31820		A	Repair of windpipe defect	4.10	3.58	0.46	8.14	090	S
31825		A	Revise windpipe scar	6.31	5.00	0.58	11.89	090	S
31830		A	Airways surgical procedure	4.26	3.66	0.42	8.34	090	S
31899		C	Drainage of chest	0.00	0.00	0.00	0.00	YYY	S
32000		A	Treatment of collapsed lung	1.54	0.90	0.08	2.52	000	N
32002		A	Treat lung lining chemically	2.19	1.34	0.22	3.75	000	S
32005		A	Insertion of chest tube	2.19	1.09	0.15	3.43	000	S
32020		A	Exploration of chest	3.98	2.63	0.43	7.04	000	S
32035		A	Exploration of chest	6.55	6.78	1.25	14.56	090	S
32036		A	Biopsy through chest wall	7.56	7.13	1.32	16.01	090	S
32095		A	Exploration/biopsy of chest	7.13	6.25	1.45	16.83	090	S
32100		A	Explore/repair chest	10.07	11.24	2.10	23.41	090	S
32110		A	Re-exploration of chest	11.76	11.51	2.01	25.28	090	S
32120		A	Explore chest, free adhesions	9.62	9.45	1.72	20.79	090	S
32124		A	Removal of lung lesion(s)	10.93	10.94	2.21	24.08	090	S
32140		A	Remove/treat lung lesions	12.14	12.37	2.42	26.93	090	S
32141		A	Removal of lung lesion(s)	12.14	13.42	2.53	28.09	090	S
32150		A	Remove lung foreign body	12.42	10.34	2.01	24.77	090	S
32151		A	Open chest heart massage	12.42	9.15	1.37	22.94	090	S
32160		A	Drainage of lung lesion	7.13	9.13	1.52	17.78	090	S
32200		A	Treat chest lining	13.10	6.89	0.93	20.92	090	S
32215		A	Release of lung	10.07	7.82	1.28	18.97	090	S
32220		A	Partial release of lung	17.62	15.81	3.01	36.44	090	S
32225		A	Removal of chest lining	12.10	11.84	2.28	26.22	090	S
32310		A	Free/remove chest lining	12.05	11.64	2.10	25.79	090	S
32320		A	Needle biopsy chest lining	19.15	18.10	3.40	40.65	090	S
32400		A	Open biopsy chest lining	1.76	1.48	0.12	3.36	000	N
32402		A	Biopsy, lung or mediastinum	5.55	7.58	1.34	15.47	090	S
32405		A	Puncture/clear lung	1.93	2.12	0.18	4.23	000	N
32420		A	Removal of lung	2.18	1.50	0.13	3.81	000	N
32440		A	Sleeve pneumonectomy	19.15	8.56	3.55	41.26	090	S
32442		A	Remove lung	24.68	17.94	3.50	46.12	090	S
32445		A	Partial removal of lung	23.37	20.46	3.88	47.71	090	S
32480		A	Bilobectomy	16.84	17.15	3.23	37.22	090	S
32482		A	Bilobectomy	18.54	17.15	3.23	38.92	090	S

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
32484		A	Segmentectomy	19.52	17.15	3.23	39.90	090	S
32486		A	Sleeve lobectomy	22.75	15.54	3.23	42.52	090	S
32488		A	Completion pneumonectomy	24.41	17.74	3.46	45.61	090	S
32491		N	Lung volume reduction	+21.25	15.45	3.02	39.72	XXX	0
32500		A	Partial removal of lung	13.10	13.47	2.58	29.13	090	S
32501		A	Repair bronchus (add-on)	4.89	4.31	0.70	8.70	ZZZ	S
32520		A	Remove lung & revise chest	19.42	20.67	3.93	44.02	090	S
32522		A	Remove lung & revise chest	21.94	21.90	4.19	48.03	090	S
32525		A	Remove lung & revise chest	24.33	23.50	4.61	52.44	090	S
32540		A	Removal of lung lesion	13.31	11.67	2.05	27.03	090	S
32601		A	Thoracoscopy, diagnostic	5.46	3.47	0.57	9.50	000	S
32602		A	Thoracoscopy, diagnostic	5.96	3.67	0.64	10.47	000	S
32603		A	Thoracoscopy, diagnostic	7.81	3.47	0.57	11.85	000	S
32604		A	Thoracoscopy, diagnostic	8.78	3.87	0.64	13.29	000	S
32605		A	Thoracoscopy, diagnostic	6.93	3.47	0.57	10.97	000	S
32606		A	Thoracoscopy, diagnostic	8.40	3.87	0.64	12.91	000	S
32650		A	Thoracoscopy, surgical	10.07	7.82	1.28	18.97	090	S
32651		A	Thoracoscopy, surgical	12.10	11.84	2.28	26.22	090	S
32652		A	Thoracoscopy, surgical	17.62	15.81	3.01	36.44	090	S
32653		A	Thoracoscopy, surgical	12.42	10.34	2.01	24.77	090	S
32654		A	Thoracoscopy, surgical	11.76	11.51	2.01	25.28	090	S
32655		A	Thoracoscopy, surgical	12.42	13.42	2.53	28.37	090	S
32656		A	Thoracoscopy, surgical	12.10	13.36	2.36	27.82	090	S
32657		A	Thoracoscopy, surgical	13.10	13.47	2.56	29.13	090	S
32658		A	Thoracoscopy, surgical	11.08	13.26	2.52	26.86	090	S
32659		A	Thoracoscopy, surgical	10.91	13.96	2.61	27.48	090	S
32660		A	Thoracoscopy, surgical	16.62	19.93	3.56	40.11	090	S
32661		A	Thoracoscopy, surgical	12.70	9.25	1.47	23.42	090	S
32662		A	Thoracoscopy, surgical	15.76	14.55	2.74	33.05	090	S
32663		A	Thoracoscopy, surgical	17.43	17.15	3.23	37.81	090	S
32664		A	Thoracoscopy, surgical	13.65	10.55	2.04	26.24	090	S
32665		A	Thoracoscopy, surgical	14.73	14.33	2.84	31.70	090	S
32690		A	Repair lung hernia	12.10	8.28	1.58	21.96	090	S
32610		A	Close chest after drainage	11.59	6.50	1.19	19.28	090	S
32615		A	Close bronchial fistula	21.36	15.22	2.62	39.20	090	S
32620		A	Reconstruct injured chest	19.78	19.01	3.24	42.03	090	S
32650		X	Donor pneumonectomy	0.00	0.00	0.00	0.00	XXX	0
32651		A	Lung transplant, single	35.14	25.55	4.99	65.68	090	S
32652		A	Lung transplant, double	38.11	27.71	5.41	71.23	090	S
32653		A	Lung transplant, double	43.93	31.94	6.24	82.11	090	S
32654		A	Removal of rib(s)	46.90	34.10	6.67	87.67	090	S
32900		A	Revises & repair chest wall	18.14	8.47	1.63	28.24	090	S
32905		A	Revises & repair chest wall	19.15	12.74	2.60	34.49	090	S
32906		A	Revision of lung	25.17	15.42	2.92	43.51	090	S
32960		A	Therapeutic pneumothorax	15.14	11.37	1.75	31.26	090	S
32999		C	Chest surgery procedure	1.84	0.93	0.13	2.90	000	N
33010		A	Drainage of heart sac	0.00	0.00	0.00	0.00	YYY	N
33011		A	Repeat drainage of heart sac	2.24	1.54	0.14	3.92	000	N
33015		A	Incision of heart sac	2.24	1.11	0.12	3.47	000	N
33020		A	Incision of heart sac	5.64	4.26	0.82	10.72	090	S
33025		A	Incision of heart sac	11.08	13.28	2.52	26.88	090	S
33030		A	Partial removal of heart sac	10.91	13.98	2.61	27.48	090	S
33031		A	Partial removal of heart sac	16.62	21.02	3.92	41.56	090	S
33050		A	Removal of heart sac lesion	19.64	13.25	2.50	35.39	090	S
33120		A	Removal of heart lesion	12.70	9.25	1.47	23.42	090	S
33130		A	Removal of heart lesion	22.57	28.69	5.17	56.43	090	S
33200		A	Insertion of heart pacemaker	19.53	13.50	2.22	35.25	090	S
33201		A	Insertion of heart pacemaker	11.08	12.27	1.90	25.25	090	S
33206		A	Insertion of heart pacemaker	8.93	11.19	1.67	21.79	090	S
33207		A	Insertion of heart pacemaker	6.04	7.73	1.34	15.11	090	S
33208		A	Insertion of heart pacemaker	7.26	9.01	1.33	17.62	090	S
33210		A	Insertion of heart electrode	7.28	9.50	1.54	18.32	090	N
33211		A	Insertion of heart electrode	3.30	3.30	0.27	6.87	000	N
33212		A	Insertion of pulse generator	3.40	3.30	0.27	6.97	000	N
33213		A	Insertion of pulse generator	5.21	5.36	0.88	11.47	090	S
33214		A	Upgrade of pacemaker system	6.15	5.38	0.88	12.41	090	N
				7.43	5.40	1.06	13.89	090	N

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
33216		A	Revision implanted electrode	5.07	5.02	0.56	10.64	090	N
33217		A	Insert/revise electrode	5.43	5.02	0.56	11.00	090	N
33218		A	Repair pacemaker electrodes	5.02	4.59	0.62	10.23	090	S
33220		A	Repair pacemaker electrode	5.10	4.59	0.62	10.31	090	N
33222		A	Pacemaker acid pocket	4.59	5.70	1.01	11.30	090	S
33223		A	Pacemaker acid pocket	6.14	5.70	1.01	12.85	090	S
33233		A	Removal of pacemaker system	2.97	2.64	0.06	5.68	090	N
33234		A	Removal of pacemaker system	7.50	2.84	0.23	10.57	090	S
33235		A	Removal of pacemaker electrode	8.74	3.14	0.38	12.21	090	N
33236		A	Remove electrode/thoracotomy	11.71	3.98	0.62	16.31	090	S
33237		A	Remove electrode/thoracotomy	12.69	9.00	1.13	23.42	090	S
33238		A	Remove electrode/thoracotomy	14.15	10.29	2.01	26.45	090	S
33239		A	Insert/replace pulse generator	7.20	5.38	0.88	13.46	090	S
33240		A	Remove pulse generator only	2.97	2.16	0.43	5.56	090	S
33241		A	Repair pulse generator/leads	5.85	7.50	1.54	14.89	090	S
33242		A	Remove generator/thoracotomy	21.47	9.02	1.54	32.03	090	S
33243		A	Remove generator	8.34	9.02	1.54	18.90	090	S
33244		A	Implant heart defibrillator	12.57	16.09	2.36	31.02	090	S
33245		A	Implant heart defibrillator	19.28	20.79	3.19	43.26	090	S
33246		A	Insert/replace leads	9.78	12.49	2.36	24.61	090	N
33247		A	Insert/replace leads/gener	12.83	16.42	3.19	32.44	090	S
33249		A	Ablate heart dysrhythm focus	19.54	11.56	0.86	31.96	090	S
33250		A	Ablate heart dysrhythm focus	22.57	16.41	3.21	42.19	090	S
33251		A	Reconstruct atria	30.00	21.81	4.26	56.07	090	S
33253		A	Ablate heart dysrhythm focus	22.57	13.96	2.73	39.26	090	S
33261		A	Repair of heart wound	16.19	14.36	2.60	33.15	090	S
33300		A	Repair of heart wound	19.22	17.40	3.07	39.69	090	S
33305		A	Exploratory heart surgery	17.12	11.28	1.83	30.33	090	S
33310		A	Exploratory heart surgery	20.15	14.48	2.57	37.20	090	S
33315		A	Repair major blood vessel(s)	15.39	14.14	2.51	32.04	090	S
33320		A	Repair major vessel	18.74	21.75	3.61	44.10	090	S
33321		A	Repair major blood vessel(s)	18.40	21.75	3.61	43.76	090	S
33322		A	Insert major vessel graft	19.15	12.67	1.83	33.75	090	S
33330		A	Insert major vessel graft	22.50	15.07	2.39	39.96	090	S
33332		A	Insert major vessel graft	27.66	15.07	2.39	45.12	090	S
33335		A	Repair of aortic valve	23.16	26.21	2.83	52.20	090	S
33400		A	Valvuloplasty, open	22.45	26.21	2.83	51.49	090	S
33401		A	Valvuloplasty, w/oc bypass	23.43	26.21	2.83	52.47	090	S
33403		A	Prepare heart-aorta conduit	26.82	31.25	5.99	63.46	090	S
33404		A	Replacement of aortic valve	28.47	30.48	5.33	64.28	090	S
33405		A	Replacement, aortic valve	31.23	38.65	7.45	77.33	090	S
33408		A	Replacement, aortic valve	30.37	38.65	7.45	76.47	090	S
33411		A	Replacement of aortic valve	32.26	38.65	7.45	78.36	090	S
33412		A	Replacement, aortic valve	34.17	41.09	7.23	82.49	090	S
33413		A	Repair, aortic valve	29.28	38.65	7.45	75.38	090	S
33414		A	Revision, subvalvular tissue	25.02	30.48	5.33	60.83	090	S
33415		A	Reviser ventricle muscle	28.20	28.14	4.99	61.33	090	S
33416		A	Repair of aortic valve	27.34	34.71	6.18	68.23	090	S
33417		A	Revision of mitral valve	20.69	19.82	2.45	42.96	090	S
33420		A	Revision of mitral valve	23.72	30.35	6.45	60.52	090	S
33422		A	Repair of mitral valve	25.57	31.27	5.42	62.26	090	S
33425		A	Repair of mitral valve	29.42	31.96	5.80	67.18	090	S
33426		A	Repair of mitral valve	32.07	34.71	6.30	73.08	090	S
33427		A	Replacement of mitral valve	29.42	34.85	6.11	70.38	090	S
33430		A	Revision of tricuspid valve	21.60	26.07	4.73	52.40	090	S
33460		A	Valvuloplasty, tricuspid	24.16	32.67	5.95	62.78	090	S
33463		A	Valvuloplasty, tricuspid	25.87	32.67	5.95	64.49	090	S
33464		A	Replace tricuspid valve	26.57	32.67	5.95	65.19	090	S
33465		A	Revision of tricuspid valve	28.20	34.71	6.30	69.21	090	S
33468		A	Revision of pulmonary valve	19.52	19.82	2.45	41.79	090	S
33470		A	Valvotomy, pulmonary valve	21.13	26.21	2.83	50.17	090	S
33471		A	Revision of pulmonary valve	20.91	28.70	2.83	52.44	090	S
33472		A	Revision of pulmonary valve	20.91	28.70	2.83	52.44	090	S
33474		A	Replacement, pulmonary valve	27.34	34.85	6.11	68.30	090	S
33475		A	Revision of heart chamber	24.41	28.14	4.99	57.54	090	S
33476		A	Revision of heart chamber	25.38	31.27	5.42	62.07	090	S
33478		A	Repair heart vessel fistula	23.91	29.55	5.20	58.66	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
33501		A	Repair heart vessel fistula	16.14	14.14	2.51	32.79	090	S
33502		A	Coronary artery correction	19.80	14.14	2.51	36.45	090	S
33503		A	Coronary artery graft	20.15	29.55	5.20	54.90	090	S
33504		A	Coronary artery graft	23.18	29.55	5.20	57.91	090	S
33505		A	Repair artery w/tunnel	25.38	34.24	6.03	65.65	090	S
33506		A	Repair artery, translocation	25.38	34.24	6.03	65.65	090	S
33510		A	CABG, vein, single	23.29	29.55	5.20	58.04	090	S
33511		A	CABG, vein, two	25.57	32.44	5.71	63.72	090	S
33512		A	CABG, vein, three	27.84	35.33	6.22	69.39	090	S
33513		A	CABG, vein, four	30.12	38.21	6.73	75.06	090	S
33514		A	CABG, vein, five	32.39	41.09	7.23	80.71	090	S
33516		A	CABG, vein, six+	34.66	43.97	7.74	86.37	090	S
33517		A	CABG, artery-vein, single	2.27	2.89	0.50	5.66	090	S
33518		A	CABG, artery-vein, two	4.55	5.77	1.02	11.34	090	S
33519		A	CABG, artery-vein, three	6.82	8.65	1.52	16.99	090	S
33521		A	CABG, artery-vein, four	9.10	11.54	2.03	22.67	090	S
33522		A	CABG, artery-vein, five	11.37	14.43	2.64	28.44	090	S
33523		A	CABG, artery-vein, six+	13.65	17.32	3.05	34.02	090	S
33530		A	Coronary artery, bypass/rep	5.86	7.51	2.18	15.55	ZZZ	S
33533		A	CABG, arterial, single	24.00	30.45	5.36	59.81	090	S
33534		A	CABG, arterial, two	26.99	34.24	6.03	67.26	090	S
33535		A	CABG, arterial, three	29.98	38.03	6.70	74.71	090	S
33536		A	CABG, arterial, four+	32.98	41.82	7.37	82.15	090	S
33542		A	Removal of heart lesion	26.57	30.73	5.53	62.83	090	S
33545		A	Repair of heart damage	33.96	34.92	6.28	75.16	090	S
33572		A	Open coronary endarterectomy	4.45	3.23	0.63	8.31	ZZZ	S
33600		A	Closure of valve	28.31	34.85	5.11	68.27	090	S
33602		A	Closure of valve	27.34	30.48	5.33	63.15	090	S
33606		A	Anastomosis/artery-aorta	29.28	38.65	7.45	75.38	090	S
33608		A	Repair anomaly w/conduit	30.02	38.65	7.45	76.12	090	S
33610		A	Repair by enlargement	29.28	38.65	7.45	75.38	090	S
33611		A	Repair double ventricle	31.23	38.65	7.45	77.33	090	S
33612		A	Repair double ventricle	32.06	38.65	7.45	78.16	090	S
33615		A	Repair (simple fontan)	30.50	38.65	7.45	76.60	090	S
33617		A	Repair by modified fontan	32.21	38.65	7.45	78.31	090	S
33619		A	Repair single ventricle	35.39	44.30	8.04	87.73	090	S
33641		A	Repair heart septum defect	18.93	25.51	4.57	50.31	090	S
33645		A	Revision of heart veins	22.78	27.61	4.87	55.26	090	S
33647		A	Repair heart septum defects	27.44	34.82	6.28	68.54	090	S
33660		A	Repair of heart defects	24.41	31.27	5.42	61.10	090	S
33665		A	Repair of heart defects	27.34	31.27	5.42	64.03	090	S
33670		A	Repair of heart chambers	31.23	38.65	7.45	77.33	090	S
33681		A	Repair heart septum defect	26.36	34.92	6.28	67.56	090	S
33684		A	Repair heart septum defect	28.31	34.92	6.28	69.51	090	S
33688		A	Repair heart septum defect	29.28	34.92	6.28	70.48	090	S
33690		A	Reinforce pulmonary artery	18.31	22.10	4.29	44.70	090	S
33692		A	Repair of heart defects	29.28	38.65	7.45	75.38	090	S
33694		A	Repair of heart defects	30.26	38.65	7.45	76.36	090	S
33697		A	Repair of heart defects	32.21	38.65	7.45	78.31	090	S
33702		A	Repair of heart defects	25.38	30.48	5.33	61.19	090	S
33710		A	Repair of heart defects	28.35	34.82	6.28	69.45	090	S
33720		A	Repair of heart defect	25.38	30.48	5.33	61.19	090	S
33722		A	Repair of heart defect	27.34	30.48	5.33	63.15	090	S
33730		A	Repair heart-vein defect(s)	29.89	38.65	7.45	75.99	090	S
33732		A	Repair heart-vein defect	27.09	31.27	5.42	63.78	090	S
33735		A	Revision of heart chamber	19.97	25.69	4.87	50.53	090	S
33736		A	Revision of heart chamber	22.45	25.69	4.87	53.01	090	S
33737		A	Revision of heart chamber	20.50	25.69	4.87	51.06	090	S
33750		A	Major vessel shunt	20.15	22.10	4.29	46.54	090	S
33755		A	Major vessel shunt	20.50	22.10	4.29	46.89	090	S
33762		A	Major vessel shunt	20.50	22.10	4.29	46.89	090	S
33764		A	Major vessel shunt & graft	20.50	22.10	4.29	46.89	090	S
33766		A	Major vessel shunt	21.47	22.10	4.29	47.86	090	S
33767		A	Atrial septectomy/septostomy	23.43	25.69	4.87	53.99	090	S
33770		A	Repair great vessels defect	31.96	38.65	7.45	78.06	090	S
33771		A	Repair great vessels defect	33.19	38.65	7.45	79.29	090	S
33774		A	Repair great vessels defect	29.28	31.27	5.42	65.97	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
33775		A	Repair great vessels defect	30.50	31.27	5.42	67.19	090	S
33776		A	Repair great vessels defect	32.21	34.92	5.28	73.41	090	S
33777		A	Repair great vessels defect	31.73	31.27	5.42	68.42	090	S
33778		A	Repair great vessels defect	34.17	41.82	7.37	83.36	090	S
33779		A	Repair great vessels defect	34.41	41.82	7.37	83.60	090	S
33780		A	Repair great vessels defect	35.14	41.82	7.37	84.33	090	S
33781		A	Repair great vessels defect	34.65	41.82	7.37	83.84	090	S
33786		A	Repair arterial trunk	33.19	38.65	7.45	79.29	090	S
33788		A	Revision of pulmonary artery	25.38	29.55	5.20	60.13	090	S
33800		A	Aortic suspension	15.18	14.14	2.51	31.83	090	S
33802		A	Repair vessel defect	16.80	22.10	4.29	42.99	090	S
33803		A	Repair vessel defect	18.54	22.10	4.29	44.93	090	S
33813		A	Repair septal defect	19.52	22.10	4.29	45.91	090	S
33814		A	Repair septal defect	24.41	30.48	5.33	60.22	090	S
33820		A	Revises major vessel	15.62	22.10	4.29	42.01	090	S
33822		A	Revises major vessel	16.60	22.10	4.29	42.99	090	S
33824		A	Revises major vessel	18.54	22.10	4.29	44.93	090	S
33840		A	Remove aorta constriction	19.52	31.25	5.59	56.36	090	S
33845		A	Remove aorta constriction	20.99	31.25	5.59	57.83	090	S
33851		A	Remove aorta constriction	20.01	31.25	5.59	56.85	090	S
33852		A	Repair septal defect	22.45	31.25	5.59	59.29	090	S
33853		A	Repair septal defect	30.26	38.65	7.45	76.36	090	S
33850		A	Ascending aorta graft	31.23	34.71	6.18	72.12	090	S
33861		A	Ascending aorta graft	33.19	34.71	6.18	74.08	090	S
33863		A	Ascending aorta graft	35.14	34.71	6.18	76.03	090	S
33870		A	Transverse aortic arch graft	37.74	44.30	8.04	90.08	090	S
33875		A	Thoracic aorta graft	31.23	31.25	5.59	68.07	090	S
33877		A	Thoracoabdominal graft	40.29	44.11	8.38	92.78	090	S
33910		A	Remove lung artery embol	21.86	14.65	2.77	39.28	090	S
33915		A	Remove lung artery embol	18.64	12.02	2.22	33.08	090	S
33916		A	Surgery of great vessel	24.17	17.57	3.43	45.17	090	S
33917		A	Repair pulmonary artery	23.43	34.71	6.30	64.44	090	S
33918		A	Repair pulmonary artery	25.38	29.55	5.20	60.13	090	S
33919		A	Repair pulmonary artery	31.11	38.65	7.45	77.21	090	S
33920		A	Repair pulmonary artery	30.75	38.65	7.45	76.85	090	S
33922		A	Transect pulmonary artery	22.45	26.21	2.83	51.49	090	S
33924		A	Remove pulmonary shunt	5.50	4.00	0.78	10.28	ZZZ	S
33930		X	Removal of donor heart/lung	0.00	0.00	0.00	0.00	XXX	0
33935		R	Transplantation, heart/lung	56.87	77.57	13.54	147.98	090	S
33940		X	Removal of donor heart	0.00	0.00	0.00	0.00	XXX	0
33945		R	Transplantation of heart	39.56	64.80	11.06	115.41	090	S
33950		A	External circulation assist	19.36	7.01	0.94	27.31	XXX	S
33961		A	External circulation assist	10.93	7.01	0.94	18.88	XXX	S
33970		A	Aortic circulation assist	6.75	7.54	1.00	15.29	000	S
33971		A	Aortic circulation assist	8.40	5.16	0.91	14.47	090	S
33973		A	Insert balloon device	9.76	7.54	1.00	18.30	000	S
33974		A	Remove intra-aortic balloon	12.69	5.56	0.91	19.16	090	S
33975		A	Implant ventricular device	19.52	14.19	2.77	36.48	090	S
33976		A	Implant ventricular device	26.60	19.33	3.78	49.71	090	S
33977		A	Remove ventricular device	17.08	12.41	2.43	31.92	090	S
33978		A	Remove ventricular device	19.52	14.19	2.77	36.48	090	S
33999		C	Cardiac surgery procedure	0.00	0.00	0.00	0.00	YYY	S
34001		A	Removal of artery clot	11.69	8.58	1.87	23.14	090	S
34051		A	Removal of artery clot	13.62	8.81	1.59	24.02	090	S
34101		A	Removal of artery clot	8.73	8.34	1.71	18.78	090	S
34111		A	Removal of arm artery clot	7.18	7.59	1.59	16.36	090	S
34151		A	Removal of artery clot	15.23	11.96	2.39	29.58	090	S
34201		A	Removal of artery clot	8.04	8.90	1.78	18.72	090	S
34203		A	Removal of leg artery clot	11.06	8.63	1.72	21.41	090	S
34401		A	Removal of vein clot	11.84	8.07	1.39	21.10	090	S
34421		A	Removal of vein clot	8.89	7.45	1.51	17.85	090	S
34451		A	Removal of vein clot	13.13	10.69	2.14	25.96	090	S
34471		A	Removal of vein clot	9.12	3.51	0.56	13.18	090	S
34490		A	Removal of vein clot	6.51	7.27	1.54	15.32	090	S
34501		A	Repair valve, femoral vein	9.71	7.35	0.86	17.92	090	S
34502		A	Reconstruct, vena cava	25.65	18.65	3.84	47.94	090	S
34510		A	Transposition of vein valve	11.75	8.89	1.04	21.68	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
34520		A	Cross-over vein graft	12.33	9.33	1.09	22.75	090	S
34530		A	Leg vein fusion	16.33	12.35	1.44	30.12	090	S
35001		A	Repair defect of artery	18.14	15.90	3.18	37.22	090	S
35002		A	Repair artery rupture, neck	19.43	12.64	2.41	34.48	090	S
35005		A	Repair defect of artery	16.62	10.28	2.19	29.09	090	S
35011		A	Repair defect of artery	10.43	13.35	2.76	26.54	090	S
35013		A	Repair artery rupture, arm	15.96	14.70	3.03	33.69	090	S
35021		A	Repair defect of artery	17.82	18.13	3.06	38.81	090	S
35022		A	Repair artery rupture, chest	21.15	14.78	2.80	38.73	090	S
35045		A	Repair defect of arm artery	9.98	12.35	2.50	24.83	090	S
35061		A	Repair defect of artery	26.23	21.45	4.18	51.86	090	S
35082		A	Repair artery rupture, aorta	34.20	22.91	4.59	61.70	090	S
35091		A	Repair defect of artery	33.16	22.67	4.25	60.08	090	S
35092		A	Repair artery rupture, aorta	36.06	26.27	5.21	67.54	090	S
35102		A	Repair defect of artery	28.80	22.15	4.32	55.27	090	S
35103		A	Repair artery rupture, groin	31.31	26.16	5.21	62.68	090	S
35111		A	Repair defect of artery	15.12	17.60	3.70	36.42	090	S
35112		A	Repair artery rupture, spleen	17.38	10.45	2.22	30.05	090	S
35121		A	Repair defect of artery	24.68	19.12	3.66	47.46	090	S
35122		A	Repair artery rupture, belly	32.08	17.92	3.96	53.96	090	S
35131		A	Repair defect of artery	17.00	15.68	3.15	35.83	090	S
35132		A	Repair artery rupture, groin	20.40	18.68	3.58	42.66	090	S
35141		A	Repair defect of artery	13.28	14.70	2.88	30.86	090	S
35142		A	Repair artery rupture, thigh	14.62	16.10	3.24	33.96	090	S
35151		A	Repair defect of artery	15.76	15.36	2.94	34.06	090	S
35152		A	Repair artery rupture, knee	15.48	9.27	1.95	26.68	090	S
35161		A	Repair defect of artery	17.45	15.88	3.15	36.48	090	S
35182		A	Repair artery rupture	18.45	18.68	3.58	40.71	090	S
35180		A	Repair blood vessel lesion	12.16	7.37	1.48	21.01	090	S
35182		A	Repair blood vessel lesion	16.12	10.65	1.61	28.38	090	S
35184		A	Repair blood vessel lesion	10.79	9.73	1.95	22.48	090	S
35188		A	Repair blood vessel lesion	13.10	8.11	1.59	22.80	090	S
35189		A	Repair blood vessel lesion	17.12	11.33	2.21	30.66	090	S
35190		A	Repair blood vessel lesion	11.79	10.54	2.14	24.27	090	S
35201		A	Repair blood vessel lesion	8.90	10.07	1.94	20.91	090	S
35206		A	Repair blood vessel lesion	8.49	10.15	2.03	20.67	090	S
35207		A	Repair blood vessel lesion	9.06	10.80	1.93	21.79	090	S
35211		A	Repair blood vessel lesion	20.15	13.38	2.59	36.12	090	S
35216		A	Repair blood vessel lesion	17.12	10.68	2.08	29.88	090	S
35221		A	Repair blood vessel lesion	15.11	11.09	2.20	28.40	090	S
35226		A	Repair blood vessel lesion	8.17	10.26	1.95	20.40	090	S
35231		A	Repair blood vessel lesion	10.76	13.78	2.91	27.45	090	S
35236		A	Repair blood vessel lesion	9.39	12.02	2.56	23.97	090	S
35241		A	Repair blood vessel lesion	21.15	13.49	2.60	37.24	090	S
35246		A	Repair blood vessel lesion	18.14	16.95	2.15	37.24	090	S
35251		A	Repair blood vessel lesion	16.12	9.59	1.88	27.59	090	S
35256		A	Repair blood vessel lesion	10.14	12.40	2.39	24.93	090	S
35261		A	Repair blood vessel lesion	10.39	13.16	2.66	26.21	090	S
35266		A	Repair blood vessel lesion	9.06	11.59	2.41	23.06	090	S
35271		A	Repair blood vessel lesion	20.15	12.53	2.56	35.24	090	S
35276		A	Repair blood vessel lesion	17.12	10.85	2.26	30.23	090	S
35281		A	Repair blood vessel lesion	15.11	17.28	3.37	35.76	090	S
35286		A	Repair blood vessel lesion	10.78	11.71	2.33	24.82	090	S
35301		A	Rechanneling of artery	17.79	14.46	2.81	35.06	090	S
35311		A	Rechanneling of artery	22.61	22.06	4.61	49.28	090	S
35321		A	Rechanneling of artery	11.06	12.96	2.69	26.73	090	S
35331		A	Rechanneling of artery	22.15	13.34	2.66	38.15	090	S
35341		A	Rechanneling of artery	23.67	17.37	3.53	44.57	090	S
35351		A	Rechanneling of artery	19.15	14.95	2.97	37.07	090	S
35355		A	Rechanneling of artery	15.11	15.42	2.99	33.52	090	S
35361		A	Rechanneling of artery	22.15	18.37	3.88	44.40	090	S
35363		A	Rechanneling of artery	23.18	22.77	4.40	50.33	090	S
35371		A	Rechanneling of artery	10.49	12.51	2.50	25.50	090	S
35372		A	Rechanneling of artery	12.28	11.20	2.28	25.76	090	S
35381		A	Rechanneling of artery	14.50	13.67	2.71	30.88	090	S
35390		A	Reoperation, carotid	3.19	1.67	0.36	5.22	ZZZ	S
35450		A	Repair arterial blockage	10.07	12.89	1.36	24.34	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
35452		A	Repair arterial blockage	6.91	4.35	0.61	11.87	000	S
35454		A	Repair arterial blockage	6.04	7.73	1.53	15.30	000	S
35456		A	Repair arterial blockage	7.35	9.41	1.69	18.45	000	S
35458		A	Repair arterial blockage	9.49	10.13	1.83	21.45	000	S
35459		A	Repair arterial blockage	8.63	10.39	1.69	20.71	000	S
35460		A	Repair venous blockage	6.04	3.16	0.74	9.94	000	S
35470		A	Repair arterial blockage	8.63	10.39	1.69	20.71	000	N
35471		A	Repair arterial blockage	10.07	12.09	1.38	24.34	000	N
35472		A	Repair arterial blockage	6.91	3.61	0.85	11.37	000	N
35473		A	Repair arterial blockage	6.04	7.73	1.53	15.30	000	N
35474		A	Repair arterial blockage	7.35	9.42	1.69	18.47	000	N
35475		R	Repair arterial blockage	9.49	10.13	1.83	21.45	000	N
35476		A	Repair venous blockage	6.04	3.16	0.74	9.94	000	N
35480		A	Atherectomy, open	11.08	13.43	1.38	25.89	000	S
35481		A	Atherectomy, open	7.61	4.35	0.61	12.57	000	S
35482		A	Atherectomy, open	8.65	8.51	1.53	16.69	000	S
35483		A	Atherectomy, open	8.10	10.36	1.69	20.15	000	S
35484		A	Atherectomy, open	10.44	10.13	1.83	22.40	000	S
35485		A	Atherectomy, open	9.49	4.52	1.06	15.07	000	S
35490		A	Atherectomy, percutaneous	11.08	13.43	1.38	25.89	000	N
35491		A	Atherectomy, percutaneous	7.61	4.35	0.61	12.57	000	N
35492		A	Atherectomy, percutaneous	8.65	8.51	1.53	16.69	000	N
35493		A	Atherectomy, percutaneous	8.10	10.36	1.69	20.15	000	N
35494		A	Atherectomy, percutaneous	10.44	10.13	1.83	22.40	000	N
35495		A	Atherectomy, percutaneous	9.49	4.52	1.06	15.07	000	N
35501		A	Artery bypass graft	18.23	19.35	3.49	41.07	090	S
35506		A	Artery bypass graft	18.23	19.17	3.64	41.04	090	S
35507		A	Artery bypass graft	18.23	17.92	3.61	39.76	090	S
35508		A	Artery bypass graft	17.21	18.11	3.43	38.75	090	S
35509		A	Artery bypass graft	16.70	18.90	3.92	39.52	090	S
35511		A	Artery bypass graft	15.39	10.40	1.92	27.71	090	S
35515		A	Artery bypass graft	17.21	11.25	2.01	30.47	090	S
35516		A	Artery bypass graft	14.88	17.37	3.54	35.79	090	S
35518		A	Artery bypass graft	14.05	17.47	3.38	34.90	090	S
35521		A	Artery bypass graft	14.80	17.53	3.34	35.67	090	S
35526		A	Artery bypass graft	18.83	12.95	2.44	34.02	090	S
35531		A	Artery bypass graft	24.17	20.25	3.90	48.32	090	S
35533		A	Artery bypass graft	19.15	21.04	4.43	44.62	090	S
35536		A	Artery bypass graft	21.85	21.37	4.17	47.19	090	S
35541		A	Artery bypass graft	24.17	19.55	3.65	47.37	090	S
35546		A	Artery bypass graft	24.17	21.39	4.25	49.82	090	S
35548		A	Artery bypass graft	20.13	19.55	3.65	43.33	090	S
35549		A	Artery bypass graft	21.91	21.39	4.25	47.56	090	S
35551		A	Artery bypass graft	25.17	19.25	3.87	48.29	090	S
35556		A	Artery bypass graft	19.84	18.71	3.71	42.26	090	S
35558		A	Artery bypass graft	12.82	16.41	3.23	32.46	090	S
35560		A	Artery bypass graft	22.12	20.22	3.93	46.27	090	S
35563		A	Artery bypass graft	13.83	8.32	1.70	23.85	090	S
35565		A	Artery bypass graft	13.83	17.69	3.51	35.03	090	S
35568		A	Artery bypass graft	25.00	20.82	4.08	49.70	090	S
35571		A	Artery bypass graft	17.14	19.36	3.87	40.37	090	S
35582		A	Vein bypass graft	25.69	23.74	4.89	54.32	090	S
35583		A	Vein bypass graft	20.50	20.44	4.13	45.07	090	S
35585		A	Vein bypass graft	26.47	22.95	4.63	54.05	090	S
35587		A	Vein bypass graft	17.55	21.51	4.13	43.19	090	S
35601		A	Artery bypass graft	16.19	18.83	3.33	38.35	090	S
35606		A	Artery bypass graft	17.40	17.55	3.51	38.46	090	S
35612		A	Artery bypass graft	14.39	16.75	3.30	34.44	090	S
35616		A	Artery bypass graft	14.39	16.79	3.42	34.60	090	S
35621		A	Artery bypass graft	13.23	16.94	3.80	33.97	090	S
35623		A	Bypass graft, not vein	15.42	8.06	1.88	25.36	090	S
35626		A	Artery bypass graft	22.26	20.51	4.08	46.85	090	S
35631		A	Artery bypass graft	23.16	17.87	3.57	44.60	090	S
35636		A	Artery bypass graft	21.15	13.50	2.45	37.10	090	S
35641		A	Artery bypass graft	22.67	20.56	4.08	47.31	090	S
35642		A	Artery bypass graft	16.70	10.33	2.20	29.23	090	S
35645		A	Artery bypass graft	16.19	11.15	2.05	29.39	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
35648		A	Artery bypass graft	24.00	23.76	4.73	52.51	090	S
35650		A	Artery bypass graft	13.05	16.71	3.58	33.32	090	S
35651		A	Artery bypass graft	23.67	24.09	4.69	52.45	090	S
35654		A	Artery bypass graft	17.62	22.10	4.42	44.14	090	S
35656		A	Artery bypass graft	18.42	17.73	3.60	39.75	090	S
35661		A	Artery bypass graft	11.81	15.11	3.30	30.22	090	S
35663		A	Artery bypass graft	12.82	16.41	3.80	33.03	090	S
35665		A	Artery bypass graft	14.05	17.79	3.57	35.41	090	S
35668		A	Artery bypass graft	17.60	20.06	4.00	41.66	090	S
35671		A	Artery bypass graft	13.39	15.60	4.08	33.07	090	S
35681		A	Artery bypass graft	8.05	10.42	3.52	21.99	ZZZ	S
35691		A	Arterial transposition	16.70	19.82	3.81	40.13	090	S
35694		A	Arterial transposition	14.01	9.40	1.91	25.32	090	S
35695		A	Arterial transposition	17.81	9.33	2.17	29.31	090	S
35696		A	Arterial transposition	17.81	9.33	2.17	29.31	090	S
35701		A	Reoperation, bypass graft	3.08	1.61	0.38	5.07	ZZZ	S
35721		A	Exploration, carotid artery	4.54	5.82	1.25	11.61	090	S
35741		A	Exploration, femoral artery	4.54	5.56	1.11	11.21	090	S
35761		A	Exploration popliteal artery	4.54	5.73	1.15	11.42	090	S
35800		A	Exploration of artery/vein	4.54	5.81	1.14	11.49	090	S
35820		A	Explore neck vessels	6.04	5.28	0.97	12.29	090	S
35840		A	Explore chest vessels	11.64	7.92	1.43	20.99	090	S
35860		A	Explore abdominal vessels	8.63	7.23	1.44	17.30	090	S
35870		A	Explore limb vessels	4.54	5.81	1.15	11.50	090	S
35875		A	Repair vessel graft defect	20.35	10.64	2.47	33.46	090	S
35876		A	Removal of clot in graft	9.07	8.21	1.65	18.93	090	S
35901		A	Removal of clot in graft	12.91	8.21	1.65	22.77	090	S
35903		A	Excision, graft, neck	7.25	7.18	1.46	15.89	090	S
35905		A	Excision, graft, extremity	8.63	7.18	1.46	17.27	090	S
35907		A	Excision, graft, thorax	16.89	7.18	1.46	25.53	090	S
36000		A	Excision, graft, abdomen	17.68	7.18	1.46	26.32	090	S
36005		A	Place needle in vein	0.18	0.24	0.04	0.46	XXX	N
36010		A	Injection, venography	0.95	0.47	0.04	1.46	000	N
36011		A	Place catheter in vein	2.43	2.11	0.31	4.85	XXX	N
36012		A	Place catheter in vein	3.14	2.90	0.22	5.26	XXX	N
36013		A	Place catheter in vein	3.52	2.67	0.32	6.51	XXX	N
36014		A	Place catheter in artery	2.52	2.11	0.31	4.94	XXX	N
36015		A	Place catheter in artery	3.02	2.28	0.27	5.57	XXX	N
36100		A	Place catheter in artery	3.52	2.67	0.32	6.51	XXX	N
36120		A	Establish access to artery	3.02	2.59	0.32	5.93	XXX	N
36140		A	Establish access to artery	2.01	2.32	0.30	4.63	XXX	N
36145		A	Artery to vein shunt	2.01	1.41	0.24	3.66	XXX	N
36160		A	Establish access to aorta	2.01	2.57	0.49	5.07	XXX	N
36200		A	Place catheter in aorta	2.52	2.32	0.35	5.19	XXX	S
36215		A	Place catheter in artery	3.02	2.73	0.28	6.03	XXX	N
36216		A	Place catheter in artery	4.68	2.78	0.23	7.69	XXX	N
36217		A	Place catheter in artery	5.28	3.29	0.27	8.84	XXX	N
36218		A	Place catheter in artery	6.30	3.92	0.32	10.54	XXX	N
36245		A	Place catheter in artery	1.01	0.62	0.05	1.68	XXX	N
36248		A	Place catheter in artery	4.68	3.15	0.26	8.09	XXX	N
36248		A	Place catheter in artery	5.28	3.29	0.27	8.84	XXX	N
36248		A	Place catheter in artery	6.30	3.92	0.32	10.54	XXX	N
36260		A	Insertion of infusion pump	1.01	0.62	0.05	1.68	XXX	N
36261		A	Revision of infusion pump	9.27	6.74	1.41	17.42	090	S
36262		A	Removal of infusion pump	5.04	2.23	0.42	7.69	090	S
36299		C	Vessel injection procedure	3.70	1.93	0.40	6.03	090	S
36400		A	Drawing blood	0.00	0.00	0.00	0.00	YYY	N
36405		A	Drawing blood	0.18	0.09	0.01	0.28	XXX	N
36406		A	Drawing blood	0.18	0.45	0.03	0.66	XXX	N
36410		A	Drawing blood	0.18	0.16	0.01	0.35	XXX	S
36415		G	Drawing blood	0.18	0.22	0.02	0.42	XXX	N
36420		A	Establish access to vein	0.00	0.00	0.00	0.00	XXX	O
36425		A	Establish access to vein	1.01	0.61	0.05	1.67	XXX	N
36430		A	Blood transfusion service	0.76	0.08	0.01	0.85	XXX	N
36440		A	Blood transfusion service	0.00	0.96	0.07	1.03	XXX	N
36450		A	Exchange transfusion service	1.03	0.94	0.07	2.04	XXX	S
				2.23	1.88	0.18	4.29	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
36455		A	Exchange transfusion service	2.43	2.27	0.22	4.92	XXX	N
36460		A	Transfusion service, fetal	5.59	4.71	1.09	12.39	XXX	N
36465		R	Injection(s); spider veins	0.00	0.00	0.00	0.00	XXX	S
36469		R	Injection(s); spider veins	0.00	0.00	0.00	0.00	XXX	S
36470		A	Injection therapy of vein	1.02	0.27	0.04	1.33	010	S
36471		A	Injection therapy of veins	1.49	0.39	0.05	1.93	010	S
36481		A	Insertion of catheter, vein	6.99	5.30	0.61	12.90	000	S
36488		A	Insertion of catheter, vein	1.35	0.97	0.14	2.46	000	N
36489		A	Insertion of catheter, vein	1.22	1.12	0.17	2.51	000	N
36490		A	Insertion of catheter, vein	1.67	1.38	0.20	3.25	000	N
36491		A	Insertion of catheter, vein	1.43	1.71	0.32	3.46	000	N
36493		A	Repositioning of cvc	1.21	0.63	0.18	2.00	000	N
36500		A	Insertion of catheter, vein	3.52	0.08	0.01	3.61	000	N
36510		A	Insertion of catheter, vein	1.09	0.34	0.02	1.45	000	N
36520		A	Plasma and/or cell exchange	1.74	1.92	0.12	3.78	000	N
36522		A	Photopheresis	1.67	2.48	0.37	4.52	000	S
36530		R	Insertion of infusion pump	4.83	4.82	1.02	10.67	010	S
36531		R	Revision of infusion pump	4.80	4.37	0.27	9.44	010	S
36532		R	Removal of infusion pump	3.23	1.77	0.37	5.37	010	S
36533		A	Insertion of access port	5.00	4.29	0.85	10.14	010	S
36534		A	Revision of access port	2.73	3.46	0.21	6.40	010	S
36535		A	Removal of access port	2.22	1.81	0.38	4.41	010	S
36600		A	Withdrawal of arterial blood	0.32	0.28	0.02	0.62	XXX	N
36620		A	Insertion catheter, artery	1.15	0.68	0.14	1.95	000	N
36625		A	Insertion catheter, artery	2.11	0.86	0.18	3.15	000	N
36640		A	Insertion catheter, artery	2.10	2.32	0.40	4.82	000	N
36660		A	Insertion catheter, artery	1.40	0.49	0.04	1.93	000	N
36680		A	Insert needle, bone cavity	1.20	1.24	0.10	2.54	000	N
36800		A	Insertion of cannula	2.43	2.22	0.28	4.93	000	N
36810		A	Insertion of cannula	3.97	4.85	0.74	9.56	000	S
36815		A	Insertion of cannula	2.82	3.35	0.70	6.87	000	S
36821		A	Artery-vein fusion	8.39	7.24	1.46	17.09	090	S
36822		A	Insertion of cannula(s)	5.03	5.60	0.77	11.40	090	S
36825		A	Artery-vein graft	9.36	11.20	2.21	22.77	090	S
36830		A	Artery-vein graft	11.25	9.96	2.36	23.57	090	S
36832		A	Revised artery-vein fistula	5.84	7.48	2.38	15.70	090	S
36834		A	Repair A-V aneurysm	9.32	7.80	1.66	18.78	090	S
36836		A	Artery to vein shunt	6.54	3.42	0.79	10.75	090	S
36860		A	Cannula declotting	2.01	2.57	0.43	5.01	000	N
36861		A	Cannula declotting	2.52	3.22	1.01	6.75	000	S
37140		A	Revision of circulation	22.15	16.29	3.34	41.78	090	S
37145		A	Revision of circulation	23.16	17.13	1.72	42.01	090	S
37160		A	Revision of circulation	20.15	17.74	3.79	41.68	090	S
37180		A	Revision of circulation	23.16	14.19	2.76	40.11	090	S
37181		A	Splice spleen/kidney veins	25.17	16.41	3.52	45.10	090	S
37200		A	Transcatheter biopsy	4.56	1.59	0.13	6.28	000	N
37201		A	Transcatheter therapy infuse	5.00	5.50	0.64	11.14	000	N
37202		A	Transcatheter therapy infuse	5.68	4.30	0.50	10.48	000	N
37203		A	Transcatheter retrieval	5.03	3.82	0.45	9.30	000	N
37204		A	Transcatheter occlusion	18.14	13.76	1.60	33.50	000	N
37205		A	Transcatheter stent	8.28	5.16	0.42	13.86	000	S
37206		A	Transcatheter stent	4.13	2.58	0.21	6.92	ZZZ	S
37207		A	Transcatheter stent	8.28	5.16	0.42	13.86	000	S
37208		A	Transcatheter stent	4.13	2.58	0.21	6.92	ZZZ	S
37209		A	Exchange arterial catheter	2.27	1.41	0.11	3.79	000	N
37250		A	Intravascular us	1.51	1.14	0.13	2.78	ZZZ	N
37251		A	Intravascular us	1.15	0.87	0.10	2.12	ZZZ	N
37565		A	Ligation of neck vein	3.90	3.79	0.74	8.43	090	S
37600		A	Ligation of neck artery	3.90	4.98	0.80	9.68	090	S
37605		A	Ligation of neck artery	4.63	5.56	1.04	11.23	090	S
37606		A	Ligation of neck artery	4.63	5.92	0.72	11.27	090	S
37607		A	Ligation of fistula	5.84	3.06	0.71	9.61	090	S
37609		A	Temporal artery procedure	2.27	2.22	0.38	4.87	010	S
37615		A	Ligation of neck artery	4.39	5.62	1.11	11.12	090	S
37616		A	Ligation of chest artery	14.69	4.21	0.83	19.73	090	S
37617		A	Ligation of abdomen artery	14.19	8.00	1.54	23.73	090	S
37618		A	Ligation of extremity artery	3.90	4.96	1.06	9.94	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
37620		A	Revision of major vein	9.24	8.81	1.48	19.53	090	S
37650		A	Revision of major vein	4.39	4.02	0.52	8.93	090	S
37660		A	Revision of major vein	9.65	5.75	1.07	16.47	090	S
37700		A	Revised leg vein	3.52	3.64	0.73	7.89	090	S
37720		A	Removal of leg vein	5.22	5.11	1.04	11.37	090	S
37730		A	Removal of leg veins	6.63	6.95	1.40	14.98	090	S
37735		A	Removal of leg veins/lesion	9.90	8.34	1.68	19.92	090	S
37760		A	Revision of leg veins	9.90	7.48	1.52	18.90	090	S
37780		A	Revision of leg vein	3.52	1.89	0.35	5.76	090	S
37785		A	Revised secondary varicosity	3.56	0.98	0.18	4.72	090	S
37788		A	Revascularization, penis	21.33	15.14	1.48	37.95	090	S
37790		A	Pentle venous occlusion	8.02	5.70	0.55	14.27	090	S
37799		C	Vascular surgery procedure	0.00	0.00	0.00	0.00	YYY	S
38100		A	Removal of spleen, total	11.99	8.55	1.81	22.35	090	S
38101		A	Removal of spleen, partial	12.59	8.99	1.51	21.09	090	S
38102		A	Removal of spleen, total	4.80	2.61	0.58	7.99	ZZZ	S
38115		A	Repair of ruptured spleen	12.59	7.64	1.49	21.72	090	S
38200		A	Injection for spleen x-ray	2.64	1.71	0.15	4.50	000	S
38230		A	Bone marrow collection	4.22	2.78	0.21	7.21	010	N
38231		A	Stem cell collection	1.50	1.37	0.08	2.95	000	N
38240		A	Bone marrow/stem transplant	2.24	2.08	0.14	4.46	XXX	N
38241		A	Bone marrow/stem transplant	2.24	2.04	0.13	4.41	XXX	N
38300		A	Drainage lymph node lesion	1.48	0.58	0.10	2.16	010	S
38305		A	Drainage lymph node lesion	4.24	1.96	0.36	6.56	090	S
38308		A	Incision of lymph channels	4.55	3.97	0.45	8.97	090	S
38380		A	Thoracic duct procedure	6.53	4.44	0.76	11.73	090	S
38381		A	Thoracic duct procedure	12.10	7.56	1.50	21.16	090	S
38382		A	Thoracic duct procedure	9.24	4.84	1.13	15.21	090	S
38500		A	Biopsy/removal lymph node(s)	2.83	1.59	0.31	4.73	010	S
38505		A	Needle biopsy, lymph node(s)	1.14	1.12	0.17	2.43	000	S
38510		A	Biopsy/removal lymph node(s)	3.90	2.54	0.45	6.89	090	S
38520		A	Biopsy/removal lymph node(s)	4.86	2.99	0.56	8.41	090	S
38525		A	Biopsy/removal lymph node(s)	4.37	2.59	0.53	7.49	090	S
38530		A	Biopsy/removal lymph node(s)	5.82	3.17	0.65	9.64	090	S
38542		A	Explore deep node(s), neck	5.41	4.26	0.59	10.26	090	S
38550		A	Removal neck/ampit lesion	6.42	3.23	0.63	10.28	090	S
38555		A	Removal neck/ampit lesion	13.05	7.27	1.38	21.70	090	S
38562		A	Removal, pelvic lymph nodes	9.65	8.88	1.20	17.73	090	S
38564		A	Removal, abdomen lymph nodes	10.00	7.39	1.51	18.90	090	S
38700		A	Removal of lymph nodes, neck	7.56	9.64	1.31	18.51	090	S
38720		A	Removal of lymph nodes, neck	12.29	15.73	2.04	30.06	090	S
38724		A	Removal of lymph nodes, neck	13.22	14.36	2.00	29.58	090	S
38740		A	Remove ampit lymph nodes	6.28	4.72	1.00	12.00	090	S
38745		A	Remove ampit lymph nodes	8.08	8.28	1.78	18.12	090	S
38746		A	Remove thoracic lymph nodes	4.39	2.29	0.53	7.21	ZZZ	S
38747		A	Remove abdominal lymph nodes	4.89	2.56	0.59	8.04	ZZZ	S
38760		A	Remove groin lymph nodes	8.19	8.83	1.35	16.17	090	S
38765		A	Remove groin lymph nodes	14.98	12.67	2.42	30.07	090	S
38770		A	Remove pelvic lymph nodes	12.10	15.40	1.73	29.23	090	S
38780		A	Remove abdomen lymph nodes	15.17	16.05	3.13	34.35	090	S
38790		A	Injection for lymphatic x-ray	1.29	1.64	0.19	3.12	000	N
38794		A	Access thoracic lymph duct	4.05	2.84	0.38	7.27	090	S
38999		C	Blood/lymph system procedure	0.00	0.00	0.00	0.00	YYY	S
39000		A	Exploration of chest	5.03	6.05	1.08	12.16	090	S
39010		A	Exploration of chest	10.78	11.46	2.08	24.32	090	S
39200		A	Removal chest lesion	12.40	11.58	2.14	26.12	090	S
39220		A	Removal chest lesion	16.16	14.94	2.83	33.93	090	S
39400		A	Visualization of chest	5.11	5.12	0.95	11.18	010	S
39499		C	Chest procedure	0.00	0.00	0.00	0.00	YYY	S
39501		A	Repair diaphragm laceration	12.10	10.86	2.10	24.86	090	S
39502		A	Repair paraesophageal hernia	15.18	11.93	2.45	29.56	090	S
39503		A	Repair of diaphragm hernia	33.22	25.18	2.94	61.34	090	S
39520		A	Repair of diaphragm hernia	15.18	12.53	2.46	30.17	090	S
39530		A	Repair of diaphragm hernia	14.22	14.06	2.71	30.99	090	S
39531		A	Repair of diaphragm hernia	15.23	10.00	1.80	27.03	090	S
39540		A	Repair of diaphragm hernia	12.10	11.98	2.51	26.59	090	S
39541		A	Repair of diaphragm hernia	13.10	12.16	2.37	27.63	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
39646		A	Revision of diaphragm	12.10	7.90	1.31	21.31	090	S
39699		C	Diaphragm surgery procedure	0.00	0.00	0.00	0.00	YYY	S
40490		A	Biopsy of lip	1.22	0.74	0.07	2.03	090	S
40500		A	Partial excision of lip	4.08	5.23	0.94	10.25	090	S
40510		A	Partial excision of lip	4.57	5.84	0.83	11.24	090	S
40520		A	Partial excision of lip	4.54	4.50	0.68	9.72	090	S
40525		A	Reconstruct lip with flap	7.26	9.30	1.43	17.99	090	S
40527		A	Reconstruct lip with flap	8.71	11.16	1.65	21.52	090	S
40530		A	Partial removal of lip	5.14	5.10	0.74	10.98	090	S
40650		A	Repair lip	3.49	4.47	0.65	8.61	090	S
40652		A	Repair lip	4.08	5.23	0.79	10.10	090	S
40654		A	Repair lip	5.13	6.57	1.00	12.70	090	S
40700		A	Repair cleft lip/nasal	12.04	8.46	1.28	21.78	090	S
40701		A	Repair cleft lip/nasal	15.10	10.33	1.82	26.05	090	S
40702		A	Repair cleft lip/nasal	12.34	9.37	1.10	22.81	090	S
40720		A	Repair cleft lip/nasal	12.91	9.59	1.79	24.29	090	S
40761		A	Repair cleft lip/nasal	14.00	10.84	1.74	26.58	090	S
40799		C	Lip surgery procedure	0.00	0.00	0.00	0.00	YYY	S
40800		A	Drainage of mouth lesion	1.12	0.74	0.07	1.93	010	S
40801		A	Drainage of mouth lesion	2.48	1.70	0.16	4.34	010	S
40804		A	Removal foreign body, mouth	1.19	0.58	0.06	1.83	010	S
40805		A	Removal foreign body, mouth	2.64	2.50	0.30	5.44	010	S
40808		A	Incision of lip fold	0.31	0.36	0.03	0.70	000	S
40808		A	Biopsy of mouth lesion	0.81	0.76	0.08	1.75	010	S
40810		A	Excision of mouth lesion	1.26	1.18	0.11	2.55	010	S
40812		A	Excise/repair mouth lesion	2.26	1.50	0.14	3.90	010	S
40814		A	Excise/repair mouth lesion	3.27	3.23	0.32	6.82	090	S
40816		A	Excision of mouth lesion	3.52	3.22	0.33	7.07	090	S
40818		A	Excise oral mucosa for graft	2.26	2.25	0.20	4.71	090	S
40819		A	Excise lip or cheek fold	2.26	1.23	0.14	3.63	090	S
40820		A	Treatment of mouth lesion	1.23	0.53	0.06	1.82	010	S
40830		A	Repair mouth laceration	1.71	0.67	0.07	2.45	010	S
40831		A	Repair mouth laceration	2.41	1.94	0.21	4.56	010	S
40840		R	Reconstruction of mouth	8.31	6.28	0.73	15.32	090	S
40842		R	Reconstruction of mouth	8.31	6.28	0.73	15.32	090	S
40843		R	Reconstruction of mouth	11.63	8.80	1.03	21.46	090	S
40844		R	Reconstruction of mouth	15.37	11.63	1.36	28.36	090	S
40845		R	Reconstruction of mouth	17.94	23.99	1.93	43.86	090	S
40899		C	Mouth surgery procedure	0.00	0.00	0.00	0.00	YYY	S
41000		A	Drainage of mouth lesion	1.25	0.76	0.08	2.09	010	S
41005		A	Drainage of mouth lesion	1.21	0.82	0.07	1.90	010	S
41006		A	Drainage of mouth lesion	3.03	1.01	0.11	4.15	090	S
41007		A	Drainage of mouth lesion	2.89	2.90	0.30	6.09	090	S
41008		A	Drainage of mouth lesion	3.16	1.06	0.11	4.33	090	S
41009		A	Drainage of mouth lesion	3.35	3.31	0.34	7.00	090	S
41010		A	Incision of tongue fold	1.01	0.37	0.04	1.42	010	S
41015		A	Drainage of mouth lesion	3.72	0.87	0.10	4.69	090	S
41016		A	Drainage of mouth lesion	3.72	3.69	0.38	7.79	090	S
41017		A	Drainage of mouth lesion	3.72	1.40	0.14	5.26	090	S
41018		A	Drainage of mouth lesion	4.75	3.93	0.38	9.06	090	S
41100		A	Biopsy of tongue	1.58	0.80	0.08	2.46	010	S
41105		A	Biopsy of tongue	1.37	1.03	0.12	2.52	010	S
41108		A	Biopsy of floor of mouth	1.00	0.85	0.09	1.94	010	S
41110		A	Excision of tongue lesion	1.46	1.30	0.15	2.91	010	S
41112		A	Excision of tongue lesion	2.63	2.39	0.23	5.25	090	S
41113		A	Excision of tongue lesion	3.09	3.41	0.37	6.87	090	S
41114		A	Excision of tongue lesion	7.86	6.39	0.73	15.00	090	S
41115		A	Excision of tongue fold	1.69	1.78	0.17	3.64	010	S
41116		A	Excision of mouth lesion	2.36	2.49	0.27	5.12	090	S
41120		A	Partial removal of tongue	5.83	7.28	0.88	16.99	090	S
41130		A	Tongue and neck surgery	10.27	9.06	1.14	20.47	090	S
41135		A	Removal of tongue	21.15	18.30	2.64	42.09	090	S
41140		A	Tongue removal; neck surgery	23.46	18.89	2.45	44.80	090	S
41145		A	Tongue, mouth, jaw surgery	27.58	22.79	2.95	53.32	090	S
41150		A	Tongue, mouth, neck surgery	21.00	18.96	2.46	42.42	090	S
41153		A	Tongue, mouth, jaw surgery	21.18	25.00	3.03	49.21	090	S
41155		A	Tongue, jaw, & neck surgery	25.60	29.95	3.75	59.30	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
41250		A	Repair tongue laceration	1.86	1.07	0.11	3.04	010	S
41251		A	Repair tongue laceration	2.22	2.07	0.21	4.50	010	S
41252		A	Repair tongue laceration	2.92	2.35	0.26	5.53	010	S
41500		A	Fixation of tongue	3.50	3.29	0.26	7.05	090	S
41510		A	Tongue to lip surgery	3.32	2.53	0.46	6.30	090	S
41520		A	Reconstruction, tongue fold	2.63	2.88	0.28	5.79	090	S
41599		C	Tongue and mouth surgery	0.00	0.00	0.00	0.00	YYY	S
41800		A	Drainage of gum lesion	1.12	0.69	0.07	1.88	010	S
41805		A	Removal foreign body, gum	1.19	0.84	0.08	2.11	010	S
41806		A	Removal foreign body, jawbone	2.64	1.64	0.15	4.43	010	S
41820		R	Excision, gum, each quadrant	0.00	0.00	0.00	0.00	XXX	S
41821		R	Excision of gum flap	0.00	0.00	0.00	0.00	XXX	S
41822		R	Excision of gum lesion	2.26	3.03	0.25	5.54	010	S
41823		R	Excision of gum lesion	3.15	4.20	0.34	7.69	090	S
41825		A	Excision of gum lesion	1.26	1.49	0.14	2.89	010	S
41826		A	Excision of gum lesion	2.26	2.07	0.18	4.51	010	S
41827		A	Excision of gum lesion	3.27	3.76	0.38	7.43	090	S
41828		R	Excision of gum lesion	3.04	4.07	0.33	7.44	010	S
41830		R	Removal of gum tissue	3.30	4.41	0.36	8.07	010	S
41850		R	Treatment of gum lesion	0.00	0.00	0.00	0.00	XXX	S
41870		R	Gum graft	0.00	0.00	0.00	0.00	XXX	S
41872		R	Repair gum	2.44	3.26	0.27	5.97	090	S
41874		R	Repair tooth socket	2.94	3.93	0.32	7.19	090	S
41899		C	Dental surgery procedure	0.00	0.00	0.00	0.00	YYY	S
42000		A	Drainage mouth roof lesion	1.18	0.62	0.06	1.86	010	S
42100		A	Biopsy roof of mouth	1.26	0.79	0.08	2.13	010	S
42104		A	Excision lesion, mouth roof	1.58	1.62	0.17	3.38	010	S
42106		A	Excision lesion, mouth roof	2.05	2.22	0.21	4.48	010	S
42107		A	Excision lesion, mouth roof	4.20	4.91	0.50	9.61	090	S
42120		A	Remove palate/lesion	5.39	6.90	1.01	13.30	090	S
42140		A	Excision of uvula	1.54	1.35	0.15	3.04	090	S
42145		A	Repair, palate, pharynx/uvula	7.04	9.01	1.45	17.50	090	S
42160		A	Treatment mouth roof lesion	1.75	1.53	0.16	3.44	010	S
42180		A	Repair palate	2.45	2.24	0.26	4.95	010	S
42182		A	Repair palate	3.78	3.47	0.38	7.63	010	S
42200		A	Reconstruct cleft palate	11.25	7.19	0.85	19.29	090	S
42205		A	Reconstruct cleft palate	8.96	10.82	0.70	20.57	090	S
42210		A	Reconstruct cleft palate	13.75	12.51	0.95	27.21	090	S
42215		A	Reconstruct cleft palate	8.42	7.66	0.86	16.96	090	S
42220		A	Reconstruct cleft palate	6.65	5.40	0.81	12.86	090	S
42225		A	Reconstruct cleft palate	8.06	6.90	1.06	17.06	090	S
42226		A	Lengthening of palate	9.42	7.89	0.86	18.17	090	S
42227		A	Lengthening of palate	8.89	7.41	0.38	16.68	090	S
42235		A	Repair palate	7.50	5.55	0.49	13.54	090	S
42260		A	Repair nose to lip fistula	9.18	3.99	0.44	13.60	090	S
42280		A	Preparation, palate mold	1.49	1.99	0.17	3.65	010	S
42281		A	Insertion, palate prosthesis	1.77	1.47	0.15	3.39	010	S
42289		C	Palate/uvula surgery	0.00	0.00	0.00	0.00	YYY	S
42300		A	Drainage of salivary gland	1.88	0.96	0.12	2.96	010	S
42305		A	Drainage of salivary gland	5.59	2.18	0.27	8.04	090	S
42310		A	Drainage of salivary gland	1.51	1.03	0.12	2.66	010	S
42320		A	Drainage of salivary gland	2.30	1.83	0.22	4.35	010	S
42325		A	Create salivary cyst drain	2.65	2.12	0.20	4.97	090	S
42326		A	Create salivary cyst drain	3.65	4.34	0.33	8.32	090	S
42330		A	Removal of salivary stone	2.18	1.10	0.12	3.38	010	S
42335		A	Removal of salivary stone	3.21	2.47	0.27	5.95	090	S
42340		A	Removal of salivary stone	4.47	4.25	0.45	9.17	090	S
42400		A	Biopsy of salivary gland	0.78	0.79	0.10	1.67	000	S
42405		A	Biopsy of salivary gland	3.24	1.54	0.19	4.97	010	S
42406		A	Excision of salivary cyst	4.41	3.24	0.38	8.03	090	S
42409		A	Drainage of salivary cyst	2.71	2.81	0.30	5.82	090	S
42410		A	Excise parotid gland/lesion	8.68	5.94	0.92	15.74	090	S
42415		A	Excise parotid gland/lesion	16.12	12.68	1.68	30.48	090	S
42420		A	Excise parotid gland/lesion	18.63	14.82	1.87	35.32	090	S
42425		A	Excise parotid gland/lesion	12.36	11.10	1.43	24.89	090	S
42426		A	Excise parotid gland/lesion	19.88	24.12	3.21	47.21	090	S
42440		A	Excision submaxillary gland	6.61	7.98	0.99	15.58	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
42450		A	Excision sublingual gland	4.38	3.42	0.35	8.15	090	S
42500		A	Repair salivary duct	4.06	4.61	0.50	9.17	090	S
42505		A	Repair salivary duct	5.92	7.34	0.86	14.12	090	S
42507		A	Parotid duct diversion	5.96	4.65	0.67	11.28	090	S
42508		A	Parotid duct diversion	8.64	7.61	0.94	17.19	090	S
42509		A	Parotid duct diversion	11.08	7.31	1.23	19.62	090	S
42510		A	Parotid duct diversion	7.71	7.65	0.84	16.20	090	S
42550		A	Injection for salivary x-ray	1.25	0.44	0.04	1.73	000	N
42600		A	Closure of salivary fistula	4.58	3.89	0.46	8.93	090	S
42650		A	Dilation of salivary duct	0.77	0.39	0.04	1.20	000	S
42660		A	Dilation of salivary duct	1.13	0.50	0.08	1.69	000	S
42665		A	Ligation of salivary duct	2.43	2.04	0.25	4.72	090	S
42699		C	Salivary surgery procedure	0.00	0.00	0.00	0.00	YYY	S
42700		A	Drainage of tonsil abscess	1.57	0.85	0.10	2.52	010	S
42720		A	Drainage of throat abscess	4.53	1.89	0.22	6.64	010	S
42725		A	Drainage of throat abscess	9.50	4.45	0.53	14.48	090	S
42800		A	Biopsy of throat	1.34	0.74	0.08	2.16	010	S
42802		A	Biopsy of throat	1.49	1.02	0.12	2.63	010	S
42804		A	Biopsy of upper nose/throat	1.19	1.09	0.13	2.41	010	S
42806		A	Biopsy of upper nose/throat	1.53	1.40	0.16	3.09	010	S
42808		A	Excise pharynx lesion	2.25	2.52	0.29	5.06	010	S
42809		A	Remove pharynx foreign body	1.76	0.82	0.08	2.66	010	S
42810		A	Excision of neck cyst	3.20	3.14	0.47	6.81	090	S
42815		A	Excision of neck cyst	6.75	8.47	1.12	16.34	090	S
42820		A	Remove tonsils and adenoids	3.59	3.15	0.32	7.06	090	S
42821		A	Remove tonsils and adenoids	4.10	3.93	0.46	8.49	090	S
42825		A	Remove tonsils	3.21	2.64	0.33	6.18	090	S
42826		A	Removal of tonsils	3.19	3.86	0.43	7.48	090	S
42830		A	Removal of adenoids	2.49	1.86	0.27	4.62	090	S
42831		A	Removal of adenoids	2.61	2.36	0.26	5.22	090	S
42835		A	Removal of adenoids	2.22	1.86	0.10	4.18	090	S
42836		A	Removal of adenoids	3.10	2.79	0.31	6.20	090	S
42842		A	Extensive surgery of throat	8.13	6.69	0.73	15.55	090	S
42844		A	Extensive surgery of throat	12.73	10.85	1.27	24.85	090	S
42845		A	Extensive surgery of throat	21.88	18.62	2.22	42.72	090	S
42860		A	Excision of tonsil tags	2.14	1.89	0.21	4.24	090	S
42870		A	Excision of lingual tonsil	5.16	2.32	0.26	7.74	090	S
42880		D	Excise nose/throat lesion	0.00	0.00	0.00	0.00	090	S
42890		A	Partial removal of pharynx	11.67	8.99	1.03	21.69	090	S
42892		A	Revision of pharyngeal walls	13.94	10.92	1.27	26.13	090	S
42894		A	Revision of pharyngeal walls	20.68	16.06	1.83	38.57	090	S
42900		A	Repair throat wound	4.98	4.26	0.48	9.72	010	S
42950		A	Reconstruction of throat	7.70	9.86	1.10	18.66	090	S
42953		A	Repair throat, esophagus	8.21	6.34	0.93	15.48	090	S
42955		A	Surgical opening of throat	6.50	3.32	0.43	10.25	090	S
42960		A	Control throat bleeding	2.28	1.08	0.12	3.48	010	S
42961		A	Control throat bleeding	5.18	1.75	0.19	7.12	090	S
42962		A	Control throat bleeding	6.64	5.98	0.68	13.30	090	S
42970		A	Control nose/throat bleeding	4.78	1.03	0.10	5.91	090	N
42971		A	Control nose/throat bleeding	5.56	2.90	0.34	8.80	090	S
42972		A	Control nose/throat bleeding	6.55	4.55	0.73	11.83	090	S
42999		C	Throat surgery procedure	0.00	0.00	0.00	0.00	YYY	S
43020		A	Incision of esophagus	7.72	6.58	0.71	15.01	090	S
43030		A	Throat muscle surgery	7.15	9.15	1.21	17.51	090	S
43045		A	Incision of esophagus	18.83	12.45	2.36	33.64	090	S
43100		A	Excision of esophagus lesion	8.47	6.19	0.95	15.61	090	S
43101		A	Excision of esophagus lesion	15.11	9.48	1.88	26.47	090	S
43107		A	Removal of esophagus	27.20	22.50	4.42	54.12	090	S
43108		A	Removal of esophagus	32.64	25.27	4.77	62.68	090	S
43112		A	Removal of esophagus	29.67	21.85	4.22	55.74	090	S
43113		A	Removal of esophagus	33.63	25.27	4.77	63.67	090	S
43116		A	Partial removal of esophagus	29.67	25.27	4.77	59.71	090	S
43117		A	Partial removal of esophagus	28.47	25.27	4.77	58.51	090	S
43118		A	Partial removal of esophagus	31.65	25.27	4.77	61.69	090	S
43121		A	Partial removal of esophagus	27.69	21.36	4.19	53.24	090	S
43122		A	Partial removal of esophagus	27.69	21.36	4.19	53.24	090	S
43123		A	Partial removal of esophagus	31.65	25.27	4.77	61.69	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
43124		A	Removal of esophagus	24.73	22.50	4.42	51.65	090	S
43130		A	Removal of esophagus pouch	10.65	10.51	1.60	22.79	090	S
43135		A	Removal of esophagus pouch	15.11	11.72	2.17	29.00	090	S
43200		A	Esophagus endoscopy	1.59	2.04	0.28	3.89	000	S
43202		A	Esophagus endoscopy, biopsy	1.89	2.41	0.31	4.61	000	N
43204		A	Esophagus endoscopy & inject	3.77	4.83	0.36	8.96	000	N
43205		A	Esophagus endoscopy/ligation	3.79	2.70	0.18	6.67	000	N
43215		A	Esophagus endoscopy	2.60	3.33	0.46	6.39	000	N
43216		A	Esophagus endoscopy/lesion	2.40	3.58	0.37	6.35	000	N
43217		A	Esophagus endoscopy	2.90	3.58	0.37	6.85	000	N
43219		A	Esophagus endoscopy	2.80	3.58	0.34	6.72	000	N
43220		A	Esophagus endoscopy, dilation	2.10	2.68	0.27	5.05	000	N
43226		A	Esophagus endoscopy, dilation	2.34	3.00	0.26	5.60	000	N
43227		A	Esophagus endoscopy, repair	3.60	4.61	0.34	8.55	000	N
43228		A	Esophagus endoscopy, ablation	3.77	4.79	0.38	8.94	000	N
43234		A	Upper GI endoscopy, exam	2.01	2.67	0.30	4.98	000	N
43235		A	Upper GI endoscopy, diagnosis	2.39	3.07	0.29	5.75	000	N
43239		A	Upper GI endoscopy, biopsy	2.69	3.44	0.33	6.46	000	N
43241		A	Upper GI endoscopy with tube	2.59	3.31	0.38	6.28	000	N
43243		A	Upper GI endoscopy & inject	4.57	5.63	0.39	10.59	000	N
43244		A	Upper GI endoscopy/ligation	4.58	3.47	0.41	8.47	000	N
43245		A	Operative upper GI endoscopy	3.38	4.34	0.40	8.13	000	N
43246		A	Place gastrostomy tube	4.33	5.55	0.51	10.39	000	N
43247		A	Operative upper GI endoscopy	3.38	4.34	0.38	8.11	000	N
43248		A	Upper GI endoscopy/guidewire	3.15	4.03	0.35	7.53	000	N
43249		A	Esophagus endoscopy, dilation	2.90	3.73	0.30	6.93	000	N
43250		A	Upper GI endoscopy/tumor	3.20	4.60	0.43	8.23	000	N
43251		A	Operative upper GI endoscopy	3.70	4.60	0.43	8.73	000	N
43255		A	Operative upper GI endoscopy	4.40	5.63	0.38	10.41	000	N
43258		A	Operative upper GI endoscopy	4.55	5.41	0.38	10.34	000	N
43259		A	Endoscopic ultrasound exam	4.89	4.02	0.35	9.26	000	N
43260		A	Endoscopy, bile duct/pancreas	5.98	5.98	0.39	12.33	000	N
43261		A	Endoscopy, bile duct/pancreas	8.27	5.98	0.39	14.64	000	N
43262		A	Endoscopy, bile duct/pancreas	7.39	9.00	0.58	16.97	000	N
43263		A	Endoscopy, bile duct/pancreas	8.19	5.83	0.38	14.40	000	N
43264		A	Endoscopy, bile duct/pancreas	8.90	8.92	0.61	18.43	000	N
43265		A	Endoscopy, bile duct/pancreas	8.90	6.82	0.48	16.21	000	N
43267		A	Endoscopy, bile duct/pancreas	7.39	7.41	0.48	15.28	000	N
43268		A	Endoscopy, bile duct/pancreas	7.39	8.72	0.56	16.67	000	N
43269		A	Endoscopy, bile duct/pancreas	6.04	7.35	0.51	13.90	000	N
43271		A	Endoscopy, bile duct/pancreas	7.39	7.83	0.50	15.72	000	N
43272		A	Endoscopy, bile duct/pancreas	7.39	5.60	0.42	13.41	000	N
43300		A	Repair of esophagus	8.72	11.17	1.70	21.59	090	S
43305		A	Repair esophagus and fistula	16.14	13.71	1.78	31.63	090	S
43310		A	Repair of esophagus	24.20	18.99	2.23	44.42	090	S
43312		A	Repair esophagus and fistula	27.26	13.72	2.30	43.28	090	S
43320		A	Fuse esophagus & stomach	14.49	11.68	2.05	28.22	090	S
43324		A	Revise esophagus & stomach	15.18	11.88	2.53	29.59	090	S
43325		A	Revise esophagus & stomach	14.63	11.61	2.29	28.53	090	S
43326		A	Revise esophagus & stomach	14.37	7.52	1.75	23.64	090	S
43330		A	Repair of esophagus	14.27	11.36	2.39	28.02	090	S
43331		A	Repair of esophagus	14.73	14.33	2.64	31.70	090	S
43340		A	Fuse esophagus & intestine	14.16	12.44	2.52	29.12	090	S
43341		A	Fuse esophagus & intestine	15.26	9.90	1.66	26.72	090	S
43350		A	Surgical opening, esophagus	11.25	7.88	1.15	20.28	090	S
43351		A	Surgical opening, esophagus	13.42	8.77	1.53	23.72	090	S
43352		A	Surgical opening, esophagus	10.92	8.86	1.47	21.25	090	S
43360		A	Gastrointestinal repair	26.06	21.36	4.19	51.61	090	S
43361		A	Gastrointestinal repair	29.67	25.27	4.77	59.71	090	S
43400		A	Ligate esophagus veins	15.55	10.82	1.63	28.00	090	S
43401		A	Esophagus surgery for veins	16.26	9.59	1.93	27.78	090	S
43405		A	Ligate/staple esophagus	14.84	14.33	2.64	31.81	090	S
43410		A	Repair esophagus wound	8.61	8.90	1.54	20.05	090	S
43415		A	Repair esophagus wound	15.86	12.74	2.52	31.12	090	S
43420		A	Repair esophagus opening	10.19	5.88	0.78	16.85	090	S
43425		A	Repair esophagus opening	15.58	9.94	1.71	27.23	090	S
43450		A	Dilate esophagus	1.38	0.68	0.05	2.11	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
43453		A	Dilate esophagus	1.51	1.51	0.11	3.13	000	N
43456		A	Dilate esophagus	2.57	2.47	0.24	5.28	000	N
43458		A	Dilation of esophagus	3.06	1.52	0.27	4.85	000	N
43460		A	Pressure treatment esophagus	3.80	1.67	0.15	5.62	000	N
43466		C	Free jejunum flap, microvasc	0.00	0.00	0.00	0.00	090	S
43469		C	Esophagus surgery procedure	0.00	0.00	0.00	0.00	YYY	N
43500		A	Surgical opening of stomach	7.60	6.13	1.20	14.93	090	S
43501		A	Surgical repair of stomach	13.85	8.58	1.83	24.26	090	S
43502		A	Surgical repair of stomach	15.82	8.58	1.83	26.23	090	S
43510		A	Surgical opening of stomach	8.27	8.29	0.94	18.50	090	N
43520		A	Incision of pyloric muscle	7.00	4.48	0.87	12.35	090	S
43600		A	Biopsy of stomach	1.91	0.50	0.05	2.46	000	N
43605		A	Biopsy of stomach	8.23	5.91	1.29	15.43	090	S
43610		A	Excision of stomach lesion	10.11	8.17	1.71	19.99	090	S
43611		A	Excision of stomach lesion	12.43	8.17	1.71	22.31	090	S
43620		A	Removal of stomach	21.03	15.38	3.19	39.60	090	S
43621		A	Removal of stomach	21.47	15.38	3.19	40.04	090	S
43622		A	Removal of stomach	22.82	15.38	3.19	41.39	090	S
43631		A	Removal of stomach, partial	18.10	12.42	2.66	33.18	090	S
43632		A	Removal stomach, partial	18.10	12.42	2.66	33.18	090	S
43633		A	Removal stomach, partial	18.54	12.42	2.66	33.62	090	S
43634		A	Removal stomach, partial	19.89	20.83	4.57	45.29	090	S
43635		A	Partial removal of stomach	2.06	1.08	0.26	3.40	ZZZ	S
43636		A	Partial removal of stomach	20.15	12.75	2.73	35.63	090	S
43639		A	Removal stomach, partial	20.64	12.75	2.73	36.12	090	S
43640		A	Vagotomy & pylorus repair	13.28	10.34	2.19	25.81	090	S
43641		A	Vagotomy & pylorus repair	13.28	10.34	2.18	25.80	090	S
43750		A	Place gastrostomy tube	4.27	4.36	0.58	9.18	010	N
43760		A	Change gastrostomy tube	1.10	0.69	0.09	1.88	000	N
43761		A	Reposition gastrostomy tube	2.01	1.06	0.25	3.32	000	N
43800		A	Reconstruction of pylorus	8.41	6.85	1.47	17.73	090	S
43810		A	Fusion of stomach and bowel	10.08	7.64	1.53	19.25	090	S
43820		A	Fusion of stomach and bowel	10.43	8.29	1.75	20.47	090	S
43825		A	Fusion of stomach and bowel	13.28	11.08	2.30	26.66	090	S
43830		A	Place gastrostomy tube	6.52	6.19	1.19	13.90	090	S
43831		A	Place gastrostomy tube	6.41	5.20	0.93	12.54	090	S
43832		A	Place gastrostomy tube	10.68	7.95	1.36	19.99	090	S
43840		A	Repair of stomach lesion	10.45	7.84	1.68	19.95	090	S
43842		A	Gastroplasty for obesity	13.76	13.72	2.93	30.41	090	S
43843		A	Gastroplasty for obesity	13.76	13.72	2.93	30.41	090	S
43848		A	Gastric bypass for obesity	17.84	14.80	3.30	35.94	090	S
43847		A	Gastric bypass for obesity	18.87	14.80	3.30	37.97	090	S
43848		A	Revision gastroplasty	22.10	14.80	3.30	40.20	090	S
43850		A	Revise stomach-bowel fusion	18.14	11.64	2.25	32.03	090	S
43855		A	Revise stomach-bowel fusion	19.15	10.44	2.28	31.87	090	S
43860		A	Revise stomach-bowel fusion	18.14	11.46	2.51	32.11	090	S
43865		A	Revise stomach-bowel fusion	19.15	13.39	2.98	35.52	090	S
43870		A	Repair stomach opening	6.56	5.77	1.14	13.47	090	S
43880		A	Repair stomach-bowel fistula	18.14	8.25	1.76	28.15	090	S
43999		C	Stomach surgery procedure	0.00	0.00	0.00	0.00	YYY	N
44005		A	Freeing of bowel adhesion	12.52	8.28	1.75	22.55	090	S
44010		A	Incision of small bowel	9.24	6.91	1.42	17.57	090	S
44015		A	Insert needle catheter, bowel	2.62	3.22	0.45	6.29	ZZZ	S
44020		A	Exploration of small bowel	10.69	7.81	1.65	20.15	090	S
44021		A	Decompress small bowel	10.83	7.00	1.48	19.31	090	S
44025		A	Incision of large bowel	11.07	7.74	1.61	20.42	090	S
44050		A	Reduce bowel obstruction	10.05	7.77	1.64	19.46	090	S
44055		A	Correct malrotation of bowel	11.92	7.66	1.60	21.18	090	S
44100		A	Biopsy of bowel	2.01	1.38	0.13	3.52	000	N
44110		A	Excision of bowel lesion(s)	9.01	7.67	1.58	18.26	090	S
44111		A	Excision of bowel lesion(s)	11.05	9.67	2.14	22.86	090	S
44120		A	Removal of small intestine	13.15	9.46	2.02	24.63	090	S
44121		A	Removal of small intestine	4.45	2.32	0.54	7.31	ZZZ	S
44125		A	Removal of small intestine	13.15	10.75	2.28	26.18	090	S
44130		A	Bowel to bowel fusion	11.09	8.67	1.86	21.62	090	S
44139		A	Mobilization of colon	2.23	1.17	0.27	3.67	ZZZ	S
44140		A	Partial removal of colon	16.97	11.37	2.40	30.74	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
44141		A	Partial removal of colon	17.36	11.66	2.55	31.77	090	S
44143		A	Partial removal of colon	17.36	12.28	2.62	32.24	090	S
44144		A	Partial removal of colon	16.97	12.06	2.53	31.56	090	S
44145		A	Partial removal of colon	21.29	13.25	2.78	37.32	090	S
44146		A	Partial removal of colon	22.22	14.98	3.14	40.34	090	S
44147		A	Partial removal of colon	16.23	15.34	3.30	34.87	090	S
44150		A	Removal of colon	19.04	14.84	3.17	37.05	090	S
44151		A	Removal of colon/ileostomy	17.95	10.21	2.22	30.38	090	S
44152		A	Removal of colon/ileostomy	22.98	15.44	3.38	41.78	090	S
44153		A	Removal of colon/ileostomy	24.69	19.35	3.63	47.67	090	S
44155		A	Removal of colon	22.09	16.65	3.50	42.24	090	S
44156		A	Removal of colon/ileostomy	20.48	11.40	2.52	34.40	090	S
44160		A	Removal of colon	14.09	12.44	2.68	29.21	090	S
44300		A	Open bowel to skin	7.77	6.03	1.29	15.09	090	S
44310		A	Ileostomy/jejunostomy	10.07	7.88	1.66	19.61	090	S
44312		A	Revision of ileostomy	5.34	3.08	0.45	8.87	090	S
44314		A	Revision of ileostomy	9.77	6.68	1.21	17.66	090	S
44316		A	Devised bowel pouch	13.59	9.64	1.43	24.66	090	S
44320		A	Colostomy	11.39	7.46	1.57	20.42	090	S
44322		A	Colostomy with biopiles	10.31	9.07	1.88	21.26	090	S
44340		A	Revision of colostomy	4.92	1.68	0.35	6.95	090	S
44345		A	Revision of colostomy	10.05	4.84	1.03	15.92	090	S
44346		A	Revision of colostomy	11.13	6.65	1.36	19.16	090	S
44360		A	Small bowel endoscopy	2.92	3.74	0.32	6.98	000	N
44361		A	Small bowel endoscopy, biopsy	3.23	4.14	0.34	7.71	000	N
44363		A	Small bowel endoscopy	3.94	2.99	0.36	7.29	000	N
44364		A	Small bowel endoscopy	4.22	4.73	0.72	9.67	000	N
44365		A	Small bowel endoscopy	3.73	4.73	0.72	9.18	000	N
44366		A	Small bowel endoscopy	4.97	5.66	0.45	11.28	000	N
44369		A	Small bowel endoscopy	5.09	6.52	0.50	12.11	000	N
44372		A	Small bowel endoscopy	4.97	5.83	0.67	11.47	000	N
44373		A	Small bowel endoscopy	3.94	5.03	0.50	9.47	000	N
44376		A	Small bowel endoscopy	5.69	4.05	0.26	10.00	000	N
44377		A	Small bowel endoscopy	5.98	4.26	0.28	10.52	000	N
44378		A	Small bowel endoscopy	7.71	5.27	0.35	13.33	000	N
44380		A	Small bowel endoscopy	1.51	1.94	0.22	3.67	000	N
44382		A	Small bowel endoscopy	1.82	2.33	0.29	4.44	000	N
44385		A	Endoscopy of bowel pouch	1.82	2.33	0.34	4.49	000	N
44386		A	Endoscopy, bowel pouch, biopsy	2.12	1.54	0.15	3.81	000	N
44388		A	Colon endoscopy	2.82	3.61	0.50	6.93	000	S
44389		A	Colonoscopy with biopsy	3.13	4.00	0.45	7.58	000	N
44390		A	Colonoscopy for foreign body	3.83	2.63	0.28	6.74	000	N
44391		A	Colonoscopy for bleeding	4.32	5.28	0.53	10.11	000	N
44392		A	Colonoscopy & polypectomy	3.82	5.16	0.70	9.68	000	N
44393		A	Colonoscopy, lesion removal	4.84	5.41	0.70	10.95	000	N
44394		A	Colonoscopy w/snare	4.43	5.16	0.70	10.29	000	N
44500		A	Intro, gastrointestinal tube	0.49	0.36	0.02	0.87	000	N
44602		A	Suture, small intestine	9.72	7.65	1.62	18.99	090	S
44604		A	Suture, small intestine	12.94	9.09	1.96	23.99	090	S
44605		A	Suture, large intestine	12.94	7.87	1.67	22.48	090	S
44615		A	Repair of bowel lesion	13.91	9.37	2.02	25.30	090	S
44620		A	Intestinal stricturoplasty	12.69	6.74	1.57	21.20	090	S
44625		A	Repair bowel opening	9.65	5.97	1.25	16.88	090	S
44640		A	Repair bowel opening	12.10	9.58	2.03	23.71	090	S
44650		A	Repair bowel-skin fistula	13.34	8.54	1.35	21.23	090	S
44660		A	Repair bowel-bladder fistula	13.76	7.33	1.46	22.55	090	S
44661		A	Repair bowel-bladder fistula	13.14	8.34	1.21	22.69	090	S
44680		A	Surgical revision, intestine	15.44	13.94	2.62	31.90	090	S
44799		C	Intestine surgery procedure	12.41	9.71	2.14	24.26	090	S
44800		A	Excision of bowel pouch	10.12	5.24	1.08	16.44	090	S
44820		A	Excision of mesentery lesion	9.31	5.80	1.21	16.32	090	S
44850		A	Repair of mesentery	8.64	5.60	1.18	15.42	090	S
44899		C	Bowel surgery procedure	0.00	0.00	0.00	0.00	YYY	S
44900		A	Drainage of appendix abscess	7.86	4.28	0.88	13.02	090	S
44950		A	Appendectomy	8.25	4.89	1.01	14.15	090	S
44955		A	Appendectomy	1.53	1.96	0.60	4.09	ZZZ	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT/ HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
44960		A	Appendectomy	9.78	5.89	1.24	16.91	090	S
45000		A	Drainage of pelvic abscess	4.28	1.59	0.24	6.11	090	S
45005		A	Drainage of rectal abscess	1.96	1.29	0.21	3.46	010	S
45020		A	Drainage of rectal abscess	4.40	2.61	0.51	7.52	090	S
45100		A	Biopsy of rectum	3.38	1.88	0.35	5.61	090	S
45108		A	Removal of anorectal lesion	4.28	2.66	0.53	7.47	090	S
45110		A	Removal of rectum	21.68	16.32	3.43	41.43	090	S
45111		A	Partial removal of rectum	14.97	11.77	2.49	29.23	090	S
45112		A	Removal of rectum	24.02	16.06	3.36	43.44	090	S
45113		A	Partial proctectomy	24.69	16.06	3.36	44.11	090	S
45114		A	Partial removal of rectum	21.20	15.39	3.24	39.83	090	S
45116		A	Partial removal of rectum	19.09	10.77	2.34	32.20	090	S
45120		A	Removal of rectum	22.78	16.39	3.54	42.71	090	S
45121		A	Removal of rectum and colon	24.96	10.79	2.01	37.76	090	S
45123		A	Partial proctectomy	13.27	11.77	2.49	27.53	090	S
45130		A	Excision of rectal prolapse	13.03	8.92	1.79	23.74	090	S
45135		A	Excision of rectal prolapse	15.36	15.95	3.50	34.81	090	S
45150		A	Excision of rectal stricture	5.28	3.38	0.83	9.27	090	S
45160		A	Excision of rectal lesion	12.34	7.46	1.56	21.36	090	S
45170		A	Excision of rectal lesion	9.40	4.82	0.96	14.98	090	S
45190		A	Destruction, rectal tumor	7.91	5.09	1.06	14.06	090	S
45300		A	Proctosigmoidoscopy	0.70	0.55	0.07	1.32	000	S
45303		A	Proctosigmoidoscopy	0.80	0.64	0.12	1.56	000	S
45306		A	Proctosigmoidoscopy, biopsy	1.01	0.84	0.14	1.99	000	S
45307		A	Proctosigmoidoscopy	1.71	1.27	0.18	3.16	000	S
45308		A	Proctosigmoidoscopy	1.51	1.13	0.20	2.84	000	S
45309		A	Proctosigmoidoscopy	2.01	1.13	0.20	3.34	000	S
45315		A	Proctosigmoidoscopy	2.54	1.19	0.18	3.91	000	S
45317		A	Proctosigmoidoscopy	2.73	1.26	0.19	4.18	000	S
45320		A	Proctosigmoidoscopy	2.88	1.57	0.34	5.09	000	S
45321		A	Proctosigmoidoscopy	2.12	1.47	0.27	3.86	000	S
45330		A	Sigmoidoscopy, diagnostic	0.96	1.23	0.12	2.31	000	N
45331		A	Sigmoidoscopy and biopsy	1.26	1.61	0.15	3.02	000	N
45332		A	Sigmoidoscopy	1.96	1.76	0.16	3.88	000	N
45333		A	Sigmoidoscopy & polypectomy	1.96	2.24	0.28	4.48	000	N
45334		A	Sigmoidoscopy for bleeding	2.99	2.71	0.23	5.93	000	N
45337		A	Sigmoidoscopy, decompression	2.36	3.03	0.38	5.77	000	N
45338		A	Sigmoidoscopy	2.57	2.24	0.26	5.07	000	N
45339		A	Sigmoidoscopy	3.14	3.24	0.31	6.69	000	N
45355		A	Surgical colonoscopy	3.52	1.17	0.10	4.79	000	N
45378		A	Diagnostic colonoscopy	3.70	4.13	0.39	8.22	000	N
45378	63	A	Diagnostic colonoscopy	0.96	1.23	0.12	2.31	000	N
45379		A	Colonoscopy	4.72	5.33	0.45	10.50	000	N
45380		A	Colonoscopy and biopsy	4.01	4.79	0.40	9.20	000	N
45382		A	Colonoscopy, control bleeding	5.73	5.87	0.41	12.01	000	N
45383		A	Colonoscopy, lesion removal	5.87	5.92	0.50	12.29	000	N
45384		A	Colonoscopy	4.70	5.85	0.58	11.13	000	N
45385		A	Colonoscopy, lesion removal	5.31	6.85	0.58	12.54	000	N
45500		A	Repair of rectum	6.59	5.95	1.21	13.75	090	S
45505		A	Repair of rectum	5.54	6.29	1.23	13.06	090	S
45520		A	Treatment of rectal prolapse	0.55	0.51	0.10	1.26	000	N
45540		A	Correct rectal prolapse	11.96	9.89	2.10	23.97	090	S
45541		A	Correct rectal prolapse	9.70	10.17	2.04	22.00	090	S
45550		A	Repair rectum; remove sigmoid	16.97	11.49	2.38	30.84	090	S
45560		A	Repair of rectocele	7.48	4.79	0.98	13.25	090	S
45562		A	Exploration/repair of rectum	11.13	8.09	1.58	20.80	090	S
45563		A	Exploration/repair of rectum	17.55	12.77	2.49	32.81	090	S
45600		A	Repair rectumbladder fistula	12.75	9.82	1.45	24.02	090	S
45605		A	Repair fistula; colostomy	15.08	12.32	2.39	29.79	090	S
45620		A	Repair rectourethral fistula	13.31	8.98	1.23	23.52	090	S
45625		A	Repair fistula; colostomy	15.45	9.87	1.66	26.98	090	S
45600		A	Reduction of rectal prolapse	1.66	0.58	0.11	2.37	010	S
45605		A	Dilation of anal sphincter	1.51	0.71	0.12	2.34	010	S
45610		A	Dilation of rectal narrowing	1.86	0.57	0.13	2.56	010	S
45615		A	Remove rectal obstruction	2.09	0.78	0.09	2.96	010	N
45999		C	Rectum surgery procedure	0.00	0.00	0.00	0.00	YYY	N
46030		A	Removal of rectal marker	1.20	0.40	0.07	1.67	010	S

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 * Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT/ HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
46040		A	Incision of rectal abscess	4.41	1.69	0.34	6.44	090	S
46045		A	Incision of rectal abscess	3.91	1.85	0.38	6.14	090	S
46050		A	Incision of anal abscess	1.14	0.60	0.11	1.85	010	S
46060		A	Incision of rectal abscess	5.03	5.35	1.12	11.50	090	S
46070		A	Incision of anal septum	2.63	1.37	0.33	4.33	090	S
46080		A	Incision of anal sphincter	2.35	2.13	0.43	4.91	010	S
46083		A	Incise external hemorrhoid	1.35	0.63	0.08	2.06	010	N
46200		A	Removal of anal fissure	3.02	3.29	0.66	6.97	090	S
46210		A	Removal of anal crypt	2.52	0.77	0.14	3.43	090	S
46220		A	Removal of anal crypts	4.07	1.90	0.38	6.35	090	S
46221		A	Removal of anal tab	1.51	0.63	0.12	2.26	010	S
46230		A	Ligation of hemorrhoid(s)	1.38	0.66	0.14	2.18	010	S
46250		A	Removal of anal tabs	2.52	0.83	0.12	3.47	010	S
46255		A	Hemorrhoidectomy	4.29	2.84	0.52	7.65	090	S
46257		A	Hemorrhoidectomy	4.95	4.72	0.85	10.52	090	S
46258		A	Remove hemorrhoids & fissure	5.57	5.23	1.08	12.18	090	S
46260		A	Remove hemorrhoids & fistula	6.26	5.87	1.22	13.35	090	S
46261		A	Hemorrhoidectomy	6.70	6.07	1.25	14.02	090	S
46262		A	Remove hemorrhoids & fissure	7.62	6.62	1.34	15.58	090	S
46270		A	Remove hemorrhoids & fistula	8.01	6.72	1.38	16.12	090	S
46275		A	Removal of anal fistula	3.51	1.87	0.37	5.75	090	S
46280		A	Removal of anal fistula	4.35	5.50	1.13	10.98	090	S
46285		A	Removal of anal fistula	5.63	6.08	1.24	12.95	090	S
46288		A	Repair anal fistula	3.88	2.26	0.43	6.59	090	S
46320		A	Removal of hemorrhoid clot	6.83	3.57	0.83	11.23	090	S
46500		A	Injection into hemorrhoids	1.58	0.70	0.11	2.39	010	S
46600		A	Diagnostic anoscopy	1.53	0.32	0.06	1.91	010	S
46604		A	Anoscopy and dilation	0.50	0.28	0.03	0.81	000	N
46608		A	Anoscopy and biopsy	1.31	0.38	0.06	1.75	000	S
46610		A	Anoscopy; remove foreign body	0.81	0.36	0.06	1.23	000	S
46611		A	Anoscopy; remove lesion	1.51	1.07	0.12	2.70	000	N
46612		A	Anoscopy	1.32	0.85	0.15	2.32	000	S
46614		A	Anoscopy; remove lesions	1.81	0.85	0.15	2.81	000	S
46615		A	Anoscopy; control bleeding	2.34	1.39	0.20	3.93	000	S
46670		A	Anoscopy	2.01	1.55	0.25	3.81	000	S
46700		A	Repair of anal stricture	2.68	1.55	0.25	4.48	000	S
46705		A	Repair of anal stricture	6.40	6.14	1.24	13.78	090	S
46715		A	Repair of anovaginal fistula	5.38	3.60	0.77	10.75	090	S
46716		A	Repair of anovaginal fistula	6.73	3.51	0.82	11.06	090	S
46730		A	Construction of absent anus	11.58	5.05	1.40	19.03	090	S
46735		A	Construction of absent anus	20.54	10.74	2.50	33.78	090	S
46740		A	Construction of absent anus	24.91	13.04	3.04	40.99	090	S
46742		A	Repair, imperforated anus	22.08	11.55	2.68	36.31	090	S
46744		A	Repair, cloacal anomaly	27.82	19.75	1.93	49.50	090	S
46746		A	Repair, cloacal anomaly	31.23	22.17	2.17	55.57	090	S
46748		A	Repair, cloacal anomaly	34.17	24.26	2.37	60.80	090	S
46750		A	Repair, cloacal anomaly	38.07	27.03	2.64	67.74	090	S
46751		A	Repair of anal sphincter	7.35	6.00	1.22	14.57	090	S
46753		A	Repair of anal sphincter	7.78	4.07	0.95	12.80	090	S
46754		A	Reconstruction of anus	6.04	4.69	1.02	11.95	090	S
46760		A	Removal of suture from anus	1.51	1.48	0.30	3.29	010	S
46761		A	Repair of anal sphincter	10.61	6.80	1.41	18.82	090	S
46762		A	Repair of anal sphincter	10.16	6.83	1.35	18.34	090	S
46900		A	Implant artificial sphincter	9.26	5.72	1.21	16.19	090	S
46910		A	Destruction, anal lesion(s)	1.81	0.39	0.06	2.26	010	S
46916		A	Destruction, anal lesion(s)	1.81	0.64	0.08	2.53	010	S
46917		A	Cryosurgery, anal lesion(s)	1.81	0.67	0.06	2.54	010	S
46922		A	Laser surgery, anal lesion(s)	1.81	1.94	0.31	4.06	010	S
46924		A	Excision of anal lesion(s)	1.81	1.28	0.23	3.32	010	S
46934		A	Destruction, anal lesion(s)	2.71	2.56	0.46	5.73	010	S
46935		A	Destruction of hemorrhoids	3.54	1.19	0.17	5.20	090	N
46936		A	Destruction of hemorrhoids	2.40	1.62	0.22	4.24	010	N
46937		A	Destruction of hemorrhoids	4.17	2.29	0.24	6.70	090	N
46938		A	Cryotherapy of rectal lesion	2.66	2.35	0.45	5.46	010	S
46939		A	Cryotherapy of rectal lesion	4.42	2.50	0.52	7.44	090	S
46940		A	Treatment of anal fissure	2.29	0.51	0.09	2.89	010	S
46942		A	Treatment of anal fissure	2.01	0.46	0.08	2.55	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
46945		A	Ligation of hemorrhoids	1.90	0.63	0.12	2.65	090	S
46946		A	Ligation of hemorrhoids	2.76	0.94	0.17	3.87	090	S
46999		C	Anus surgery procedure	0.00	0.00	0.00	0.00	YYY	S
47000		A	Needle biopsy of liver	1.90	1.40	0.13	3.43	000	N
47001		A	Needle biopsy, liver	1.90	1.40	0.13	3.43	ZZZ	S
47010		A	Drainage of liver lesion	6.75	6.75	1.13	16.63	090	S
47015		A	Inject/aspirate liver cyst	6.75	6.75	1.13	16.66	090	S
47100		A	Wedge biopsy of liver	6.75	3.29	0.67	10.71	090	S
47120		A	Partial removal of liver	19.99	12.00	2.48	34.47	090	S
47122		A	Extensive removal of liver	32.54	17.58	3.59	53.71	090	S
47125		A	Partial removal of liver	26.68	17.43	3.61	49.72	090	S
47130		A	Partial removal of liver	31.56	19.19	3.69	54.64	090	S
47133		X	Removal of donor liver	0.00	0.00	0.00	0.00	XXX	0
47134		R	Partial removal, donor liver	39.15	20.48	4.77	64.40	XXX	S
47136		R	Transplantation of liver	77.61	54.48	8.49	140.58	090	S
47136		R	Transplantation of liver	64.04	33.50	7.79	105.33	090	S
47300		A	Surgery for liver lesion	8.75	7.67	1.59	18.01	090	S
47350		A	Repair liver wound	11.29	7.46	1.49	20.24	090	S
47360		A	Repair liver wound	15.34	10.93	2.18	28.45	090	S
47361		A	Repair liver wound	28.00	14.64	3.41	46.05	090	S
47362		A	Repair liver wound	10.00	5.23	1.22	16.45	090	S
47399		C	Liver surgery procedure	0.00	0.00	0.00	0.00	YYY	S
47400		A	Incision of bile duct	18.90	8.53	1.36	28.79	090	S
47420		A	Incision of bile duct	15.31	9.48	1.99	26.78	090	S
47425		A	Incision of bile duct	14.78	11.71	2.46	28.95	090	S
47460		A	Incise bile duct sphincter	14.41	15.54	1.82	31.77	090	N
47480		A	Incision of gallbladder	8.05	7.60	1.59	17.24	090	S
47490		A	Incision of gallbladder	6.04	3.57	0.38	9.99	090	N
47500		A	Injection for liver x-rays	1.96	1.51	0.14	3.61	000	N
47505		A	Injection for liver x-rays	0.76	0.88	0.14	1.86	000	N
47510		A	Insert catheter, bile duct	7.39	2.87	0.25	10.51	090	N
47511		A	Insert bile duct drain	9.91	2.87	0.25	13.03	090	N
47525		A	Change bile duct catheter	5.41	1.59	0.16	7.16	010	N
47530		A	Revise, reinsert bile tube	5.41	1.51	0.19	7.11	090	N
47550		A	Bile duct endoscopy	3.02	1.55	0.35	4.93	000	S
47552		A	Biliary endoscopy, thru skin	6.04	1.36	0.21	7.61	000	S
47553		A	Biliary endoscopy, thru skin	6.35	3.80	0.62	10.77	000	N
47554		A	Biliary endoscopy, thru skin	9.06	3.93	0.67	13.66	000	S
47555		A	Biliary endoscopy, thru skin	7.56	2.63	0.30	10.49	000	N
47556		A	Biliary endoscopy, thru skin	8.56	2.63	0.30	11.49	000	N
47600		A	Removal of gallbladder	10.88	7.53	1.58	19.99	090	S
47605		A	Removal of gallbladder	11.53	8.14	1.75	21.42	090	S
47610		A	Removal of gallbladder	15.00	9.37	2.00	26.37	090	S
47612		A	Removal of gallbladder	14.75	14.23	3.05	32.03	090	S
47620		A	Removal of gallbladder	15.79	11.23	2.36	29.38	090	S
47630		A	Remove bile duct stone	8.31	3.75	0.40	12.46	090	N
47700		A	Exploration of bile ducts	13.75	7.63	1.58	22.96	090	S
47701		A	Bile duct revision	26.57	8.21	1.90	36.68	090	S
47711		A	Excision of bile duct tumor	18.15	12.08	2.46	32.69	090	S
47712		A	Excision of bile duct tumor	23.74	12.06	2.46	38.26	090	S
47715		A	Excision of bile duct cyst	14.50	8.22	1.71	24.43	090	S
47716		A	Fusion of bile duct cyst	12.53	6.56	1.53	20.62	090	S
47720		A	Fuse gallbladder & bowel	11.90	9.16	1.93	22.99	090	S
47721		A	Fuse upper gi structures	14.41	11.42	2.47	28.30	090	S
47740		A	Fuse gallbladder & bowel	13.93	10.21	2.14	26.28	090	S
47741		A	Fuse gallbladder & bowel	16.23	14.35	3.02	33.60	090	S
47760		A	Fuse bile ducts and bowel	19.93	11.61	2.53	34.07	090	S
47765		A	Fuse liver ducts & bowel	19.04	14.61	2.97	36.62	090	S
47780		A	Fuse bile ducts and bowel	20.40	13.07	2.73	36.20	090	S
47785		A	Fuse bile ducts and bowel	24.41	13.07	2.73	40.21	090	S
47800		A	Reconstruction of bile ducts	17.71	13.22	2.43	33.36	090	S
47801		A	Placement, bile duct support	11.28	5.48	0.81	17.57	090	S
47802		A	Fuse liver duct & intestine	16.01	10.27	1.75	28.03	090	S
47900		A	Suture bile duct injury	15.63	13.22	2.43	31.28	090	S
47999		C	Bile tract surgery procedure	0.00	0.00	0.00	0.00	YYY	S
48000		A	Drainage of abdomen	13.10	7.05	1.40	21.55	090	S
48001		A	Placement of drain, pancreas	15.54	8.13	1.89	25.56	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
48005		A	Resect/debride pancreas	17.57	9.19	2.14	28.90	090	S
48020		A	Removal of pancreatic stone	12.98	6.78	1.57	21.33	090	S
48100		A	Biopsy of pancreas	10.19	4.21	0.79	15.19	090	S
48102		A	Needle biopsy, pancreas	4.43	2.41	0.25	7.09	010	N
48120		A	Removal of pancreas lesion	12.79	9.72	2.07	24.58	090	S
48140		A	Partial removal of pancreas	18.27	13.29	2.83	34.39	090	S
48145		A	Partial removal of pancreas	19.09	15.71	3.16	37.96	090	S
48146		A	Pancreatectomy	21.73	16.49	1.92	40.14	090	S
48148		A	Removal of pancreatic duct	14.41	8.23	1.68	24.32	090	S
48150		A	Partial removal of pancreas	40.25	22.54	4.75	67.54	090	S
48152		A	Pancreatectomy	36.50	22.54	4.75	63.79	090	S
48153		A	Pancreatectomy	40.25	22.54	4.75	67.54	090	S
48154		A	Pancreatectomy	36.50	22.54	4.75	63.79	090	S
48155		A	Removal of pancreas	19.43	20.40	4.26	44.09	090	S
48160		N	Pancreas removal, transplant	0.00	0.00	0.00	0.00	XXX	0
48160		A	Fuse pancreas and bowel	20.88	12.80	2.63	36.11	090	S
48400		A	Injection, intraoperative	1.95	1.03	0.24	3.22	ZZZ	N
48500		A	Surgery of pancreas cyst	12.04	8.53	1.66	22.23	090	S
48510		A	Drain pancreatic pseudocyst	11.22	7.54	1.44	20.20	090	S
48520		A	Fuse pancreas cyst and bowel	12.87	11.30	2.43	26.70	090	S
48540		A	Fuse pancreas cyst and bowel	15.77	12.66	2.65	31.08	090	S
48545		A	Pancreatostomy	14.65	7.66	1.79	24.10	090	S
48547		A	Duodenal exclusion	21.18	11.08	2.58	34.84	090	S
48550		N	Donor pancreatectomy	0.00	0.00	0.00	0.00	XXX	0
48554		N	Transplant allograft pancreas	34.17	17.87	4.16	56.20	XXX	0
48556		A	Removal, allograft pancreas	13.89	7.26	1.69	22.84	090	S
48999		C	Pancreas surgery procedure	0.00	0.00	0.00	0.00	YYY	S
49000		A	Exploration of abdomen	11.00	6.79	1.40	19.19	090	S
49002		A	Reopening of abdomen	8.40	6.05	1.21	15.66	090	S
49010		A	Exploration behind abdomen	11.19	6.95	1.31	19.45	090	S
49021		A	Drain abdominal abscess	14.25	4.82	0.91	19.98	090	S
49040		A	Drain abdominal abscess	9.06	4.82	0.91	14.79	090	N
49060		A	Drain abdominal abscess	8.74	5.54	1.27	15.55	090	S
49080		A	Puncture, peritoneal cavity	10.55	5.54	1.01	17.10	090	S
49081		A	Removal of abdominal fluid	1.35	0.87	0.08	2.30	000	N
49085		A	Remove abdomen foreign body	1.28	0.75	0.07	2.08	000	N
49180		A	Biopsy, abdominal mass	7.91	3.46	0.67	12.04	090	S
49200		A	Removal of abdominal lesion	1.73	1.82	0.20	3.75	000	N
49201		A	Removal of abdominal lesion	9.19	8.38	1.70	19.27	090	S
49215		A	Excise sacral spine tumor	13.60	12.10	2.50	28.20	090	S
49220		A	Multiple surgery, abdomen	21.05	8.50	1.59	31.14	090	S
49250		A	Excision of umbilicus	13.66	12.30	2.53	28.49	090	S
49255		A	Removal of omentum	7.42	4.52	0.96	12.90	090	S
49400		A	Air injection into abdomen	10.25	5.16	1.15	16.56	090	S
49420		A	Insert abdominal drain	1.88	1.12	0.17	3.17	000	S
49421		A	Insert abdominal drain	2.22	1.58	0.20	4.00	000	S
49422		A	Remove perm cannula/catheter	4.89	4.14	0.81	9.84	090	S
49425		A	Insert abdomen-venous drain	5.85	4.14	0.81	10.80	010	S
49426		A	Revise abdomen-venous shunt	10.22	8.48	1.78	20.48	090	S
49427		A	Injection, abdominal shunt	8.57	5.39	1.07	15.03	090	S
49428		A	Ligation of shunt	0.89	0.49	0.03	1.41	000	N
49429		A	Removal of shunt	1.98	1.04	0.24	3.26	010	S
49495		A	Repair inguinal hernia, init	6.35	3.32	0.77	10.44	010	S
49496		A	Repair inguinal hernia, init	5.79	4.96	0.95	11.72	090	S
49500		A	Repair inguinal hernia	8.37	5.04	1.08	14.49	090	S
49501		A	Repair inguinal hernia, init	4.41	4.98	0.95	10.34	090	S
49505		A	Repair inguinal hernia	7.26	5.04	1.08	13.38	090	S
49507		A	Repair inguinal hernia	5.17	4.51	0.94	11.62	090	S
49520		A	Repair inguinal hernia	7.40	5.04	1.08	13.52	090	S
49521		A	Repair inguinal hernia, rec	7.87	5.22	1.11	14.20	090	S
49525		A	Repair inguinal hernia	9.43	5.04	1.08	15.55	090	S
49540		A	Repair lumbar hernia	6.97	5.55	1.16	13.68	090	S
49550		A	Repair femoral hernia	7.91	5.20	1.12	14.23	090	S
49553		A	Repair femoral hernia, init	6.97	4.61	0.97	12.55	090	S
49555		A	Repair femoral hernia	7.40	4.61	0.97	12.98	090	S
49557		A	Repair femoral hernia, recur	7.29	6.07	1.26	14.62	090	S
				8.73	6.07	1.26	16.06	090	S

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³ * Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
49560		A	Repair abdominal hernia	9.48	5.65	1.19	16.32	090	S
49561		A	Repair incisional hernia	11.38	5.65	1.19	18.22	090	S
49565		A	Repair abdominal hernia	9.48	6.41	1.35	17.24	090	S
49566		A	Repair incisional hernia	11.38	6.41	1.35	19.14	090	S
49568		A	Hernia repair w/mesh	4.89	2.56	0.59	8.04	ZZZ	S
49570		A	Repair epigastric hernia	4.46	4.38	0.91	9.75	090	S
49572		A	Repair, epigastric hernia	5.35	5.60	1.18	12.13	090	S
49580		A	Repair umbilical hernia	3.24	4.15	0.94	8.33	090	S
49582		A	Repair umbilical hernia	5.13	4.81	0.94	10.88	090	S
49585		A	Repair umbilical hernia	4.95	4.41	0.91	10.27	090	S
49587		A	Repair umbilical hernia	5.93	4.41	0.91	11.25	090	S
49590		A	Repair abdominal hernia	6.55	5.63	1.22	13.40	090	S
49600		A	Repair umbilical lesion	9.48	5.26	0.77	15.51	090	S
49605		A	Repair umbilical lesion	21.92	8.57	1.77	32.26	090	S
49606		A	Repair umbilical lesion	17.93	8.31	0.98	27.20	090	S
49610		A	Repair umbilical lesion	9.83	5.48	1.27	16.58	090	S
49611		A	Repair umbilical lesion	8.25	9.00	0.58	17.83	090	S
49900		A	Repair of abdominal wall	9.40	3.66	0.75	13.81	090	S
49905		A	Omental flap	6.55	3.42	0.80	10.77	ZZZ	S
49906		C	Free omental flap, microvasc	0.00	0.00	0.00	0.00	090	S
49999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	YYY	S
50010		A	Exploration of kidney	10.07	9.55	1.13	20.75	090	S
50020		A	Drainage of kidney abscess	12.41	6.80	0.89	20.06	090	S
50040		A	Drainage of kidney	13.80	7.18	0.62	21.60	090	N
50045		A	Exploration of kidney	14.48	9.81	0.89	25.18	090	S
50060		A	Removal of kidney stone	18.00	12.25	1.21	31.46	090	S
50065		A	Incision of kidney	19.62	13.93	1.39	34.90	090	S
50070		A	Incision of kidney	19.15	12.87	1.35	33.37	090	S
50075		A	Removal of kidney stone	24.05	16.87	1.62	42.54	090	S
50080		A	Removal of kidney stone	13.98	12.20	1.16	27.33	090	S
50081		A	Removal of kidney stone	20.58	14.96	1.44	36.98	090	S
50100		A	Revises kidney blood vessels	15.11	10.34	1.35	26.80	090	S
50120		A	Exploration of kidney	15.00	10.91	1.24	27.15	090	S
50125		A	Explore and drain kidney	15.61	10.95	1.09	27.62	090	S
50130		A	Removal of kidney stone	16.12	12.80	1.26	30.18	090	S
50135		A	Exploration of kidney	18.14	17.05	1.63	36.82	090	S
50200		A	Biopsy of kidney	2.63	2.61	0.22	5.46	000	N
50205		A	Biopsy of kidney	10.50	5.64	0.69	16.83	090	S
50220		A	Removal of kidney	15.98	13.31	1.43	30.72	090	S
50225		A	Removal of kidney	18.93	16.52	1.70	37.15	090	S
50230		A	Removal of kidney	20.56	18.40	1.84	40.80	090	S
50234		A	Removal of kidney & ureter	21.11	16.65	1.65	39.41	090	S
50236		A	Removal of kidney & ureter	23.33	17.74	1.74	42.81	090	S
50240		A	Partial removal of kidney	20.24	16.00	1.70	37.94	090	S
50260		A	Removal of kidney lesion	14.63	10.96	1.16	26.65	090	S
50290		A	Removal of kidney lesion	13.69	8.87	1.19	23.75	090	S
50300		X	Removal of donor kidney	0.00	0.00	0.00	0.00	XXX	O
50320		A	Removal of donor kidney	21.22	18.49	2.40	40.11	090	S
50340		A	Removal of kidney	10.73	12.49	2.24	25.46	090	S
50360		A	Transplantation of kidney	27.05	24.45	4.24	55.74	090	S
50365		A	Transplantation of kidney	32.54	30.71	3.89	67.14	090	S
50370		A	Remove transplanted kidney	11.11	11.08	1.92	24.11	090	S
50380		A	Reimplantation of kidney	16.49	10.12	1.71	28.32	090	S
50390		A	Drainage of kidney lesion	1.96	1.69	0.16	3.80	000	N
50392		A	Insert kidney drain	3.38	2.36	0.20	5.94	000	N
50393		A	Insert ureteral tube	4.16	3.01	0.26	7.43	000	N
50394		A	Injection for kidney x-ray	0.76	0.55	0.06	1.36	000	N
50395		A	Create passage to kidney	3.38	3.33	0.29	7.00	000	N
50396		A	Measure kidney pressure	2.09	0.50	0.05	2.64	000	N
50398		A	Change kidney tube	1.46	0.53	0.05	2.04	000	S
50400		A	Revision of kidney/ureter	18.07	13.66	1.36	33.09	090	S
50405		A	Revision of kidney/ureter	22.45	17.29	1.74	41.48	090	S
50500		A	Repair of kidney wound	16.27	12.46	1.64	30.37	090	S
50520		A	Close kidney- skin fistula	15.93	10.34	1.50	27.77	090	S
50525		A	Repair renal-abdomen fistula	20.59	12.61	1.99	35.19	090	S
50528		A	Repair renal-abdomen fistula	22.15	7.39	2.32	31.86	090	S
50540		A	Revision of horseshoe kidney	19.15	13.41	1.54	34.10	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
50551		A	Kidney endoscopy	5.60	2.19	0.21	8.00	000	S
50553		A	Kidney endoscopy	5.99	1.66	0.47	7.82	000	S
50555		A	Kidney endoscopy & biopsy	6.53	4.70	0.45	11.68	000	S
50557		A	Kidney endoscopy & treatment	6.62	4.71	0.49	11.82	000	S
50559		A	Renal endoscopy; radiotracer	6.78	1.34	0.14	8.26	000	S
50561		A	Kidney endoscopy & treatment	7.59	5.12	0.49	13.20	000	S
50570		A	Kidney endoscopy	9.54	1.45	0.14	11.13	000	S
50572		A	Kidney endoscopy	10.35	7.25	0.75	18.35	000	S
50574		A	Kidney endoscopy & biopsy	11.02	7.08	0.64	18.74	000	S
50575		A	Kidney endoscopy	13.98	9.93	0.97	24.88	000	S
50576		A	Kidney endoscopy & treatment	10.99	8.99	0.77	20.45	000	S
50578		A	Renal endoscopy; radiotracer	11.35	3.79	1.19	16.33	000	S
50580		A	Kidney endoscopy & treatment	11.88	3.58	0.35	15.79	000	S
50590		A	Fragmenting of kidney stone	8.79	10.11	0.97	19.87	090	S
50600		A	Exploration of ureter	14.78	9.69	1.01	25.48	090	S
50605		A	Insert ureteral support	14.40	6.11	0.60	21.11	090	S
50610		A	Removal of ureter stone	14.66	11.77	1.17	27.60	090	S
50620		A	Removal of ureter stone	14.17	11.49	1.16	26.82	090	S
50630		A	Removal of ureter stone	13.95	12.71	1.25	27.91	090	S
50650		A	Removal of ureter	16.37	12.07	1.21	29.65	090	S
50660		A	Removal of ureter	18.44	12.49	1.53	32.46	090	S
50684		A	Injection for ureter x-ray	0.76	0.45	0.05	1.30	000	S
50686		A	Measure ureter pressure	1.51	0.37	0.04	1.92	000	S
50688		A	Change of ureter tube	1.14	0.39	0.04	1.57	010	S
50690		A	Injection for ureter x-ray	1.16	0.32	0.03	1.51	000	S
50700		A	Revision of ureter	14.10	12.57	1.29	27.96	090	S
50715		A	Release of ureter	17.60	11.24	1.49	30.33	090	S
50722		A	Release of ureter	15.11	10.32	1.97	27.40	090	S
50725		A	Release/revise ureter	17.12	12.05	1.75	30.92	090	S
50727		A	Revise ureter	7.57	5.37	0.51	13.45	090	S
50728		A	Revise ureter	11.13	7.90	0.77	19.80	090	S
50740		A	Fusion of ureter & kidney	17.12	13.03	1.88	32.03	090	S
50750		A	Fusion of ureter & kidney	18.14	14.04	1.26	33.44	090	S
50760		A	Fusion of ureters	17.12	13.47	1.46	32.07	090	S
50770		A	Splicing of ureters	18.14	15.23	1.53	34.90	090	S
50780		A	Reimplant ureter in bladder	17.12	13.78	1.46	32.36	090	S
50782		A	Reimplant ureter in bladder	18.23	13.78	1.46	33.47	090	S
50783		A	Reimplant ureter in bladder	19.17	13.78	1.46	34.41	090	S
50785		A	Reimplant ureter in bladder	19.15	15.42	1.80	36.37	090	S
50800		A	Implant ureter in bowel	13.10	14.67	1.51	29.28	090	S
50810		A	Fusion of ureter & bowel	18.14	12.57	1.75	32.46	090	S
50815		A	Urine shunt to bowel	18.14	19.76	2.75	40.65	090	S
50820		A	Construct bowel bladder	20.15	18.97	2.50	41.62	090	S
50825		A	Construct bowel bladder	26.19	30.54	3.33	60.06	090	S
50830		A	Revise urine flow	29.29	20.93	2.27	52.49	090	S
50840		A	Replace ureter by bowel	18.14	13.32	1.35	32.81	090	S
50845		A	Appendico-vesicostomy	19.52	13.87	1.35	34.74	090	S
50860		A	Transplant ureter to skin	13.99	10.92	1.16	26.07	090	S
50920		A	Repair of ureter	12.58	9.98	1.15	23.71	090	S
50930		A	Closure ureter/skin fistula	13.22	9.52	0.99	23.73	090	S
50940		A	Closure ureter/bowel fistula	17.61	12.50	1.22	31.33	090	S
50945		A	Release of ureter	13.47	9.90	0.95	24.32	090	S
50951		A	Endoscopy of ureter	5.84	1.67	0.17	7.68	000	S
50953		A	Endoscopy of ureter	6.24	1.66	0.16	8.06	000	S
50955		A	Ureter endoscopy & biopsy	6.75	2.55	0.25	9.55	000	S
50957		A	Ureter endoscopy & treatment	6.79	2.50	0.25	9.54	000	S
50959		A	Ureter endoscopy & tracer	4.40	3.38	0.29	8.07	000	S
50961		A	Ureter endoscopy & treatment	6.05	2.62	0.26	8.93	000	S
50970		A	Ureter endoscopy	7.14	5.17	0.52	12.83	000	S
50972		A	Ureter endoscopy & catheter	6.89	1.54	0.16	8.59	000	S
50974		A	Ureter endoscopy & biopsy	9.17	7.01	0.85	16.83	000	S
50976		A	Ureter endoscopy & treatment	9.04	6.41	0.62	16.07	000	S
50978		A	Ureter endoscopy & tracer	5.10	4.05	0.48	9.63	000	S
50980		A	Ureter endoscopy & treatment	6.85	3.13	0.30	10.28	000	S
51000		A	Drainage of bladder	0.78	0.48	0.05	1.31	000	S
51005		A	Drainage of bladder	1.02	0.46	0.04	1.52	000	S
51010		A	Drainage of bladder	2.64	0.97	0.11	3.62	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 4 HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
51020		A	Incise & treat bladder	6.04	6.85	0.71	13.60	090	S
51030		A	Incise & treat bladder	6.04	4.53	0.43	11.00	090	S
51040		A	Incise & drain bladder	4.08	5.23	0.75	10.08	090	S
51045		A	Incise bladder, drain ureter	6.04	4.96	0.50	11.50	090	S
51050		A	Removal of bladder stone	6.04	7.12	0.70	13.86	090	S
51090		A	Removal of ureter stone	8.05	10.31	1.19	19.55	090	S
51095		A	Removal of ureter stone	8.05	7.08	0.71	15.84	090	S
51098		A	Drainage of bladder abscess	5.41	5.18	0.57	11.16	090	S
51500		A	Removal of bladder cyst	9.54	6.86	1.21	17.61	090	S
51620		A	Removal of bladder lesion	8.69	8.53	0.87	18.09	090	S
51625		A	Removal of bladder lesion	12.78	10.67	1.08	24.51	090	S
51530		A	Removal of bladder lesion	11.32	9.25	1.02	21.59	090	S
51535		A	Repair of ureter lesion	11.51	7.68	1.14	20.33	090	S
51550		A	Partial removal of bladder	14.34	10.71	1.17	26.22	090	S
51555		A	Partial removal of bladder	19.60	12.26	1.31	33.17	090	S
51665		A	Revises bladder & ureter(s)	20.01	15.84	1.67	37.52	090	S
51570		A	Removal of bladder	22.16	15.66	1.62	39.44	090	S
51575		A	Removal of bladder & nodes	27.93	22.67	2.25	53.05	090	S
51580		A	Remove bladder; revise tract	28.20	19.95	2.04	50.19	090	S
51585		A	Removal of bladder & nodes	32.22	25.12	2.42	59.76	090	S
51590		A	Remove bladder; revise tract	30.21	24.52	2.56	57.29	090	S
51595		A	Remove bladder; revise tract	34.25	33.00	3.34	71.39	090	S
51596		A	Remove bladder, create pouch	36.27	34.89	3.46	74.61	090	S
51697		A	Removal of pelvic structures	35.27	30.63	4.31	70.21	090	S
51600		A	Injection for bladder x-ray	0.88	0.28	0.03	1.19	000	S
51605		A	Preparation for bladder x-ray	0.64	0.30	0.03	0.97	000	S
51610		A	Injection for bladder x-ray	1.05	0.27	0.02	1.34	000	S
51700		A	Irrigation of bladder	0.88	0.22	0.02	1.12	000	S
51705		A	Change of bladder tube	0.99	0.38	0.04	1.41	010	S
51710		A	Change of bladder tube	1.46	0.57	0.06	2.09	010	S
51715		A	Endoscopic injection/implant	3.74	2.65	0.27	6.66	000	S
51720		A	Treatment of bladder lesion	1.96	0.45	0.05	2.46	000	S
51725		A	Simple cystometrogram	1.51	1.01	0.11	2.63	000	S
51725	26	A	Simple cystometrogram	1.51	0.63	0.07	2.21	000	S
51725	TC	A	Simple cystometrogram	0.00	0.38	0.04	0.42	000	S
51726		A	Complex cystometrogram	1.71	1.29	0.13	3.13	000	S
51726	26	A	Complex cystometrogram	1.71	0.81	0.08	2.60	000	S
51726	TC	A	Complex cystometrogram	0.00	0.48	0.05	0.53	000	S
51736		A	Urine flow measurement	0.61	0.41	0.04	1.06	000	S
51736	26	A	Urine flow measurement	0.61	0.26	0.03	0.90	000	S
51736	TC	A	Urine flow measurement	0.00	0.15	0.01	0.16	000	S
51741		A	Electro-uroflowmetry, first	1.14	0.56	0.06	1.76	000	S
51741	26	A	Electro-uroflowmetry, first	1.14	0.35	0.04	1.53	000	S
51741	TC	A	Electro-uroflowmetry, first	0.00	0.21	0.02	0.23	000	S
51772		A	Urethra pressure profile	1.61	0.94	0.11	2.66	000	S
51772	26	A	Urethra pressure profile	1.61	0.52	0.06	2.19	000	S
51772	TC	A	Urethra pressure profile	0.00	0.42	0.05	0.47	000	S
51784		A	Anal/urinary muscle study	1.53	1.04	0.11	2.68	000	S
51784	26	A	Anal/urinary muscle study	1.53	0.65	0.07	2.25	000	S
51784	TC	A	Anal/urinary muscle study	0.00	0.39	0.04	0.43	000	S
51785		A	Anal/urinary muscle study	1.53	1.04	0.11	2.68	000	S
51785	26	A	Anal/urinary muscle study	1.53	0.65	0.07	2.25	000	S
51785	TC	A	Anal/urinary muscle study	0.00	0.39	0.04	0.43	000	S
51792		A	Urinary reflex study	1.10	1.93	0.20	3.23	000	S
51792	26	A	Urinary reflex study	1.10	0.59	0.06	1.75	000	S
51792	TC	A	Urinary reflex study	0.00	1.34	0.14	1.48	000	S
51795		A	Urine voiding pressure study	1.53	1.44	0.16	3.13	000	S
51795	26	A	Urine voiding pressure study	1.53	0.57	0.06	2.16	000	S
51795	TC	A	Urine voiding pressure study	0.00	0.87	0.10	0.97	000	S
51797		A	Intraabdominal pressure test	1.60	0.96	0.10	2.66	000	S
51797	26	A	Intraabdominal pressure test	1.60	0.51	0.05	2.16	000	S
51797	TC	A	Intraabdominal pressure test	0.00	0.45	0.05	0.50	000	S
51800		A	Revision of bladder/urethra	16.31	12.02	1.47	29.80	090	S
51820		A	Revision of urinary tract	16.67	7.39	1.32	25.38	090	S
51840		A	Attach bladder/urethra	9.78	9.22	1.28	20.28	090	S
51841		A	Attach bladder/urethra	12.10	11.01	1.48	24.59	090	S
51845		A	Repair bladder neck	9.06	10.71	1.09	20.86	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 4 HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
51860		A	Repair of bladder wound	11.17	7.62	0.91	19.70	090	S
51865		A	Repair of bladder wound	13.99	10.96	1.27	26.22	090	S
51880		A	Repair of bladder opening	7.21	4.96	0.52	12.69	090	S
51900		A	Repair bladder/vagina lesion	11.67	11.65	1.41	24.73	090	S
51920		A	Close bladder-uterus fistula	10.57	7.51	0.73	18.81	090	S
51925		A	Hysterectomy/bladder repair	14.10	10.07	2.33	26.50	090	S
51940		A	Correction of bladder defect	25.00	18.95	2.22	46.17	090	S
51960		A	Revision of bladder & bowel	21.15	21.40	2.27	44.82	090	S
51980		A	Construct bladder opening	10.43	7.46	0.75	18.64	090	S
52000		A	Cystoscopy	2.01	1.33	0.14	3.48	000	S
52005		A	Cystoscopy & ureter catheter	2.37	2.20	0.22	4.79	000	S
52007		A	Cystoscopy and biopsy	3.02	2.82	0.28	6.12	000	S
52010		A	Cystoscopy & duct catheter	3.02	1.90	0.20	5.12	000	S
52204		A	Cystoscopy	2.37	2.38	0.24	4.99	000	S
52214		A	Cystoscopy and treatment	3.71	2.80	0.28	6.79	000	S
52224		A	Cystoscopy and treatment	3.14	2.90	0.29	6.33	000	S
52234		A	Cystoscopy and treatment	4.63	4.71	0.45	9.79	000	S
52235		A	Cystoscopy and treatment	5.45	6.97	0.81	13.23	000	S
52240		A	Cystoscopy and treatment	9.72	10.65	1.04	21.41	000	S
52250		A	Cystoscopy & radiotracer	4.50	2.86	0.29	7.65	000	S
52260		A	Cystoscopy & treatment	3.92	2.11	0.22	6.25	000	S
52265		A	Cystoscopy & treatment	2.94	1.35	0.14	4.43	000	S
52270		A	Cystoscopy & revise urethra	3.37	3.47	0.35	7.19	000	S
52275		A	Cystoscopy & revise urethra	4.70	3.42	0.34	8.46	000	S
52276		A	Cystoscopy & treatment	5.00	4.58	0.45	10.03	000	S
52277		A	Cystoscopy and treatment	6.17	4.82	0.47	11.46	000	S
52281		A	Cystoscopy and treatment	2.80	2.31	0.23	5.34	000	S
52283		A	Cystoscopy and treatment	3.74	1.51	0.15	5.40	000	S
52285		A	Cystoscopy and treatment	3.61	2.94	0.30	6.85	000	S
52290		A	Cystoscopy and treatment	4.59	2.34	0.24	7.17	000	S
52300		A	Cystoscopy and treatment	5.31	3.47	0.36	9.14	000	S
52301		A	Cystoscopy and treatment	5.51	3.47	0.36	9.34	000	S
52305		A	Cystoscopy and treatment	5.31	3.50	0.35	9.16	000	S
52310		A	Cystoscopy and treatment	2.81	2.99	0.30	6.10	000	S
52315		A	Cystoscopy and treatment	5.21	4.07	0.40	9.68	000	S
52317		A	Remove bladder stone	6.72	6.19	0.59	13.50	000	S
52318		A	Remove bladder stone	9.19	7.88	0.77	17.84	000	S
52320		A	Cystoscopy and treatment	4.70	4.86	0.47	10.03	000	S
52325		A	Cystoscopy, stone removal	6.16	7.01	0.68	13.85	000	S
52327		A	Cystoscopy, inject material	5.19	3.69	0.36	9.24	000	S
52330		A	Cystoscopy and treatment	5.04	3.47	0.35	8.86	000	S
52332		A	Cystoscopy and treatment	2.83	3.21	0.32	6.36	000	S
52334		A	Create passage to kidney	4.83	3.33	0.34	8.50	000	S
52335		A	Endoscopy of urinary tract	5.86	4.69	0.45	11.00	000	S
52336		A	Cystoscopy, stone removal	6.88	8.81	0.99	16.68	000	S
52337		A	Cystoscopy, stone removal	7.97	10.21	1.08	19.26	000	S
52338		A	Cystoscopy and treatment	7.34	5.92	0.57	13.83	000	S
52339		A	Cystoscopy and treatment	8.82	5.92	0.57	15.31	000	S
52340		A	Cystoscopy and treatment	9.00	5.15	0.50	14.65	090	S
52450		A	Incision of prostate	7.05	4.99	0.49	12.53	090	S
52500		A	Revision of bladder neck	7.82	7.44	0.72	15.98	090	S
52510		A	Dilation prostatic urethra	6.04	7.64	0.74	14.42	090	S
52601		A	Prostatectomy (TURP)	11.51	11.87	1.16	24.54	090	S
52606		A	Control postop bleeding	7.51	3.32	0.33	11.16	090	S
52612		A	Prostatectomy, first stage	7.05	9.03	0.99	17.07	090	S
52614		A	Prostatectomy, second stage	6.04	7.09	0.68	13.81	090	S
52620		A	Remove residual prostate	6.04	5.33	0.51	11.88	090	S
52630		A	Remove prostate regrowth	6.55	8.38	1.13	16.06	090	S
52640		A	Relieve bladder contracture	6.04	6.43	0.62	13.09	090	S
52647		A	Laser surgery of prostate	9.84	11.87	1.16	22.87	090	S
52648		A	Laser surgery of prostate	10.69	11.87	1.16	23.72	090	S
52700		A	Drainage of prostate abscess	6.31	3.30	0.34	9.95	090	S
53000		A	Incision of urethra	2.01	1.76	0.17	3.94	010	S
53010		A	Incision of urethra	3.02	3.52	0.37	6.91	090	S
53020		A	Incision of urethra	1.77	0.82	0.09	2.68	000	S
53025		A	Incision of urethra	1.13	0.80	0.08	2.01	000	S
53040		A	Drainage of urethra abscess	6.01	1.85	0.19	8.05	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
53080		A	Drainage of urethra abscess	2.58	0.51	0.07	3.16	010	S
53080		A	Drainage of urinary leakage	5.87	3.98	0.45	10.30	090	S
53085		A	Drainage of urinary leakage	9.87	6.75	0.70	17.12	090	S
53200		A	Biopsy of urethra	2.59	1.10	0.12	3.81	000	S
53210		A	Removal of urethra	11.71	6.64	0.67	19.02	090	S
53215		A	Removal of urethra	14.59	10.00	0.96	25.55	090	S
53220		A	Treatment of urethra lesion	6.58	4.77	0.49	11.84	090	S
53230		A	Removal of urethra lesion	9.04	7.93	0.79	17.76	090	S
53235		A	Removal of urethra lesion	9.80	5.02	0.49	15.11	090	N
53240		A	Surgery for urethra pouch	5.03	4.33	0.45	10.81	090	S
53250		A	Removal of urethra gland	5.69	4.05	0.40	10.14	090	S
53260		A	Treatment of urethra lesion	2.93	1.12	0.16	4.21	010	S
53265		A	Treatment of urethra lesion	3.07	1.88	0.22	5.17	010	S
53270		A	Removal of urethra gland	2.93	0.84	0.18	3.95	010	S
53275		A	Repair of urethra defect	4.37	2.37	0.25	6.99	010	S
53400		A	Revis urethra, 1st stage	11.79	7.47	0.76	20.02	090	S
53405		A	Revis urethra, 2nd stage	13.70	10.38	1.21	25.29	090	S
53410		A	Reconstruction of urethra	15.59	8.56	0.84	24.99	090	S
53415		A	Reconstruction of urethra	18.50	11.87	1.15	31.52	090	S
53420		A	Reconstruct urethra, stage 1	13.28	10.88	1.05	25.21	090	S
53425		A	Reconstruct urethra, stage 2	15.18	9.25	0.85	25.31	090	S
53430		A	Reconstruction of urethra	15.54	7.18	0.76	23.46	090	S
53440		A	Correct bladder function	11.49	13.14	1.39	26.02	090	S
53442		A	Remove perineal prosthesis	7.07	5.84	0.67	14.18	090	S
53443		A	Reconstruction of urethra	18.98	10.03	1.07	30.08	090	S
53445		A	Correct urine flow control	13.15	16.83	2.03	32.01	090	S
53447		A	Remove artificial sphincter	12.37	9.16	0.89	22.42	090	S
53449		A	Correct artificial sphincter	9.16	8.41	0.82	18.39	090	S
53450		A	Revision of urethra	5.72	2.74	0.27	8.73	090	S
53460		A	Revision of urethra	6.70	2.44	0.25	9.39	090	S
53502		A	Repair of urethra injury	7.21	4.97	0.56	12.74	090	S
53505		A	Repair of urethra injury	7.21	5.18	0.51	12.90	090	S
53510		A	Repair of urethra injury	9.57	6.98	0.86	17.21	090	S
53515		A	Repair of urethra injury	12.71	9.03	0.85	22.62	090	S
53520		A	Repair of urethra defect	8.21	5.89	0.56	14.66	090	S
53600		A	Dilate urethra stricture	1.21	0.33	0.03	1.57	000	S
53601		A	Dilate urethra stricture	0.98	0.29	0.03	1.30	000	S
53605		A	Dilate urethra stricture	1.28	0.48	0.05	1.79	000	S
53620		A	Dilate urethra stricture	1.62	0.47	0.05	2.14	000	S
53621		A	Dilate urethra stricture	1.35	0.38	0.04	1.77	000	S
53640		D	Relieve bladder retention	0.00	0.00	0.00	0.00	000	S
53660		A	Dilation of urethra	0.71	0.28	0.03	1.02	000	S
53661		A	Dilation of urethra	0.72	0.25	0.03	1.00	000	S
53665		A	Dilation of urethra	0.76	0.36	0.04	1.16	000	S
53670		A	Insert urinary catheter	0.50	0.22	0.02	0.74	000	S
53675		A	Insert urinary catheter	1.47	0.47	0.05	1.99	000	S
53699		C	Urology surgery procedure	0.00	0.00	0.00	0.00	YYY	S
54000		A	Slitting of prepuce	1.49	0.63	0.07	2.19	010	S
54001		A	Slitting of prepuce	2.14	0.94	0.09	3.07	010	S
54015		A	Drain penis lesion	5.16	0.83	0.09	6.08	010	S
54050		A	Destruction, penis lesion(s)	1.19	0.38	0.03	1.60	010	S
54055		A	Destruction, penis lesion(s)	1.19	0.51	0.04	1.86	010	S
54056		A	Cryosurgery, penis lesion(s)	1.19	0.53	0.04	1.76	010	S
54057		A	Laser surg, penis lesion(s)	1.19	1.52	0.21	2.92	010	S
54060		A	Excision of penis lesion(s)	1.88	1.17	0.12	3.17	010	S
54065		A	Destruction, penis lesion(s)	2.37	2.47	0.25	5.09	010	S
54100		A	Biopsy of penis	1.90	0.65	0.07	2.62	000	S
54105		A	Biopsy of penis	3.45	1.01	0.11	4.57	010	S
54110		A	Treatment of penis lesion	9.66	6.03	0.61	16.30	090	S
54111		A	Treat penis lesion, graft	13.03	8.18	0.97	23.18	090	S
54112		A	Treat penis lesion, graft	15.14	10.84	1.14	27.12	090	S
54115		A	Treatment of penis lesion	5.68	4.18	0.44	10.30	090	S
54120		A	Partial removal of penis	9.24	6.47	0.62	16.33	090	S
54125		A	Removal of penis	12.80	11.56	1.17	25.53	090	S
54130		A	Remove penis & nodes	18.92	14.66	1.32	34.90	090	S
54135		A	Remove penis & nodes	25.01	17.75	1.74	44.50	090	S
54150		A	Circumcision	1.78	0.54	0.05	2.37	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
54152		A	Circumcision	2.26	1.82	0.20	4.28	010	S
54160		A	Circumcision	2.43	1.66	0.21	4.30	010	S
54161		A	Circumcision	3.22	2.17	0.23	5.62	010	S
54200		A	Treatment of penis lesion	1.01	0.32	0.03	1.36	010	S
54205		A	Treatment of penis lesion	7.20	5.11	0.50	12.81	090	S
54220		A	Treatment of penis lesion	2.42	1.58	0.17	4.17	000	S
54230		A	Prepene penis study	1.34	1.34	0.13	2.81	000	S
54231		A	Dynamic cavernosometry	2.04	1.44	0.14	3.62	000	S
54235		A	Penile injection	1.19	0.43	0.04	1.66	000	S
54240		A	Penis study	1.31	0.89	0.12	2.42	000	S
54240	26	A	Penis study	1.31	0.51	0.06	1.88	000	S
54250		A	Penis study	0.00	0.48	0.06	0.54	000	S
54250	26	A	Penis study	2.22	0.80	0.08	3.10	000	S
54250	TC	A	Penis study	2.22	0.50	0.05	2.77	000	S
54300		A	Revision of penis	0.00	0.50	0.03	0.53	000	S
54304		A	Revision of penis	10.05	6.88	0.87	17.80	090	S
54308		A	Reconstruction of urethra	12.13	5.66	0.90	21.69	090	S
54312		A	Reconstruction of urethra	11.58	5.84	0.74	18.16	090	S
54316		A	Reconstruction of urethra	13.16	9.37	0.91	23.44	090	S
54318		A	Reconstruction of urethra	15.97	11.34	1.12	28.43	090	S
54322		A	Reconstruction of urethra	10.47	7.53	1.11	19.11	090	S
54324		A	Reconstruction of urethra	12.34	7.61	0.74	20.69	090	S
54324		A	Reconstruction of urethra	15.46	10.98	1.08	27.52	090	S
54326		A	Reconstruction of urethra	14.81	10.51	1.03	26.35	090	S
54328		A	Revis penis, urethra	14.80	10.72	1.24	26.76	090	S
54332		A	Revis penis, urethra	16.17	12.52	1.13	29.82	090	S
54336		A	Revis penis, urethra	16.95	18.79	1.40	39.14	090	S
54340		A	Secondary urethral surgery	8.55	6.07	0.59	15.21	090	S
54344		A	Secondary urethral surgery	15.22	16.61	1.10	32.93	090	S
54348		A	Secondary urethral surgery	16.37	11.62	1.14	29.13	090	S
54352		A	Reconstruct urethra, penis	23.84	16.18	1.49	41.51	090	S
54360		A	Penis plastic surgery	11.39	7.02	0.73	19.14	090	S
54380		A	Repair penis	12.59	9.42	0.75	22.76	090	S
54385		A	Repair penis	14.75	10.46	0.89	26.10	090	S
54390		A	Repair penis and bladder	20.97	13.57	1.58	36.12	090	S
54400		A	Insert semi-rigid prosthesis	8.58	10.99	1.27	20.84	090	S
54401		A	Insert self-contd prosthesis	9.67	12.38	1.73	23.78	090	S
54402		A	Remove penis prosthesis	8.67	6.00	0.58	15.25	090	S
54405		A	Insert multi-comp prosthesis	12.63	16.17	2.10	30.90	090	S
54407		A	Remove multi-comp prosthesis	12.61	11.22	1.10	24.93	090	S
54409		A	Revis penis prosthesis	11.53	8.97	0.87	21.37	090	S
54420		A	Revision of penis	10.75	7.74	0.87	19.36	090	S
54430		A	Revision of penis	9.55	6.99	0.69	17.23	090	S
54435		A	Revision of penis	5.63	4.15	0.39	10.17	090	S
54440		C	Repair of penis	0.00	0.00	0.00	0.00	090	S
54450		A	Preputial stretching	1.12	0.68	0.07	1.87	000	S
54500		A	Biopsy of testis	1.31	0.44	0.05	1.80	000	S
54505		A	Biopsy of testis	3.41	1.86	0.22	5.49	010	S
54510		A	Removal of testis lesion	5.24	3.03	0.38	8.65	090	S
54520		A	Removal of testis	4.93	5.31	0.52	10.76	090	S
54530		A	Removal of testis	8.04	7.32	0.77	16.13	090	S
54535		A	Extensive testis surgery	11.43	8.54	1.02	20.99	090	S
54550		A	Exploration for testis	7.36	5.25	0.61	13.22	090	S
54560		A	Exploration for testis	10.46	7.23	0.81	18.50	090	S
54600		A	Reduce testis torsion	6.59	4.62	0.48	11.69	090	S
54620		A	Suspension of testis	4.69	3.32	0.33	8.34	010	S
54640		A	Suspension of testis	6.55	7.82	0.91	15.28	090	S
54650		A	Orchiopexy (Fowler-Stephens)	10.93	7.82	0.91	19.66	090	S
54660		A	Revision of testis	4.80	3.40	0.34	8.54	090	S
54670		A	Repair testis injury	6.05	4.30	0.43	10.79	090	S
54680		A	Relocation of testis(es)	11.53	8.19	0.80	20.52	090	S
54700		A	Drainage of scrotum	3.38	0.90	0.11	4.39	010	S
54800		A	Biopsy of epididymis	2.33	1.97	0.19	4.49	000	S
54820		A	Exploration of epididymis	4.72	2.62	0.29	7.63	090	S
54830		A	Remove epididymis lesion	5.07	3.51	0.39	8.97	090	S
54840		A	Remove epididymis lesion	5.01	4.84	0.48	10.33	090	S
54860		A	Removal of epididymis	5.01	5.17	0.50	11.68	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
54861	A	A	Removal of epididymis	8.54	7.30	0.72	16.56	090	S
54900	A	A	Fusion of spermatic ducts	12.61	8.95	0.87	22.43	090	S
54901	A	A	Fusion of spermatic ducts	17.30	12.29	1.20	30.79	090	S
55000	A	A	Drainage of hydrocele	1.43	0.40	0.04	1.87	000	S
55040	A	A	Removal of hydrocele	5.15	4.88	0.55	10.58	090	S
55041	A	A	Removal of hydroceles	7.38	7.47	0.81	15.66	090	S
55060	A	A	Repair of hydrocele	5.21	4.13	0.50	9.84	090	S
55100	A	A	Drainage of scrotum abscess	2.03	0.63	0.07	2.73	010	S
55110	A	A	Explore scrotum	5.28	3.48	0.37	9.13	090	S
55120	A	A	Removal of scrotum lesion	4.78	1.79	0.21	6.78	090	S
55150	A	A	Removal of scrotum	6.82	5.45	0.57	12.84	090	S
55175	A	A	Revision of scrotum	4.93	4.49	0.48	9.90	090	S
55180	A	A	Revision of scrotum	10.07	6.83	0.82	17.72	090	S
55200	A	A	Incision of sperm duct	4.14	1.97	0.20	6.31	090	S
55250	A	A	Removal of sperm duct(s)	3.21	2.63	0.28	6.12	090	S
55300	A	A	Preparation, sperm duct x-ray	3.51	2.71	0.27	6.49	000	S
55400	A	A	Repair of sperm duct	8.25	6.56	0.62	15.43	090	S
55450	A	A	Ligation of sperm duct	3.91	2.61	0.32	6.84	010	S
55500	A	A	Removal of hydrocele	5.28	4.32	0.50	10.10	090	S
55520	A	A	Removal of sperm cord lesion	5.72	3.12	0.51	9.35	090	S
55530	A	A	Revise spermatic cord veins	5.45	5.20	0.60	11.25	090	S
55535	A	A	Revise spermatic cord veins	6.25	4.40	0.45	11.10	090	S
55540	A	A	Revise hernia & sperm veins	7.25	4.54	0.91	12.70	090	S
55600	A	A	Incise sperm duct pouch	6.07	4.31	0.55	10.93	090	S
55605	A	A	Incise sperm duct pouch	7.60	5.80	0.59	13.99	090	S
55650	A	A	Remove sperm duct pouch	11.26	7.22	0.75	19.24	090	S
55680	A	A	Remove sperm pouch lesion	4.82	4.43	0.38	9.63	090	S
55700	A	A	Biopsy of prostate	1.57	1.50	0.15	3.22	000	S
55705	A	A	Biopsy of prostate	4.41	3.37	0.34	8.12	010	S
55720	A	A	Drainage of prostate abscess	7.54	3.51	0.37	11.42	090	S
55725	A	A	Drainage of prostate abscess	7.70	5.62	0.54	13.86	090	S
55801	A	A	Removal of prostate	16.25	12.76	1.44	30.45	090	S
55810	A	A	Extensive prostate surgery	21.21	17.88	1.77	40.86	090	S
55812	A	A	Extensive prostate surgery	25.66	17.68	1.94	45.27	090	S
55815	A	A	Extensive prostate surgery	28.47	25.20	2.42	56.09	090	S
55821	A	A	Removal of prostate	13.00	13.59	1.35	27.94	090	S
55831	A	A	Removal of prostate	14.30	14.56	1.44	30.30	090	S
55840	A	A	Extensive prostate surgery	21.21	16.60	1.61	39.42	090	S
55842	A	A	Extensive prostate surgery	22.70	19.16	1.88	43.74	090	S
55845	A	A	Extensive prostate surgery	26.73	25.10	2.44	54.27	090	S
55859	A	A	Percutaneous insert, probe	12.00	5.89	0.58	18.47	090	S
55860	A	A	Surgical exposure, prostate	13.33	7.13	0.70	21.16	090	S
55862	A	A	Extensive prostate surgery	17.09	11.69	1.20	29.98	090	S
55865	A	A	Extensive prostate surgery	21.85	24.52	2.39	48.76	090	S
55870	A	A	Electroejaculation	2.58	1.83	0.18	4.59	000	N
55899	C	C	Genital surgery procedure	0.00	0.00	0.00	0.00	YYY	S
55970	N	N	Sex transformation, M to F	0.00	0.00	0.00	0.00	XXX	0
55980	N	N	Sex transformation, F to M	0.00	0.00	0.00	0.00	XXX	0
56300	A	A	Pelvis laparoscopy, dx	3.65	4.45	0.93	9.03	000	S
56301	A	A	Laparoscopy; tubal cautery	3.68	4.71	1.28	9.67	010	S
56302	A	A	Laparoscopy; tubal block	4.11	5.26	1.32	10.69	010	S
56303	A	A	Laparoscopy; excise lesions	5.69	5.53	1.18	12.38	010	S
56304	A	A	Laparoscopy; lysis	4.37	5.60	1.20	11.17	010	S
56305	A	A	Pelvic laparoscopy; biopsy	3.97	4.90	0.79	9.66	000	S
56306	A	A	Laparoscopy; aspiration	3.80	4.87	1.18	9.85	010	S
56307	A	A	Laparoscopy; remove adnexa	10.68	7.16	1.60	19.44	010	S
56308	A	A	Laparoscopy; hysterectomy	13.87	9.39	2.07	25.33	010	S
56309	A	A	Laparoscopy; remove myoma	13.79	4.76	1.03	19.58	010	S
56311	A	A	Laparoscopic lymph node biop	8.93	6.38	1.47	16.78	010	S
56312	A	A	Laparoscopic lymphadenectomy	12.06	8.56	0.84	21.46	010	S
56313	A	A	Laparoscopic lymphadenectomy	14.00	10.01	2.31	26.32	010	S
56315	A	A	Laparoscopic appendectomy	8.25	4.89	1.01	14.15	090	S
56316	A	A	Laparoscopic hernia repair	6.17	4.51	0.94	11.62	090	S
56317	A	A	Laparoscopic hernia repair	7.87	5.22	1.11	14.20	090	S
56320	A	A	Laparoscopy, spermatic veins	6.25	4.40	0.45	11.10	090	S
56322	A	A	Laparoscopy, vagus nerves	9.70	5.07	1.18	15.95	090	S
56323	A	A	Laparoscopy, vagus nerves	11.65	6.09	1.41	19.15	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
56324	A	A	Laparoscopy, cholecystoenter	11.90	9.16	1.93	22.99	090	S
56340	A	A	Laparoscopic cholecystectomy	10.68	7.99	1.74	20.41	090	S
56341	A	A	Laparoscopic cholecystectomy	11.53	8.43	1.84	21.80	090	S
56342	A	A	Laparoscopic cholecystectomy	13.86	9.37	2.00	25.23	090	S
56343	A	A	Laparoscopic salpingostomy	13.34	5.28	1.11	19.73	090	S
56344	A	A	Laparoscopic fibrioplasty	12.50	5.11	1.19	18.80	090	S
56350	A	A	Hysteroscopy; diagnostic	2.39	1.99	0.44	4.82	000	S
56351	A	A	Hysteroscopy; biopsy	2.65	1.99	0.44	5.08	000	S
56352	A	A	Hysteroscopy; lysis	3.14	3.77	0.85	7.76	000	S
56353	A	A	Hysteroscopy; resect septum	3.51	3.77	0.85	8.13	000	S
56354	A	A	Hysteroscopy; remove myoma	3.85	4.93	1.30	10.08	000	S
56355	A	A	Hysteroscopy; remove impact	3.09	1.99	0.44	5.52	000	S
56356	A	A	Hysteroscopy; ablation	3.43	4.39	1.48	9.31	000	S
56360	D	D	Peritoneoscopy	0.00	0.00	0.00	0.00	000	S
56361	D	D	Peritoneoscopy w/biopsy	0.00	0.00	0.00	0.00	000	S
56362	A	A	Laparoscopy w/cholelith	4.89	2.77	0.19	7.85	000	S
56363	A	A	Laparoscopy w/biopsy	5.18	3.93	0.45	9.56	000	S
56399	C	C	Laparoscopy procedure	0.00	0.00	0.00	0.00	YYY	S
56405	A	A	I & D of vulva/perineum	1.39	0.76	0.15	2.30	010	S
56420	A	A	Drainage of gland abscess	1.34	0.80	0.13	2.27	010	S
56440	A	A	Surgery for vulva lesion	2.79	2.63	0.52	5.94	010	S
56441	A	A	Lysis of labial lesion(s)	1.92	1.65	0.30	3.87	010	S
56501	A	A	Destruction, vulva lesion(s)	1.48	0.54	0.11	2.13	010	S
56515	A	A	Destruction, vulva lesion(s)	1.85	2.38	0.66	4.87	010	S
56605	A	A	Biopsy of vulva/perineum	1.10	0.68	0.15	1.93	000	S
56606	A	A	Biopsy of vulva/perineum	0.55	0.35	0.08	0.98	000	S
56620	A	A	Partial removal of vulva	6.67	6.47	1.40	14.54	090	S
56625	A	A	Complete removal of vulva	7.41	9.52	2.13	19.06	090	S
56630	A	A	Extensive vulva surgery	10.47	13.46	3.28	27.21	090	S
56631	A	A	Extensive vulva surgery	14.57	16.70	4.51	35.78	090	S
56632	A	A	Extensive vulva surgery	18.66	21.32	4.51	44.49	090	S
56633	A	A	Extensive vulva surgery	15.00	15.97	3.28	34.25	090	S
56634	A	A	Extensive vulva surgery	16.25	21.21	4.51	41.97	090	S
56637	A	A	Extensive vulva surgery	20.34	21.42	4.51	46.27	090	S
56640	A	A	Extensive vulva surgery	20.09	19.95	4.36	44.40	090	S
56700	A	A	Partial removal of hymen	2.42	1.82	0.35	4.59	010	S
56720	A	A	Incision of hymen	0.68	0.48	0.11	1.27	000	S
56740	A	A	Remove vulva gland lesion	3.80	2.87	0.55	7.22	010	S
56800	A	A	Repair of vagina	3.73	2.82	0.57	7.12	010	S
56805	A	A	Repair clitoris	18.00	11.75	1.37	31.12	090	S
56810	A	A	Repair of perineum	3.97	2.82	0.51	7.10	010	S
57000	A	A	Exploration of vagina	2.92	2.03	0.35	5.30	010	S
57010	A	A	Drainage of pelvic abscess	5.41	2.65	0.51	8.57	090	S
57020	A	A	Drainage of pelvic fluid	1.50	0.85	0.14	2.49	000	S
57061	A	A	Destruction vagina lesion(s)	1.20	0.82	0.17	2.19	010	S
57065	A	A	Destruction vagina lesion(s)	2.56	3.28	0.74	6.58	010	S
57100	A	A	Biopsy of vagina	0.97	0.62	0.13	1.72	000	S
57105	A	A	Biopsy of vagina	1.54	1.57	0.33	3.54	010	S
57108	A	A	Partial removal of vagina	5.69	5.28	1.10	12.07	090	S
57110	A	A	Removal of vagina	13.48	7.68	1.76	23.12	090	S
57120	A	A	Closure of vagina	8.73	6.99	1.51	15.23	090	S
57130	A	A	Remove vulva lesion	2.40	2.62	0.55	5.57	010	S
57135	A	A	Remove vulva lesion	2.64	1.93	0.38	4.95	010	S
57150	A	A	Treat vulva infection	0.55	0.19	0.04	0.78	000	S
57160	A	A	Insertion of pessary/device	0.89	0.25	0.05	1.19	000	S
57170	A	A	Fitting of diaphragm/cap	0.91	0.32	0.06	1.29	000	S
57180	A	A	Treat vaginal bleeding	1.53	0.55	0.11	2.19	010	S
57200	A	A	Repair of vagina	3.68	2.71	0.60	6.99	090	S
57210	A	A	Repair vulva/perineum	4.73	3.27	0.65	8.65	090	S
57220	A	A	Revision of urethra	3.87	4.44	0.80	9.11	090	S
57230	A	A	Repair of urethral lesion	5.07	3.84	0.84	9.75	090	S
57240	A	A	Repair bladder & vagina	5.38	6.90	1.60	13.89	090	S
57250	A	A	Repair rectum & vagina	4.95	6.36	1.69	13.01	090	S
57260	A	A	Repair of vagina	7.59	8.65	1.80	18.12	090	S
57265	A	A	Extensive repair of vagina	10.66	9.42	2.11	22.19	090	S
57268	A	A	Repair of bowel bulge	6.14	7.02	1.50	14.66	090	S
57270	A	A	Repair of bowel pouch	11.30	6.83	1.44	19.57	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
57200		A	Suspension of vagina	14.10	8.55	1.86	24.48	090	S
57282		A	Repair of vaginal prolapse	8.06	8.72	1.89	18.67	090	S
57284		A	Repair paravaginal defect	12.10	8.59	0.84	21.53	090	S
57288		A	Repair bladder defect	12.34	10.72	1.36	24.42	090	S
57289		A	Repair bladder & vagina	10.80	8.19	1.13	20.12	090	S
57291		A	Construction of vagina	7.46	5.35	1.19	14.00	090	S
57292		A	Construct vagina with graft	12.34	6.55	1.38	20.27	090	S
57300		A	Repair rectum-vagina fistula	6.81	7.91	1.66	16.38	090	S
57305		A	Repair rectum-vagina fistula	12.75	7.55	1.56	21.86	090	S
57307		A	Fistula repair & colostomy	15.08	6.11	1.28	22.47	090	S
57310		A	Repair urethrovaginal lesion	8.10	4.32	0.48	10.90	090	S
57311		A	Repair urethrovaginal lesion	7.23	5.58	0.41	13.22	090	S
57320		A	Repair bladder-vagina lesion	7.33	9.38	1.35	18.06	090	S
57330		A	Repair bladder-vagina lesion	11.67	8.29	0.81	20.77	090	S
57335		A	Repair vagina	18.00	6.91	0.81	25.72	090	S
57400		A	Dilation of vagina	2.27	0.33	0.06	2.66	000	S
57410		A	Pelvic examination	1.75	0.36	0.05	2.16	000	S
57415		A	Removal vaginal foreign body	2.12	0.36	0.05	2.53	010	S
57452		A	Examination of vagina	0.99	0.65	0.14	1.78	000	S
57454		A	Vagina examination & biopsy	1.27	1.21	0.28	2.74	000	S
57460		A	Cervix excision	2.83	2.02	0.46	5.31	000	S
57500		A	Biopsy of cervix	0.97	0.57	0.12	1.66	000	S
57505		A	Endocervical curettage	1.09	0.63	0.13	1.85	010	S
57510		A	Cauterization of cervix	1.85	0.52	0.09	2.46	010	S
57511		A	Cryocautery of cervix	1.85	0.85	0.17	2.87	010	S
57513		A	Laser surgery of cervix	1.85	2.36	0.67	4.88	010	S
57520		A	Conization of cervix	3.96	3.45	0.73	8.14	090	S
57522		A	Conization of cervix	3.25	3.45	0.73	7.44	090	S
57530		A	Removal of cervix	4.42	3.81	0.78	8.81	090	S
57540		A	Removal of residual cervix	11.54	6.74	1.51	19.79	090	S
57545		A	Remove cervix, repair pelvis	12.30	4.58	1.03	17.91	090	S
57550		A	Removal of residual cervix	4.91	6.28	1.54	12.73	090	S
57555		A	Remove cervix, repair vagina	8.14	10.10	2.17	20.41	090	S
57556		A	Remove cervix, repair bowel	7.56	9.44	1.92	18.92	090	S
57700		A	Revision of cervix	3.30	2.39	0.34	6.03	090	S
57720		A	Revision of cervix	3.87	2.76	0.50	7.13	090	S
57800		A	Dilation of cervical canal	0.77	0.48	0.10	1.35	000	S
57820		A	D&C of residual cervix	1.82	2.08	0.46	4.16	010	S
58100		A	Biopsy of uterus lining	0.71	0.66	0.14	1.51	000	S
58120		A	Dilation and curettage (D&C)	2.91	2.70	0.58	6.17	010	S
58140		A	Removal of uterus lesion	13.79	8.33	1.71	23.83	090	S
58145		A	Removal of uterus lesion	7.36	8.24	1.54	17.14	090	S
58150		A	Total hysterectomy	14.30	9.57	2.08	25.95	090	S
58152		A	Total hysterectomy	14.10	11.99	2.59	28.68	090	S
58180		A	Partial hysterectomy	14.30	9.76	2.11	26.17	090	S
58200		A	Extensive hysterectomy	20.34	12.98	2.80	36.12	090	S
58210		A	Extensive hysterectomy	27.50	17.77	3.87	49.14	090	S
58240		A	Removal of pelvis contents	35.27	28.73	6.15	70.15	090	S
58260		A	Vaginal hysterectomy	11.39	9.39	2.07	22.85	090	S
58262		A	Vaginal hysterectomy	13.06	9.39	2.07	24.52	090	S
58263		A	Vaginal hysterectomy	14.27	10.32	2.22	26.81	090	S
58267		A	Hysterectomy & vagina repair	13.94	11.53	2.48	27.95	090	S
58270		A	Hysterectomy & vagina repair	12.60	10.32	2.22	25.14	090	S
58275		A	Hysterectomy, revise vagina	13.99	11.02	2.32	27.33	090	S
58280		A	Hysterectomy, revise vagina	14.35	10.50	2.30	27.15	090	S
58285		A	Extensive hysterectomy	17.45	11.80	2.70	31.75	090	S
58300		N	Insert intrauterine device	+1.01	0.77	0.13	1.91	XXX	D
58301		A	Remove intrauterine device	1.27	0.45	0.08	1.80	000	S
58321		A	Artificial insemination	0.92	0.71	0.15	1.78	000	S
58322		A	Artificial insemination	1.10	0.71	0.15	1.96	000	S
58323		A	Sperm washing	0.23	0.16	0.04	0.43	000	S
58340		A	Inject for uterus/tube x-ray	0.88	0.57	0.08	1.53	000	S
58345		A	Reopen fallopian tube	4.61	3.49	0.41	8.51	010	S
58350		A	Reopen fallopian tube	0.96	0.69	0.16	1.81	010	S
58400		A	Suspension of uterus	5.66	5.64	1.16	12.46	090	S
58410		A	Suspension of uterus	12.00	5.53	0.84	18.37	090	S
58520		A	Repair of ruptured uterus	11.11	4.24	0.99	16.34	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
58540		A	Revision of uterus	13.96	6.13	1.42	21.51	090	S
58600		A	Division of fallopian tube	3.74	4.79	1.38	9.91	090	S
58605		A	Division of fallopian tube	3.29	4.21	1.01	8.51	090	S
58611		A	Ligate oviduct(s)	0.63	0.47	0.10	1.20	ZZZ	S
58615		A	Occlude fallopian tube(s)	3.85	2.91	0.35	7.11	010	S
58700		A	Removal of fallopian tube	5.92	5.33	1.31	13.56	090	S
58720		A	Removal of ovary/tube(s)	10.68	7.50	1.63	19.81	090	S
58740		A	Revis fallopian tube(s)	5.28	6.76	1.08	13.92	090	S
58750		A	Repair oviduct	14.26	6.31	1.46	22.03	090	S
58752		A	Revis ovarian tube(s)	14.26	6.74	0.93	21.93	090	S
58760		A	Remove tubal obstruction	12.50	5.11	1.19	18.80	090	S
58770		A	Create new tubal opening	13.34	5.28	1.11	19.73	090	S
58800		A	Drainage of ovarian cyst(s)	3.77	2.68	0.53	6.98	090	S
58805		A	Drainage of ovarian cyst(s)	5.44	6.38	1.36	13.18	090	S
58820		A	Drainage of ovarian abscess	3.96	2.76	0.49	7.21	090	S
58825		A	Drainage of ovarian abscess	9.06	3.55	0.81	13.42	090	S
58900		A	Transposition, ovary(s)	5.63	4.03	0.93	10.59	090	S
58905		A	Biopsy of ovary(s)	5.49	5.19	1.07	11.75	090	S
58920		A	Partial removal of ovary(s)	6.28	6.78	1.41	14.47	090	S
58925		A	Removal of ovarian cyst(s)	10.68	6.56	1.38	18.62	090	S
58940		A	Removal of ovary(s)	6.54	6.48	1.33	14.36	090	S
58943		A	Removal of ovary(s)	17.49	12.11	2.63	32.23	090	S
58950		A	Resect ovarian malignancy	14.10	11.24	2.38	27.72	090	S
58951		A	Resect ovarian malignancy	20.34	18.34	3.93	42.61	090	S
58952		A	Resect ovarian malignancy	23.35	18.11	3.92	45.38	090	S
58960		A	Exploration of abdomen	13.66	12.98	2.96	29.60	090	S
58970		A	Retrieval of oocyte	3.53	2.52	0.58	6.63	000	N
58974		C	Transfer of embryo	0.00	0.00	0.00	0.00	000	N
58978		A	Transfer of embryo	3.83	2.73	0.63	7.19	000	N
58998		C	Genital surgery procedure	0.00	0.00	0.00	0.00	YYY	S
59000		A	Amniocentesis	1.30	0.97	0.18	2.45	000	S
59012		A	Fetal cord puncture, prenatal	3.45	2.62	0.31	6.38	000	S
59015		A	Chorion biopsy	2.20	1.20	0.10	3.50	000	S
59020		A	Fetal contract stress test	0.66	1.35	0.29	2.30	000	S
59020	26	A	Fetal contract stress test	0.66	0.95	0.19	1.70	000	S
59025		A	Fetal non-stress test	0.00	0.50	0.10	0.60	000	S
59025	26	A	Fetal non-stress test	0.53	0.61	0.12	1.26	000	S
59025	TC	A	Fetal non-stress test	0.53	0.39	0.08	1.00	000	S
59030		A	Fetal non-stress test	0.00	0.22	0.04	0.26	000	S
59030		A	Fetal scalp blood sample	1.99	1.58	0.21	3.78	000	S
59050		A	Fetal monitor w/report	0.89	0.81	0.15	1.85	XXX	S
59051		A	Fetal monitor/interpret only	0.74	0.81	0.15	1.70	XXX	N
59100		A	Remove uterus lesion	11.54	4.14	0.86	16.64	090	S
59120		A	Treat ectopic pregnancy	10.68	7.85	1.50	20.04	090	S
59121		A	Treat ectopic pregnancy	10.99	5.38	1.07	17.44	090	S
59130		A	Treat ectopic pregnancy	13.49	5.96	0.70	20.15	090	S
59135		A	Treat ectopic pregnancy	13.00	9.85	1.15	24.00	090	S
59136		A	Treat ectopic pregnancy	12.50	6.22	1.44	20.16	090	S
59140		A	Treat ectopic pregnancy	5.09	4.66	0.29	10.04	090	S
59150		A	Treat ectopic pregnancy	6.34	4.53	1.05	11.92	090	S
59151		A	Treat ectopic pregnancy	7.24	6.61	0.64	16.49	090	S
59160		A	D&C after delivery	2.66	2.93	0.52	6.11	010	S
59200		A	Insert cervical dilator	0.79	0.54	0.11	1.44	000	S
59300		A	Episiotomy or vaginal repair	2.41	0.99	0.10	3.50	000	S
59320		A	Revision of cervix	2.48	1.78	0.41	4.67	000	S
59325		A	Revision of cervix	4.07	2.89	0.29	7.25	000	S
59350		A	Repair of uterus	4.95	3.54	0.82	9.31	000	S
59400		A	Obstetrical care	23.08	14.99	3.47	41.52	MMM	S
59409		A	Obstetrical care	13.50	9.48	2.20	25.18	MMM	S
59410		A	Obstetrical care	14.78	10.31	2.39	27.48	MMM	S
59412		A	Antepartum manipulation	1.71	1.22	0.29	3.22	MMM	S
59414		A	Deliver placenta	1.61	1.15	0.27	3.03	MMM	S
59425		A	Antepartum care only	4.81	2.88	0.66	8.35	MMM	S
59426		A	Antepartum care only	8.28	4.94	1.14	14.36	MMM	S
59430		A	Care after delivery	2.13	0.38	0.07	2.58	MMM	S
59510		A	Cesarean delivery	26.22	16.90	3.92	47.04	MMM	S
59514		A	Cesarean delivery only	15.97	10.99	2.55	29.51	MMM	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
59515		A	Cesarean delivery	17.37	11.82	2.73	31.92	MMM	S
59525		A	Remove uterus after cesarean	8.54	3.61	0.88	13.23	MMM	S
59610		A	Vbac delivery	24.62	14.99	3.47	43.08	MMM	S
59612		A	Vbac delivery only	15.06	9.48	2.20	26.74	MMM	S
59614		A	Vbac care after delivery	16.34	10.31	2.39	29.04	MMM	S
59618		A	Attempted vbac delivery	27.78	16.90	3.92	48.60	MMM	S
59620		A	Attempted vbac delivery only	17.53	10.99	2.55	31.07	MMM	S
59622		A	Attempted vbac after care	18.93	11.82	2.73	33.48	MMM	S
59812		A	Treatment of miscarriage	3.10	3.61	0.77	7.48	090	S
59820		A	Care of miscarriage	3.73	3.75	0.77	8.25	090	S
59821		A	Treatment of miscarriage	4.26	2.72	0.62	7.60	090	S
59830		A	Treat uterus infection	5.96	4.53	0.52	11.01	090	S
59840		A	Abortion	2.91	3.22	0.69	6.82	010	S
59841		A	Abortion	4.80	3.75	0.76	9.31	010	S
59850		A	Abortion	5.46	4.00	0.85	10.31	090	S
59851		A	Abortion	5.62	4.28	0.88	10.78	090	S
59852		A	Abortion	7.70	5.51	1.27	14.48	090	S
59855		A	Abortion	5.80	4.14	0.96	10.90	090	S
59856		A	Abortion	7.16	5.11	1.19	13.46	090	S
59857		A	Abortion	8.71	6.22	1.44	16.37	090	S
59866		A	Abortion	4.00	2.86	0.66	7.52	000	S
59870		A	Evacuate mole of uterus	4.08	2.91	0.67	7.66	090	S
59899		C	Maternity care procedure	0.00	0.00	0.00	0.00	YYY	S
60000		A	Drain thyroid/tongue cyst	1.71	0.60	0.09	2.40	010	N
60001		A	Aspirate/inject thyroid cyst	0.97	1.05	0.12	2.14	000	N
60100		A	Biopsy of thyroid	0.97	1.05	0.12	2.14	000	N
60200		A	Remove thyroid lesion	8.83	6.02	1.04	15.89	090	S
60210		A	Partial excision thyroid	10.51	8.88	1.65	20.84	090	S
60212		A	Partial thyroid excision	15.48	9.04	1.74	26.26	090	S
60220		A	Partial removal of thyroid	9.86	8.54	1.61	20.01	090	S
60225		A	Partial removal of thyroid	13.31	10.49	1.92	25.72	090	S
60240		A	Removal of thyroid	15.68	10.58	1.96	28.20	090	S
60252		A	Removal of thyroid	17.23	13.65	2.55	33.43	090	S
60254		A	Extensive thyroid surgery	22.50	19.21	3.08	44.79	090	S
60260		A	Repeat thyroid surgery	14.49	3.14	0.34	17.97	090	S
60270		A	Removal of thyroid	16.44	13.97	2.54	32.95	090	S
60271		A	Removal of thyroid	14.18	12.14	2.25	28.55	090	S
60280		A	Remove thyroid duct lesion	5.55	7.10	1.11	13.76	090	S
60281		A	Remove thyroid duct lesion	8.00	5.04	0.95	13.99	090	S
60500		A	Explore parathyroid glands	15.40	11.36	2.31	29.07	090	S
60502		A	Re-explore parathyroids	19.25	11.39	2.33	32.97	090	S
60505		A	Explore parathyroid glands	19.93	13.14	2.56	35.63	090	S
60512		A	Autotransplant, parathyroid	4.45	2.32	0.54	7.31	ZZZ	S
60520		A	Removal of thymus gland	15.82	13.54	2.46	31.82	090	S
60521		A	Removal thymus gland	17.80	13.54	2.46	33.80	090	S
60522		A	Removal of thymus gland	21.76	13.54	2.46	37.76	090	S
60540		A	Explore adrenal gland	15.72	12.05	2.08	29.85	090	S
60545		A	Explore adrenal gland	18.51	14.27	2.34	35.12	090	S
60600		A	Remove carotid body lesion	16.13	11.46	1.88	29.47	090	S
60605		A	Remove carotid body lesion	18.20	10.71	2.21	31.12	090	S
60699		C	Endocrine surgery procedure	0.00	0.00	0.00	0.00	YYY	S
61000		A	Remove cranial cavity fluid	1.58	1.07	0.17	2.82	000	S
61001		A	Remove cranial cavity fluid	1.49	0.88	0.17	2.54	000	S
61020		A	Remove brain cavity fluid	1.51	1.26	0.20	2.97	000	S
61026		A	Injection into brain canal	1.69	2.03	0.22	3.94	000	N
61050		A	Remove brain canal fluid	1.51	1.23	0.15	2.89	000	N
61055		A	Injection into brain canal	2.10	1.88	0.19	4.17	000	N
61070		A	Brain canal stent procedure	0.89	0.49	0.03	1.41	000	N
61105		A	Drill skull for examination	4.82	6.89	1.24	12.95	090	S
61106		A	Drill skull for exam/surgery	4.82	6.15	1.15	11.92	ZZZ	S
61107		A	Drill skull for implantation	5.00	5.57	1.25	11.83	000	S
61108		A	Drill skull for drainage	9.00	12.06	2.22	23.27	090	S
61120		A	Pierce skull for examination	8.00	5.95	1.08	15.03	090	S
61130		A	Pierce skull, exam/surgery	6.37	4.95	0.96	12.28	ZZZ	S
61140		A	Pierce skull for biopsy	14.84	14.13	2.56	31.53	090	S
61150		A	Pierce skull for drainage	16.37	14.65	2.63	33.65	090	S
61151		A	Pierce skull for drainage	11.40	2.13	0.37	13.90	090	S

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³ * Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
61154		A	Pierce skull, remove clot	13.67	17.50	3.27	34.44	090	S
61156		A	Pierce skull for drainage	15.23	16.19	3.05	34.47	090	S
61210		A	Pierce skull; implant device	5.84	6.04	1.53	13.41	000	S
61215		A	Insert brain-fluid device	4.00	9.00	1.63	14.63	090	S
61250		A	Pierce skull & explore	9.40	8.03	1.44	18.87	090	S
61253		A	Pierce skull & explore	11.27	9.62	1.89	22.58	090	S
61304		A	Open skull for exploration	20.63	26.03	4.78	51.44	090	S
61305		A	Open skull for exploration	24.77	29.11	5.05	58.93	090	S
61312		A	Open skull for drainage	21.83	24.13	4.46	50.42	090	S
61313		A	Open skull for drainage	22.50	24.04	4.38	50.92	090	S
61314		A	Open skull for drainage	22.78	25.62	4.68	53.08	090	S
61315		A	Open skull for drainage	25.91	24.41	4.47	54.79	090	S
61320		A	Open skull for drainage	23.90	18.70	3.41	46.01	090	S
61321		A	Open skull for drainage	28.66	19.83	3.54	52.03	090	S
61330		A	Decompress eye socket	21.55	12.97	1.22	35.74	090	S
61332		A	Explore/biopsy eye socket	26.08	20.72	2.76	49.56	090	S
61333		A	Explore orbit; remove lesion	26.75	20.46	3.26	50.47	090	S
61334		A	Explore orbit; remove object	17.07	14.65	1.82	33.54	090	S
61340		A	Relieve cranial pressure	17.33	14.80	2.54	34.67	090	S
61343		A	Incise skull, pressure relief	27.87	30.05	5.28	63.20	090	S
61345		A	Relieve cranial pressure	25.36	19.18	3.45	47.99	090	S
61440		A	Incise skull for surgery	24.79	20.75	3.00	48.54	090	S
61450		A	Incise skull for surgery	24.29	20.43	3.43	48.15	090	S
61458		A	Incise skull for brain wound	25.97	27.28	4.87	58.12	090	S
61460		A	Incise skull for surgery	26.75	25.05	3.98	55.76	090	S
61470		A	Incise skull for surgery	24.60	13.86	2.53	40.99	090	S
61480		A	Incise skull for surgery	25.03	15.07	1.78	41.88	090	S
61490		A	Incise skull for surgery	24.20	11.72	2.16	38.09	090	S
61500		A	Removal of skull lesion	16.93	20.07	3.58	40.58	090	S
61501		A	Remove infected skull bone	13.59	17.40	3.33	34.32	090	S
61510		A	Removal of brain lesion	26.77	27.04	4.90	58.71	090	S
61512		A	Remove brain lining lesion	33.51	29.02	5.28	67.81	090	S
61514		A	Removal of brain abscess	23.49	25.52	4.74	53.75	090	S
61516		A	Removal of brain lesion	22.84	26.48	4.57	53.89	090	S
61518		A	Removal of brain lesion	35.59	30.02	5.46	71.07	090	S
61519		A	Remove brain lining lesion	39.58	31.22	5.77	76.57	090	S
61520		A	Removal of brain lesion	52.98	33.85	5.89	92.72	090	S
61521		A	Removal of brain lesion	42.20	32.97	5.85	81.02	090	S
61522		A	Removal of brain abscess	27.55	19.96	3.79	51.30	090	S
61524		A	Removal of brain lesion	26.02	27.45	5.15	58.62	090	S
61526		A	Removal of brain lesion	50.59	34.01	4.79	89.39	090	S
61530		A	Removal of brain lesion	42.35	34.01	4.79	81.15	090	S
61531		A	Implant brain electrodes	12.95	14.98	1.75	29.68	090	S
61533		A	Implant brain electrodes	18.05	17.02	3.33	38.40	090	S
61534		A	Removal of brain lesion	19.13	6.38	2.01	27.52	090	S
61535		A	Remove brain electrodes	10.23	7.66	1.25	19.14	090	S
61536		A	Removal of brain lesion	33.49	21.96	3.99	59.44	090	S
61538		A	Removal of brain tissue	25.09	29.08	4.97	59.14	090	S
61539		A	Removal of brain tissue	30.05	22.96	4.07	57.08	090	S
61541		A	Incision of brain tissue	26.95	19.80	3.78	50.53	090	S
61542		A	Removal of brain tissue	29.05	18.91	3.90	52.86	090	S
61543		A	Removal of brain tissue	27.32	17.24	2.49	47.05	090	S
61544		A	Remove & treat brain lesion	23.71	28.19	2.11	54.01	090	S
61545		A	Excision of brain tumor	41.76	26.66	4.80	72.22	090	S
61546		A	Removal of pituitary gland	29.33	27.01	4.78	61.12	090	S
61548		A	Removal of pituitary gland	20.15	24.78	4.03	48.96	090	S
61550		A	Release of skull seams	14.24	11.81	1.11	27.16	090	S
61552		A	Release of skull seams	19.02	13.83	2.70	35.55	090	S
61556		A	Incise skull/sutures	21.35	15.53	3.04	39.92	090	S
61557		A	Incise skull/sutures	21.47	15.62	3.05	40.14	090	S
61558		A	Excision of skull/sutures	34.41	17.74	3.47	55.62	090	S
61559		A	Excision of skull/sutures	31.65	23.01	4.50	59.16	090	S
61563		A	Excision of skull tumor	25.87	18.81	3.68	48.36	090	S
61564		A	Excision of skull tumor	32.64	23.73	4.64	61.01	090	S
61570		A	Remove brain foreign body	22.89	16.49	3.06	42.44	090	S
61571		A	Incise skull for brain wound	24.55	18.32	3.21	46.08	090	S
61575		A	Skull base/brainstem surgery	32.33	32.99	5.05	70.37	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
61576		A	Skull base/brainstem surgery	50.08	28.23	3.91	82.22	090	S
61580		A	Craniofacial approach, skull	28.90	21.01	4.10	54.01	090	S
61581		A	Craniofacial approach, skull	32.80	23.84	4.86	61.30	090	S
61582		A	Craniofacial approach, skull	29.77	21.85	4.22	55.84	090	S
61583		A	Craniofacial approach, skull	33.97	24.70	4.83	63.50	090	S
61584		A	Orbitocranial approach/skull	32.89	23.91	4.68	61.48	090	S
61585		A	Orbitocranial approach/skull	36.80	26.75	5.23	68.78	090	S
61586		A	Resect nasopharynx, skull	23.60	21.38	2.32	47.30	090	S
61590		A	Infratemporal approach/skull	40.02	29.10	5.68	74.80	090	S
61591		A	Infratemporal approach/skull	41.97	30.52	5.96	78.45	090	S
61592		A	Orbitocranial approach/skull	38.07	27.88	5.41	71.16	090	S
61595		A	Transmastoid approach/skull	28.12	20.44	4.00	52.56	090	S
61596		A	Transmastoid approach/skull	34.17	24.84	4.86	63.87	090	S
61597		A	Transcondylar approach/skull	38.12	26.26	5.13	69.51	090	S
61598		A	Transpetrosal approach/skull	31.83	23.13	4.62	59.48	090	S
61600		A	Resect/excise cranial lesion	24.41	17.74	3.46	45.61	090	S
61601		A	Resect/excise cranial lesion	26.16	19.03	3.72	48.91	090	S
61605		A	Resect/excise cranial lesion	27.62	20.08	3.93	51.64	090	S
61606		A	Resect/excise cranial lesion	37.00	26.90	5.25	69.15	090	S
61607		A	Resect/excise cranial lesion	34.56	25.13	4.91	64.60	090	S
61608		A	Resect/excise cranial lesion	40.21	29.24	5.71	75.16	090	S
61609		A	Transect, artery, sinus	9.89	7.19	1.40	18.48	ZZZ	S
61610		A	Transect, artery, sinus	29.67	21.57	4.21	55.45	ZZZ	S
61611		A	Transect, artery, sinus	7.42	5.39	1.06	13.87	ZZZ	S
61612		A	Transect, artery, sinus	27.88	20.27	3.96	52.11	ZZZ	S
61613		A	Remove aneurysm, sinus	39.43	26.07	5.61	71.11	090	S
61615		A	Resect/excise lesion, skull	30.36	22.07	4.31	56.74	090	S
61616		A	Resect/excise lesion, skull	41.29	30.03	5.86	77.18	090	S
61618		A	Repair dura	15.62	11.35	2.22	29.19	090	S
61619		A	Repair dura	19.52	14.19	2.77	36.48	090	S
61624		A	Occlusion/embolization cath	20.15	15.28	1.79	37.22	000	N
61626		A	Occlusion/embolization cath	16.62	12.60	1.47	30.69	000	N
61630		A	Intracranial vessel surgery	29.13	31.08	5.79	65.98	090	S
61632		A	Intracranial vessel surgery	59.47	35.31	6.36	101.14	090	S
61634		A	Intracranial vessel surgery	38.23	29.76	3.47	71.46	090	S
61636		A	Intracranial vessel surgery	62.08	35.98	4.20	102.26	090	S
61638		A	Intracranial vessel surgery	27.80	27.48	4.09	59.35	090	S
61639		A	Intracranial vessel surgery	49.74	28.79	3.36	81.89	090	S
61700		A	Inner skull vessel surgery	48.30	31.89	5.67	85.86	090	S
61702		A	Inner skull vessel surgery	46.31	36.31	6.61	89.23	090	S
61703		A	Clamp neck artery	16.27	12.21	2.24	30.72	090	S
61705		A	Revise circulation to head	34.49	30.41	5.25	70.15	090	S
61708		A	Revise circulation to head	33.59	25.20	2.32	61.11	090	S
61710		A	Revise circulation to head	28.14	16.63	1.75	46.52	090	S
61711		A	Fusion of skull arteries	34.62	33.04	6.20	73.86	090	S
61712		A	Skull or spine microsurgery	3.49	4.47	0.93	8.89	ZZZ	S
61720		A	Incise skull/brain surgery	15.92	20.29	4.05	40.26	090	S
61735		A	Incise skull/brain surgery	18.72	12.96	1.51	33.19	090	S
61750		A	Incise skull; brain biopsy	16.67	13.54	4.31	34.52	090	S
61751		A	Brain biopsy with cat scan	16.66	19.43	4.44	40.53	090	S
61760		A	Implant brain electrodes	21.00	14.98	1.75	37.73	090	S
61770		A	Incise skull for treatment	19.78	19.38	3.43	42.59	090	S
61790		A	Treat trigeminal nerve	10.31	13.19	3.03	26.53	090	S
61791		A	Treat trigeminal tract	13.99	9.77	3.16	26.92	090	S
61793		A	Focus radiation beam	16.70	21.35	1.96	40.01	090	S
61795		A	Brain surgery using computer	4.04	5.24	1.55	10.83	000	S
61850		A	Implant neuroelectrodes	11.50	11.63	2.26	25.39	090	S
61855		A	Implant neuroelectrodes	12.50	10.39	1.47	24.36	090	S
61860		A	Implant neuroelectrodes	19.60	8.14	1.58	29.33	090	S
61865		A	Implant neuroelectrodes	21.70	15.78	3.09	40.57	090	S
61870		A	Implant neuroelectrodes	13.67	4.19	0.82	18.68	090	S
61875		A	Implant neuroelectrodes	13.79	6.59	1.31	21.79	090	S
61880		A	Revise/remove neuroelectrode	5.72	4.79	0.88	11.17	090	S
61885		A	Implant neuroreceiver	5.28	1.96	0.29	7.53	090	S
61888		A	Revise/remove neuroreceiver	4.67	2.25	0.44	7.36	010	S
62000		A	Repair of skull fracture	11.26	5.73	0.95	17.94	090	S
62005		A	Repair of skull fracture	14.84	11.08	1.97	27.89	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
62010		A	Treatment of head injury	16.43	19.20	3.39	41.02	090	S
62100		A	Repair brain fluid leakage	20.78	21.62	3.72	46.12	090	S
62115		A	Reduction of skull defect	20.50	15.51	1.82	37.83	090	S
62116		A	Reduction of skull defect	22.45	16.96	1.99	41.42	090	S
62117		A	Reduction of skull defect	25.38	19.20	2.25	46.83	090	S
62120		A	Repair skull cavity lesion	22.34	16.90	1.98	41.22	090	S
62121		A	Incise skull repair	20.25	17.51	3.41	41.17	090	S
62140		A	Repair of skull defect	12.63	13.43	2.39	28.45	090	S
62141		A	Repair of skull defect	13.90	17.73	3.28	34.91	090	S
62142		A	Remove skull plate/flap	9.91	12.69	2.64	25.24	090	S
62143		A	Replace skull plate/flap	12.11	9.17	1.05	22.33	090	S
62145		A	Repair of skull & brain	17.88	13.16	2.23	33.13	090	S
62146		A	Repair of skull with graft	15.11	10.99	2.15	28.25	090	S
62147		A	Repair of skull with graft	18.14	13.17	2.57	33.88	090	S
62180		A	Establish brain cavity shunt	19.71	14.21	2.70	36.62	090	S
62190		A	Establish brain cavity shunt	10.13	12.97	3.21	26.31	090	S
62192		A	Establish brain cavity shunt	11.31	14.48	2.74	28.53	090	S
62194		A	Replace/irrigate catheter	4.50	1.88	0.29	6.67	010	N
62200		A	Establish brain cavity shunt	17.33	16.95	3.09	37.37	090	S
62201		A	Establish brain cavity shunt	13.54	8.78	1.72	24.04	090	S
62220		A	Establish brain cavity shunt	12.06	15.43	3.12	30.61	090	S
62223		A	Establish brain cavity shunt	11.96	16.40	3.02	31.38	090	S
62225		A	Replace/irrigate catheter	4.71	4.80	0.58	10.09	090	S
62230		A	Replace/revise brain shunt	9.71	8.83	1.82	21.36	090	S
62256		A	Remove brain cavity shunt	5.90	6.38	1.17	13.45	090	S
62258		A	Replace brain cavity shunt	13.60	14.78	2.55	30.93	090	S
62268		A	Drain spinal cord cyst	4.74	2.98	0.36	8.08	000	N
62269		A	Needle biopsy spinal cord	5.02	1.75	0.28	7.05	000	N
62270		A	Spinal fluid tap, diagnostic	1.13	0.71	0.06	1.90	000	N
62272		A	Drain spinal fluid	1.35	1.01	0.12	2.48	000	N
62273		A	Treat lumbar spine lesion	2.15	1.12	0.26	3.53	000	N
62274		A	Inject spinal anesthetic	1.78	0.74	0.17	2.69	000	N
62275		A	Inject spinal anesthetic	1.79	0.59	0.19	2.57	000	N
62276		A	Inject spinal anesthetic	2.04	1.23	0.23	3.50	000	N
62277		A	Inject spinal anesthetic	2.15	0.84	0.23	3.22	000	N
62278		A	Inject spinal anesthetic	1.51	0.98	0.25	2.75	000	N
62279		A	Inject spinal anesthetic	1.58	0.82	0.24	2.64	000	N
62280		A	Treat spinal cord lesion	2.56	0.71	0.14	3.41	010	N
62281		A	Treat spinal cord lesion	2.61	0.87	0.28	3.76	010	N
62282		A	Treat spinal canal lesion	2.28	1.70	0.40	4.38	010	N
62284		A	Injection for myelogram	1.54	1.98	0.34	3.86	000	S
62287		A	Percutaneous diskectomy	7.43	6.96	2.65	17.04	090	S
62288		A	Injection into spinal canal	1.74	1.12	0.24	3.10	000	N
62289		A	Injection into spinal canal	1.54	1.07	0.29	3.00	000	N
62290		A	Inject for spine disk x-ray	3.00	1.86	0.24	5.10	000	N
62291		A	Inject for spine disk x-ray	2.91	1.78	0.39	5.08	000	N
62292		A	Injection into disk lesion	7.00	8.86	2.13	18.09	090	S
62294		A	Injection into spinal artery	10.95	5.84	0.68	17.47	090	S
62298		A	Injection into spinal canal	2.20	1.04	0.13	3.37	000	N
62351		A	Implant spinal catheter	6.25	3.49	1.02	10.76	090	S
62355		A	Implant spinal catheter	9.25	5.16	1.50	15.91	090	S
62360		A	Remove spinal canal catheter	4.80	3.49	0.68	8.97	090	S
62361		A	Insert spine infusion device	2.00	1.12	0.33	3.45	090	S
62362		A	Implant spine infusion pump	4.80	2.68	0.78	8.26	090	S
62365		A	Implant spine infusion pump	6.29	3.51	1.02	10.82	090	S
62367		A	Remove spine infusion device	4.77	3.47	0.68	8.92	090	S
62367	26	A	Analyze spine infusion pump	0.00	0.00	0.00	0.00	XXX	N
62367	TC	C	Analyze spine infusion pump	0.48	0.35	0.07	0.90	XXX	N
62368		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	XXX	N
62368	26	A	Analyze spine infusion pump	0.00	0.00	0.00	0.00	XXX	N
62368	TC	C	Analyze spine infusion pump	0.75	0.55	0.11	1.41	XXX	N
63001		A	Removal of spinal lamina	14.50	18.55	3.42	36.47	090	S
63003		A	Removal of spinal lamina	14.63	17.83	3.23	35.79	090	S
63005		A	Removal of spinal lamina	13.88	17.32	3.10	34.30	090	S
63011		A	Removal of spinal lamina	13.40	9.99	1.87	25.26	090	S
63012		A	Removal of spinal lamina	14.21	18.07	3.15	35.43	090	S

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³ Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
63015		A	Removal of spinal lamina	17.77	21.23	4.18	43.18	090	S
63016		A	Removal of spinal lamina	17.43	22.30	4.11	43.84	090	S
63017		A	Removal of spinal lamina	14.90	20.29	4.00	39.19	090	S
63020		A	Neck spine disk surgery	13.77	16.04	3.38	33.19	090	S
63030		A	Low back disk surgery	11.10	15.50	2.91	29.41	090	S
63035		A	Added spinal disk surgery	3.15	4.04	0.76	7.95	ZZZ	S
63040		A	Neck spine disk surgery	17.56	22.48	4.30	44.34	090	S
63042		A	Low back disk surgery	16.56	22.10	4.38	43.04	090	S
63045		A	Removal of spinal lamina	15.31	19.59	4.38	39.28	090	S
63046		A	Removal of spinal lamina	14.61	18.70	4.58	37.89	090	S
63047		A	Removal of spinal lamina	13.57	16.33	4.48	34.38	090	S
63048		A	Removal of spinal lamina	3.26	4.17	1.03	8.46	ZZZ	S
63055		A	Decompress spinal cord	20.57	23.73	4.18	48.58	090	S
63056		A	Decompress spinal cord	19.11	21.84	3.76	44.71	090	S
63057		A	Decompress spinal cord	5.26	3.84	0.85	9.95	ZZZ	S
63064		A	Decompress spinal cord	23.23	23.83	4.09	51.15	090	S
63066		A	Decompress spinal cord	3.26	2.48	0.45	6.19	ZZZ	S
63075		A	Neck spine disk surgery	16.50	17.57	3.21	39.28	090	S
63076		A	Neck spine disk surgery	4.05	5.19	0.97	10.21	ZZZ	S
63077		A	Spine disk surgery, thorax	20.25	18.42	3.17	41.84	090	S
63078		A	Spine disk surgery, thorax	3.28	2.61	0.45	6.34	ZZZ	S
63081		A	Removal of vertebral body	22.08	26.26	4.50	52.84	090	S
63082		A	Removal of vertebral body	4.37	5.60	1.22	11.19	ZZZ	S
63085		A	Removal of vertebral body	25.07	27.39	4.69	57.15	090	S
63086		A	Removal of vertebral body	3.19	4.08	1.07	8.34	ZZZ	S
63087		A	Removal of vertebral body	33.91	28.25	4.85	67.01	090	S
63088		A	Removal of vertebral body	4.33	5.55	1.18	11.06	ZZZ	S
63090		A	Removal of vertebral body	26.20	29.22	4.92	60.34	090	S
63091		A	Removal of vertebral body	3.03	2.73	0.46	6.22	ZZZ	S
63170		A	Incise spinal cord tract(s)	18.18	18.88	3.28	40.34	090	S
63172		A	Drainage of spinal cyst	16.19	20.72	4.26	41.17	090	S
63173		A	Drainage of spinal cyst	20.40	15.47	1.81	37.68	090	S
63180		A	Revise spinal cord ligaments	16.75	11.61	2.05	30.41	090	S
63182		A	Revise spinal cord ligaments	18.91	16.44	2.21	37.56	090	S
63185		A	Incise spinal column/nerves	13.85	15.55	2.93	32.33	090	S
63190		A	Incise spinal column/nerves	16.28	20.81	3.91	40.98	090	S
63191		A	Incise spinal column/nerves	16.42	13.04	2.21	31.67	090	S
63194		A	Incise spinal column & cord	17.53	13.02	2.33	32.88	090	S
63195		A	Incise spinal column & cord	17.16	13.88	2.11	33.13	090	S
63196		A	Incise spinal column & cord	20.57	15.59	1.83	37.99	090	S
63197		A	Incise spinal column & cord	19.38	14.36	2.62	36.36	090	S
63198		A	Incise spinal column & cord	22.45	16.32	3.19	41.96	090	S
63199		A	Incise spinal column & cord	23.89	21.40	2.61	47.90	090	S
63200		A	Release of spinal cord	17.66	12.49	1.83	31.98	090	S
63250		A	Revise spinal cord vessels	38.67	27.99	5.22	71.88	090	S
63251		A	Revise spinal cord vessels	38.86	22.74	4.32	65.92	090	S
63252		A	Revise spinal cord vessels	38.85	26.25	5.52	72.62	090	S
63265		A	Excise intraspinal lesion	20.04	22.01	3.90	45.95	090	S
63266		A	Excise intraspinal lesion	20.65	24.76	4.43	49.84	090	S
63267		A	Excise intraspinal lesion	16.70	21.38	4.20	42.28	090	S
63268		A	Excise intraspinal lesion	17.27	12.56	2.46	32.29	090	S
63270		A	Excise intraspinal lesion	24.84	18.14	3.42	46.40	090	S
63271		A	Excise intraspinal lesion	24.96	26.60	4.79	56.35	090	S
63272		A	Excise intraspinal lesion	23.69	23.15	4.26	51.10	090	S
63273		A	Excise intraspinal lesion	22.66	17.56	3.12	43.34	090	S
63275		A	Biopsy/excise spinal tumor	22.05	27.82	5.09	54.96	090	S
63276		A	Biopsy/excise spinal tumor	21.76	25.31	4.62	51.69	090	S
63277		A	Biopsy/excise spinal tumor	19.51	23.75	4.25	47.51	090	S
63278		A	Biopsy/excise spinal tumor	19.24	23.34	4.32	46.90	090	S
63280		A	Biopsy/excise spinal tumor	26.72	26.08	4.99	59.79	090	S
63281		A	Biopsy/excise spinal tumor	26.42	27.67	4.96	59.05	090	S
63282		A	Biopsy/excise spinal tumor	24.96	24.11	4.44	53.51	090	S
63283		A	Biopsy/excise spinal tumor	23.57	18.77	3.44	45.78	090	S
63285		A	Biopsy/excise spinal tumor	34.24	24.49	4.49	63.22	090	S
63286		A	Biopsy/excise spinal tumor	33.94	28.76	4.92	67.62	090	S
63287		A	Biopsy/excise spinal tumor	34.43	25.72	4.53	64.68	090	S
63290		A	Biopsy/excise spinal tumor	35.04	27.16	4.85	66.85	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
63300		A	Removal of vertebral body	22.78	17.27	2.02	42.07	090	S
63301		A	Removal of vertebral body	25.08	18.45	3.58	47.11	090	S
63302		A	Removal of vertebral body	25.80	21.36	3.02	49.98	090	S
63303		A	Removal of vertebral body	28.47	16.50	3.39	50.36	090	S
63304		A	Removal of vertebral body	26.10	21.31	2.49	51.90	090	S
63305		A	Removal of vertebral body	29.42	22.49	3.75	55.66	090	S
63306		A	Removal of vertebral body	30.01	22.76	2.65	55.42	090	S
63307		A	Removal of vertebral body	29.42	24.42	2.98	56.82	090	S
63600		A	Remove spinal cord lesion	5.25	4.05	0.73	10.03	ZZZ	S
63610		A	Stimulation of spinal cord	13.08	10.70	2.63	26.41	090	N
63615		A	Remove lesion of spinal cord	8.73	6.73	2.06	17.52	090	N
63650		A	Implant neuroelectrodes	15.40	11.55	2.03	28.98	090	S
63655		A	Implant neuroelectrodes	5.99	7.67	2.13	15.79	090	S
63660		A	Implant neuroelectrodes	9.50	11.93	3.84	24.87	090	S
63685		A	Revise/remove neuroelectrode	5.54	7.06	1.56	14.19	090	S
63688		A	Implant neuroelectrode	6.29	7.40	1.46	15.15	090	S
63690		A	Revise/remove neuroelectrode	4.77	6.10	1.26	12.13	090	S
63691		A	Analysis of neuroelectrode	0.45	0.58	0.12	1.15	XXX	N
63700		A	Analysis of neuroelectrode	0.65	0.41	0.11	1.17	XXX	N
63702		A	Repair of spinal herniation	15.62	11.35	2.22	29.19	090	S
63704		A	Repair of spinal herniation	17.57	12.78	2.48	32.84	090	S
63706		A	Repair of spinal herniation	19.52	14.19	2.77	36.48	090	S
63707		A	Repair of spinal herniation	22.45	16.33	3.18	41.96	090	S
63708		A	Repair spinal fluid leakage	10.14	12.98	2.58	25.68	090	S
63710		A	Repair spinal fluid leakage	13.26	16.97	3.30	33.53	090	S
63740		A	Graft repair of spine defect	13.01	8.75	1.58	24.34	090	S
63741		A	Install spinal shunt	10.37	13.35	2.99	26.71	090	S
63744		A	Install spinal shunt	7.57	9.13	2.39	19.09	090	S
63746		A	Revision of spinal shunt	7.34	8.15	1.68	17.17	090	S
64400		A	Removal of spinal shunt	5.60	5.52	1.08	12.20	090	S
64402		A	Injection for nerve block	1.11	0.48	0.05	1.64	090	N
64405		A	Injection for nerve block	1.25	0.62	0.09	1.96	090	S
64408		A	Injection for nerve block	1.32	0.64	0.07	2.03	090	N
64410		A	Injection for nerve block	1.41	1.04	0.11	2.56	090	N
64412		A	Injection for nerve block	1.43	0.71	0.15	2.29	090	N
64413		A	Injection for nerve block	1.18	0.82	0.08	1.88	090	N
64415		A	Injection for nerve block	1.40	0.74	0.08	2.22	090	N
64417		A	Injection for nerve block	1.46	0.26	0.07	1.81	090	N
64418		A	Injection for nerve block	1.44	0.63	0.15	2.22	090	N
64420		A	Injection for nerve block	1.32	0.85	0.10	2.27	090	N
64421		A	Injection for nerve block	1.18	0.64	0.07	1.89	090	N
64425		A	Injection for nerve block	1.68	0.83	0.17	2.68	090	N
64430		A	Injection for nerve block	1.75	0.57	0.10	2.42	090	N
64435		A	Injection for nerve block	1.46	0.70	0.12	2.28	090	S
64440		A	Injection for nerve block	1.45	0.47	0.09	2.01	090	S
64441		A	Injection for nerve block	1.34	0.79	0.09	2.22	090	N
64442		A	Injection for nerve block	1.79	1.01	0.12	2.92	090	N
64443		A	Injection for nerve block	1.41	1.19	0.16	2.76	090	N
64445		A	Injection for nerve block	0.98	0.63	0.12	1.73	ZZZ	N
64450		A	Injection for nerve block	1.48	0.49	0.06	2.03	090	N
64505		A	Injection for nerve block	1.27	0.53	0.05	1.85	090	S
64508		A	Injection for nerve block	1.36	0.62	0.06	2.04	090	N
64510		A	Injection for nerve block	1.12	1.04	0.08	2.24	090	N
64520		A	Injection for nerve block	1.22	0.71	0.18	2.11	090	N
64530		A	Injection for nerve block	1.35	0.72	0.17	2.24	090	N
64550		A	Apply neurostimulator	1.58	1.17	0.28	3.03	090	N
64553		A	Implant neuroelectrodes	0.18	0.44	0.04	0.66	090	N
64555		A	Implant neuroelectrodes	2.26	1.02	0.10	3.38	010	N
64560		A	Implant neuroelectrodes	2.22	0.42	0.10	2.74	010	N
64565		A	Implant neuroelectrodes	2.31	1.45	0.24	4.00	010	S
64573		A	Implant neuroelectrodes	1.71	0.76	0.08	2.55	010	N
64575		A	Implant neuroelectrodes	4.35	3.16	0.61	8.12	090	S
64577		A	Implant neuroelectrodes	4.27	3.07	0.40	7.74	090	S
64580		A	Implant neuroelectrodes	4.54	2.78	0.45	7.75	090	S
64585		A	Revise/remove neuroelectrode	4.04	2.91	0.20	7.15	090	S
64590		A	Implant neuroelectrode	2.01	0.97	0.09	3.07	010	S
64591		A	Implant neuroelectrode	2.35	1.84	0.35	4.54	010	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
64585		A	Reviser/remove neuroreceptor	1.68	1.12	0.21	3.01	010	S
64600		A	Injection treatment of nerve	3.40	1.89	0.17	5.26	010	N
64605		A	Injection treatment of nerve	5.56	1.56	0.33	7.45	010	N
64610		A	Injection treatment of nerve	7.11	7.26	1.35	15.72	010	N
64612		A	Destroy nerve, face muscle	1.91	1.45	0.17	3.53	010	S
64613		A	Destroy nerve, spine muscle	1.91	1.45	0.17	3.53	010	S
64620		A	Injection treatment of nerve	2.79	1.00	0.19	3.98	010	N
64622		A	Injection treatment of nerve	2.95	1.82	0.35	5.12	010	N
64623		A	Injection treatment of nerve	0.99	0.85	0.17	2.01	ZZZ	N
64630		A	Injection treatment of nerve	2.95	1.74	0.38	5.07	010	N
64640		A	Injection treatment of nerve	2.49	0.92	0.09	3.50	010	N
64680		A	Injection treatment of nerve	2.57	1.55	0.41	4.53	010	N
64702		A	Reviser finger/toe nerve	4.02	4.22	0.70	8.94	090	S
64704		A	Reviser hand/foot nerve	4.44	5.38	0.74	10.56	090	S
64708		A	Reviser arm/leg nerve	5.71	7.31	1.26	14.28	090	S
64712		A	Revision of sciatic nerve	7.18	9.19	1.68	18.05	090	S
64713		A	Revision of arm nerve(s)	10.34	9.40	1.72	21.46	090	S
64714		A	Revision low back nerve(s)	9.87	8.13	1.41	17.41	090	S
64718		A	Revision of cranial nerve	5.80	4.83	0.67	11.30	090	S
64718		A	Reviser ulnar nerve at elbow	5.48	6.72	1.13	13.33	090	S
64719		A	Reviser ulnar nerve at wrist	4.72	4.95	0.65	10.32	090	S
64721		A	Carpal tunnel surgery	3.99	4.90	0.83	9.72	090	S
64722		A	Relieve pressure on nerve(s)	4.46	5.71	1.11	11.28	090	S
64726		A	Release foot/toe nerve	3.97	0.72	0.07	4.76	090	S
64727		A	Internal nerve revision	3.10	3.24	0.55	6.89	ZZZ	S
64732		A	Incision of brow nerve	4.15	4.31	0.72	9.18	090	S
64734		A	Incision of cheek nerve	4.50	4.61	0.67	9.78	090	S
64738		A	Incision of chin nerve	4.40	4.46	0.42	9.28	090	S
64738		A	Incision of jaw nerve	5.42	5.07	0.61	11.10	090	S
64740		A	Incision of tongue nerve	5.28	5.18	0.62	11.08	090	S
64742		A	Incision of facial nerve	5.91	5.00	0.44	11.35	090	S
64744		A	Incise nerve, back of head	4.67	6.10	1.10	12.07	090	S
64746		A	Incise diaphragm nerve	5.62	3.77	0.77	10.16	090	S
64752		A	Incision of vagus nerve	6.64	3.93	0.85	11.42	090	S
64755		A	Incision of stomach nerves	13.10	10.47	2.27	25.84	090	S
64760		A	Incision of vagus nerve	6.54	6.86	1.50	14.90	090	S
64761		A	Incision of pelvic nerve	6.10	4.06	0.50	11.26	090	S
64763		A	Incise hip/thigh nerve	6.62	4.80	0.92	12.34	090	S
64766		A	Incise hip/thigh nerve	8.31	6.67	1.20	16.18	090	S
64771		A	Sever cranial nerve	6.99	6.42	0.73	14.14	090	S
64772		A	Incision of spinal nerve	6.79	6.77	1.30	14.86	090	S
64774		A	Remove skin nerve lesion	4.86	2.74	0.45	8.05	090	S
64776		A	Remove digit nerve lesion	4.86	2.78	0.41	8.05	090	S
64778		A	Added digit nerve surgery	3.11	2.73	0.43	6.27	ZZZ	S
64782		A	Remove limb nerve lesion	5.81	4.70	0.46	10.97	090	S
64783		A	Added limb nerve surgery	3.72	3.26	0.47	7.45	ZZZ	S
64784		A	Remove nerve lesion	9.46	5.64	0.96	16.06	090	S
64786		A	Remove sciatic nerve lesion	15.10	12.66	2.14	29.90	090	S
64787		A	Implant nerve end	4.30	3.47	0.60	8.37	ZZZ	S
64788		A	Remove skin nerve lesion	4.30	3.63	0.50	8.43	090	S
64790		A	Removal of nerve lesion	10.95	7.11	1.22	19.28	090	S
64792		A	Removal of nerve lesion	14.40	8.99	1.66	25.05	090	S
64795		A	Biopsy of nerve	3.01	2.38	0.39	5.78	000	S
64802		A	Remove sympathetic nerves	8.22	5.40	1.10	14.72	090	S
64804		A	Remove sympathetic nerves	13.65	12.77	2.44	28.86	090	S
64806		A	Remove sympathetic nerves	12.79	10.55	2.04	25.38	090	S
64818		A	Remove sympathetic nerves	9.42	8.57	1.72	19.71	090	S
64820		A	Remove sympathetic nerves	10.00	7.27	1.42	18.69	090	S
64830		A	Microrepair of nerve	3.10	2.01	0.38	5.49	ZZZ	S
64831		A	Repair of digit nerve	8.84	3.38	0.56	12.78	090	S
64832		A	Repair additional nerve	5.68	1.40	0.24	7.30	ZZZ	S
64834		A	Repair of hand or foot nerve	9.77	3.50	0.58	13.83	090	S
64835		A	Repair of hand or foot nerve	10.47	5.96	1.03	17.46	090	S
64836		A	Repair of hand or foot nerve	10.47	6.70	1.22	18.39	090	S
64837		A	Repair additional nerve	6.26	4.45	0.85	11.56	ZZZ	S
64840		A	Repair of leg nerve	12.43	10.35	0.53	23.31	090	S
64856		A	Repair/transpose nerve	12.81	8.21	1.46	22.48	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
64857		A	Repair arm/leg nerve	13.43	9.53	1.54	24.50	090	S
64858		A	Repair sciatic nerve	15.43	10.98	2.11	28.52	090	S
64859		A	Additional nerve surgery	4.28	3.50	0.58	8.34	ZZZ	S
64861		A	Repair of arm nerves	17.94	13.42	1.38	32.74	090	S
64862		A	Repair of low back nerves	18.14	21.56	1.61	41.31	090	S
64864		A	Repair of facial nerve	11.87	7.86	1.16	20.89	090	S
64865		A	Repair of facial nerve	14.70	12.34	1.50	28.54	090	S
64866		A	Fusion of facial/other nerve	14.94	11.19	1.84	27.97	090	S
64868		A	Fusion of facial/other nerve	13.38	11.19	1.47	26.02	090	S
64870		A	Fusion of facial/other nerve	15.19	13.91	1.70	30.80	090	S
64872		A	Subsequent repair of nerve	1.99	1.44	0.29	3.72	ZZZ	S
64874		A	Repair & revise nerve	2.98	2.17	0.43	5.58	ZZZ	S
64876		A	Repair nerve; shorten bone	3.38	2.46	0.48	6.32	ZZZ	N
64885		A	Nerve graft, head or neck	16.73	12.69	1.48	30.90	090	S
64886		A	Nerve graft, head or neck	19.95	15.13	1.77	36.85	090	S
64890		A	Nerve graft, hand or foot	14.35	12.26	2.12	28.73	090	S
64891		A	Nerve graft, hand or foot	15.21	10.42	1.73	27.36	090	S
64892		A	Nerve graft, arm or leg	13.85	11.04	1.69	26.58	090	S
64893		A	Nerve graft, arm or leg	14.61	13.93	2.27	30.81	090	S
64895		A	Nerve graft, hand or foot	18.39	13.16	2.55	34.10	090	S
64896		A	Nerve graft, hand or foot	19.38	17.53	1.90	38.81	090	S
64897		A	Nerve graft, arm or leg	17.38	12.63	2.47	32.48	090	S
64898		A	Nerve graft, arm or leg	18.39	14.40	2.35	35.14	090	S
64901		A	Additional nerve graft	10.22	10.16	0.87	21.25	ZZZ	S
64902		A	Additional nerve graft	11.83	11.92	0.99	24.74	ZZZ	S
64905		A	Nerve pedicle transfer	13.22	8.40	0.70	23.32	090	S
64907		A	Nerve pedicle transfer	17.90	13.02	2.55	33.47	090	S
64999		C	Nervous system surgery	0.00	0.00	0.00	0.00	YYY	N
65091		A	Reviser eye	6.10	7.81	0.46	14.36	090	S
65093		A	Reviser eye with implant	6.47	8.28	0.52	15.27	090	S
65101		A	Removal of eye	6.52	8.35	0.47	15.34	090	S
65103		A	Remove eye/insert implant	7.08	9.04	0.50	16.60	090	S
65105		A	Remove eye/attach implant	7.82	10.01	0.55	18.38	090	S
65110		A	Removal of eye	13.18	15.99	1.14	30.31	090	S
65112		A	Remove eye, revise socket	15.44	12.16	1.09	28.69	090	S
65114		A	Remove eye, revise socket	16.59	13.07	1.65	31.31	090	S
65125		A	Reviser ocular implant	2.97	2.47	0.13	5.57	090	S
65130		A	Insert ocular implant	6.75	6.64	0.50	15.89	090	S
65135		A	Insert ocular implant	6.93	5.42	0.35	12.70	090	S
65140		A	Attach ocular implant	7.46	6.22	0.33	14.01	090	S
65150		A	Reviser ocular implant	5.97	7.64	0.58	14.17	090	S
65155		A	Reinsert ocular implant	8.21	10.50	0.90	19.61	090	S
65175		A	Removal of ocular implant	5.93	7.49	0.40	13.82	090	S
65205		A	Remove foreign body from eye	0.71	0.37	0.02	1.10	000	S
65210		A	Remove foreign body from eye	0.84	0.46	0.03	1.33	000	S
65220		A	Remove foreign body from eye	0.71	0.52	0.04	1.27	000	N
65222		A	Remove foreign body from eye	0.93	0.57	0.03	1.53	000	S
65235		A	Remove foreign body from eye	7.12	5.61	0.30	13.03	090	S
65260		A	Remove foreign body from eye	10.35	8.63	0.45	19.43	090	S
65265		A	Remove foreign body from eye	12.04	10.04	0.51	22.59	090	S
65270		A	Repair of eye wound	1.65	1.17	0.07	3.09	010	S
65272		A	Repair of eye wound	3.57	1.84	0.10	5.51	090	S
65273		A	Repair of eye wound	3.89	3.22	0.21	7.32	090	S
65275		A	Repair of eye wound	5.04	0.66	0.04	5.74	090	S
65280		A	Repair of eye wound	7.10	9.09	0.49	16.68	090	S
65285		A	Repair of eye wound	12.06	12.26	0.64	24.96	090	S
65286		A	Repair of eye wound	5.16	4.79	0.25	10.20	090	S
65290		A	Repair of eye socket wound	5.06	6.20	0.37	11.63	090	S
65400		A	Removal of eye lesion	5.61	6.46	0.35	12.42	090	S
65410		A	Biopsy of cornea	1.47	1.59	0.11	3.17	000	S
65420		A	Removal of eye lesion	3.97	4.28	0.23	8.48	090	S
65426		A	Removal of eye lesion	5.05	5.47	0.38	11.90	090	S
65430		A	Corneal smear	1.47	0.54	0.03	2.04	090	S
65435		A	Curette/treat cornea	0.92	0.77	0.04	1.73	000	S
65436		A	Curette/treat cornea	3.99	1.53	0.08	5.60	090	S
65450		A	Treatment of corneal lesion	3.07	3.28	0.17	6.52	090	S
65600		A	Revision of cornea	3.15	2.62	0.14	5.91	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
65710		A	Corneal transplant	11.75	12.44	1.13	25.32	090	S
65730		A	Corneal transplant	13.50	15.14	1.29	29.93	090	S
65750		A	Corneal transplant	14.25	16.10	1.33	31.68	090	S
65755		A	Corneal transplant	14.25	16.10	1.39	31.74	090	S
65760		N	Revision of cornea	0.00	0.00	0.00	0.00	XXX	0
65765		N	Revision of cornea	0.00	0.00	0.00	0.00	XXX	0
65767		N	Corneal tissue transplant	0.00	0.00	0.00	0.00	XXX	0
65770		A	Revised cornea with implant	16.56	13.81	0.71	31.08	090	S
65771		N	Radial keratotomy	0.00	0.00	0.00	0.00	XXX	0
65772		A	Correction of astigmatism	4.04	5.16	0.31	9.51	090	S
65775		A	Correction of astigmatism	5.44	6.96	0.50	12.90	090	S
65800		A	Drainage of eye	1.91	1.72	0.10	3.73	000	S
65805		A	Drainage of eye	1.91	1.81	0.10	3.82	000	S
65810		A	Drainage of eye	4.57	5.45	0.30	10.32	090	S
65815		A	Drainage of eye	4.75	4.40	0.24	9.48	090	S
65820		A	Relieve inner eye pressure	7.60	9.54	0.51	17.65	090	S
65850		A	Incision of eye	10.18	13.03	0.69	23.90	090	S
65855		A	Laser surgery of eye	4.15	6.01	0.52	10.68	090	S
65860		A	Incise inner eye adhesions	3.37	4.31	0.37	8.05	090	S
65865		A	Incise inner eye adhesions	5.42	6.93	0.41	12.76	090	S
65870		A	Incise inner eye adhesions	5.92	5.86	0.31	12.09	090	S
65875		A	Incise inner eye adhesions	6.14	6.28	0.34	12.76	090	S
65880		A	Incise inner eye adhesions	6.69	6.85	0.37	13.91	090	S
65900		A	Remove eye lesion	10.43	7.91	0.92	19.26	090	S
65920		A	Remove implant from eye	7.90	8.36	0.44	16.70	090	S
65930		A	Remove blood clot from eye	7.03	7.68	0.41	15.12	090	S
66020		A	Injection treatment of eye	1.54	1.98	0.14	3.66	010	S
66030		A	Injection treatment of eye	1.20	0.54	0.03	1.77	010	S
66130		A	Remove eye lesion	7.54	5.28	0.28	13.10	090	S
66150		A	Glaucoma surgery	7.60	9.72	0.59	17.91	090	S
66155		A	Glaucoma surgery	7.48	9.57	0.50	17.55	090	S
66160		A	Glaucoma surgery	9.47	10.77	0.55	20.79	090	S
66165		A	Glaucoma surgery	7.31	9.36	0.57	17.24	090	S
66170		A	Glaucoma surgery	11.26	12.15	0.63	24.04	090	S
66172		A	Incision of eye	13.62	12.15	0.63	26.40	090	S
66180		A	Implant eye shunt	14.00	16.17	1.03	31.20	090	S
66185		A	Revised eye shunt	7.69	9.85	0.58	18.12	090	S
66220		A	Repair eye lesion	7.32	5.95	0.34	13.61	090	S
66225		A	Repair/graft eye lesion	10.55	13.51	0.86	24.92	090	S
66250		A	Follow-up surgery of eye	5.63	7.20	0.38	13.21	090	S
66500		A	Incision of iris	3.58	4.58	0.27	8.43	090	S
66505		A	Incision of iris	3.93	3.27	0.17	7.37	090	S
66600		A	Remove iris and lesion	8.23	9.36	0.51	18.10	090	S
66605		A	Removal of iris	12.34	11.87	0.67	24.88	090	S
66625		A	Removal of iris	4.95	6.33	0.48	11.76	090	S
66630		A	Removal of iris	5.81	7.43	0.45	13.69	090	S
66635		A	Removal of iris	5.90	7.56	0.49	13.95	090	S
66680		A	Repair iris & ciliary body	5.14	6.42	0.35	11.91	090	S
66682		A	Repair iris and ciliary body	5.86	7.33	0.38	13.57	090	S
66700		A	Destruction, ciliary body	4.55	5.83	0.35	10.73	090	S
66710		A	Destruction, ciliary body	4.55	5.83	0.41	10.79	090	S
66720		A	Destruction, ciliary body	4.55	5.83	0.38	10.76	090	S
66740		A	Destruction, ciliary body	4.55	5.83	0.39	10.77	090	S
66761		A	Revision of iris	3.77	5.10	0.47	9.34	090	S
66762		A	Revision of iris	4.33	5.92	0.55	10.80	090	S
66770		A	Removal of inner eye lesion	4.88	6.24	0.45	11.57	090	S
66820		A	Incision, secondary cataract	3.76	4.81	0.29	8.86	090	S
66821		A	After cataract laser surgery	2.15	3.61	0.37	6.33	090	S
66825		A	Reposition intraocular lens	7.73	7.33	0.38	15.44	090	S
66830		A	Removal of lens lesion	7.80	7.67	0.40	15.87	090	S
66840		A	Removal of lens material	7.51	9.61	0.54	17.66	090	S
66850		A	Removal of lens material	8.66	11.09	0.70	20.45	090	S
66852		A	Removal of lens material	9.52	12.19	0.90	22.61	090	S
66920		A	Extraction of lens	8.46	10.82	0.60	19.88	090	S
66930		A	Extraction of lens	9.73	10.49	0.57	20.79	090	S
66940		A	Extraction of lens	8.48	10.85	0.62	19.95	090	S
66983		A	Remove cataract, insert lens	8.54	10.94	0.95	20.43	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
66984		A	Remove cataract, insert lens	9.89	12.66	0.94	23.49	090	S
66985		A	Insert lens prosthesis	7.89	10.10	0.63	18.62	090	S
66986		A	Exchange lens prosthesis	11.78	12.20	0.63	24.61	090	S
66999		C	Eye surgery procedure	0.00	0.00	0.00	0.00	YYY	S
67005		A	Partial removal of eye fluid	5.50	10.28	1.13	16.91	090	S
67010		A	Partial removal of eye fluid	6.67	9.98	1.04	17.69	090	S
67015		A	Release of eye fluid	6.69	6.45	0.35	13.49	090	S
67025		A	Replace eye fluid	6.44	6.75	0.36	13.55	090	S
67028		A	Injection eye drug	2.52	3.22	0.18	5.92	000	S
67030		A	Incise inner eye strands	4.44	5.75	0.50	10.69	090	S
67031		A	Laser surgery, eye strands	3.42	6.15	0.75	10.32	090	S
67036		A	Removal of inner eye fluid	11.33	15.67	1.49	28.49	090	S
67038		A	Strip retinal membrane	20.20	25.85	1.80	47.85	090	S
67039		A	Laser treatment of retina	13.60	18.22	1.68	33.50	090	S
67040		A	Laser treatment of retina	16.26	20.81	1.75	38.82	090	S
67101		A	Repair, detached retina	7.02	8.99	0.66	16.67	090	S
67105		A	Repair, detached retina	7.06	9.14	0.80	17.00	090	S
67107		A	Repair detached retina	13.99	17.91	1.10	33.00	090	S
67108		A	Repair detached retina	19.90	25.47	1.78	47.13	090	S
67110		A	Repair detached retina	8.14	10.60	0.97	19.71	090	S
67112		A	Re-repair detached retina	16.15	16.51	0.88	33.52	090	S
67115		A	Release, encircling material	4.64	5.93	0.44	11.01	090	S
67120		A	Remove eye implant material	5.63	7.15	0.38	13.16	090	S
67121		A	Remove eye implant material	10.17	9.42	0.49	20.08	090	S
67141		A	Treatment of retina	4.90	6.27	0.48	11.65	090	S
67145		A	Treatment of retina	5.07	6.50	0.49	12.06	090	S
67208		A	Treatment of retinal lesion	6.40	8.19	0.52	15.11	090	S
67210		A	Treatment of retinal lesion	9.48	9.02	0.47	18.97	090	S
67218		A	Treatment of retinal lesion	12.73	13.31	0.70	26.74	090	S
67227		A	Treatment of retinal lesion	6.28	8.04	0.51	14.83	090	S
67228		A	Treatment of retinal lesion	12.39	9.39	0.46	22.26	090	S
67250		A	Reinforce eye wall	8.36	6.99	0.40	15.75	090	S
67255		A	Reinforce/graft eye wall	8.39	10.73	0.87	19.99	090	S
67299		C	Eye surgery procedure	0.00	0.00	0.00	0.00	YYY	S
67311		A	Revised eye muscle	6.30	8.06	0.47	14.83	090	S
67312		A	Revised two eye muscles	8.19	9.66	0.53	18.38	090	S
67314		A	Revised eye muscle	7.12	9.12	0.58	16.82	090	S
67316		A	Revised two eye muscles	9.26	10.27	0.67	20.20	090	S
67318		A	Revised eye muscle(s)	7.45	6.21	0.33	13.99	090	S
67320		A	Revised eye muscle(s)	8.26	10.57	0.69	19.52	090	S
67331		A	Eye surgery follow-up	7.72	9.89	0.54	18.15	090	S
67332		A	Revised eye muscles	8.59	11.00	0.58	20.17	090	S
67334		A	Revised eye muscle w/suture	7.56	6.30	0.33	14.19	090	S
67335		A	Eye suture during surgery	2.49	3.89	0.43	6.81	ZZZ	S
67340		A	Revised eye muscle	9.45	7.88	0.41	17.74	090	S
67343		A	Release eye tissue	7.00	5.83	0.31	13.14	090	S
67345		A	Destroy nerve of eye muscle	2.91	2.22	0.26	5.39	010	S
67350		A	Biopsy eye muscle	2.87	2.39	0.13	5.39	000	S
67399		C	Eye muscle surgery procedure	0.00	0.00	0.00	0.00	YYY	S
67400		A	Explore/biopsy eye socket	9.20	10.91	0.82	20.73	090	S
67406		A	Explore/drain eye socket	7.42	9.49	0.67	17.58	090	S
67412		A	Explore/treat eye socket	9.14	11.70	0.67	21.51	090	S
67413		A	Explore/treat eye socket	9.75	8.09	0.57	18.41	090	S
67414		A	Explore/decompress eye socket	10.07	8.39	0.44	18.90	090	S
67415		A	Aspiration orbital contents	1.76	2.02	0.12	3.90	000	S
67420		A	Explore/treat eye socket	19.00	16.78	1.11	36.89	090	S
67430		A	Explore/treat eye socket	12.79	10.65	0.54	23.98	090	S
67440		A	Explore/drain eye socket	12.43	15.91	0.97	29.31	090	S
67445		A	Explore/decompress eye socket	13.36	11.13	0.57	25.06	090	S
67450		A	Explore/biopsy eye socket	12.80	15.29	0.87	28.96	090	S
67500		A	Inject/treat eye socket	0.79	0.73	0.06	1.58	000	S
67505		A	Inject/treat eye socket	0.82	1.04	0.06	1.92	000	S
67515		A	Inject/treat eye socket	0.61	0.56	0.03	1.20	000	S
67550		A	Insert eye socket implant	9.89	9.82	0.70	20.01	090	S
67560		A	Revised eye socket implant	10.10	8.30	0.48	18.88	090	S
67570		A	Decompress optic nerve	12.52	7.56	0.39	20.47	090	S
67599		C	Orbit surgery procedure	0.00	0.00	0.00	0.00	YYY	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
67700		A	Drainage of eyelid abscess	1.30	0.49	0.03	1.82	010	S
67710		A	Incision of eyelid	0.97	1.01	0.06	2.04	010	S
67715		A	Incision of eyelid fold	1.17	1.49	0.09	2.75	010	S
67800		A	Remove eyelid lesion	1.35	0.94	0.05	2.34	010	S
67801		A	Remove eyelid lesions	1.85	1.39	0.08	3.32	010	S
67805		A	Remove eyelid lesions	2.17	1.38	0.08	3.63	010	S
67806		A	Remove eyelid lesion(s)	3.55	2.13	0.13	5.81	090	S
67810		A	Biopsy of eyelid	1.48	0.81	0.05	2.34	000	S
67820		A	Revise eyelashes	0.89	0.38	0.02	1.29	000	S
67825		A	Revise eyelashes	1.33	0.90	0.05	2.28	010	S
67830		A	Revise eyelashes	1.65	2.12	0.17	3.94	010	S
67835		A	Revise eyelashes	5.41	6.92	0.45	12.78	090	S
67840		A	Remove eyelid lesion	1.99	1.22	0.07	3.28	010	S
67850		A	Treat eyelid lesion	1.64	0.82	0.05	2.51	010	S
67875		A	Closure of eyelid by sutures	1.35	1.72	0.13	3.20	000	S
67880		A	Revision of eyelid	3.55	3.94	0.23	7.72	090	S
67882		A	Revision of eyelid	4.77	6.10	0.37	11.24	090	S
67900		A	Repair brow defect	5.84	3.78	0.20	9.82	090	S
67901		A	Repair eyelid defect	6.82	8.73	0.64	16.19	090	S
67902		A	Repair eyelid defect	6.88	8.81	0.72	16.41	090	S
67903		A	Repair eyelid defect	6.22	7.96	0.73	14.91	090	S
67904		A	Repair eyelid defect	5.96	7.64	0.71	14.31	090	S
67905		A	Repair eyelid defect	6.64	5.46	0.36	12.46	090	S
67906		A	Repair eyelid defect	4.95	6.34	0.54	11.83	090	S
67908		A	Repair eyelid defect	5.22	6.69	0.48	12.39	090	S
67909		A	Repair eyelid defect	5.09	6.58	0.79	12.46	090	S
67911		A	Repair eyelid defect	3.60	4.61	0.39	8.60	090	S
67914		A	Repair eyelid defect	3.10	1.25	0.07	4.42	090	S
67915		A	Repair eyelid defect	5.13	6.50	0.38	12.01	090	S
67916		A	Repair eyelid defect	5.84	7.48	0.47	13.79	090	S
67917		A	Repair eyelid defect	3.32	3.82	0.20	7.34	090	S
67921		A	Repair eyelid defect	2.98	1.19	0.07	4.24	090	S
67922		A	Repair eyelid defect	5.70	6.88	0.38	12.96	090	S
67923		A	Repair eyelid defect	5.64	7.22	0.43	13.29	090	S
67924		A	Repair eyelid defect	3.56	1.27	0.08	4.91	010	S
67930		A	Repair eyelid wound	6.07	3.79	0.24	10.10	090	S
67935		A	Remove eyelid foreign body	1.28	0.52	0.03	1.83	010	S
67950		A	Revision of eyelid	5.64	7.22	0.45	13.31	090	S
67961		A	Revision of eyelid	5.51	7.05	0.50	13.06	090	S
67965		A	Revision of eyelid	6.39	8.18	0.66	15.23	090	S
67971		A	Reconstruction of eyelid	9.56	10.68	0.64	20.88	090	S
67973		A	Reconstruction of eyelid	12.59	13.54	0.91	27.04	090	S
67974		A	Reconstruction of eyelid	12.58	14.07	0.87	27.50	090	S
67975		A	Reconstruction of eyelid	8.90	4.15	0.24	13.29	090	S
67999		C	Revision of eyelid	0.00	0.00	0.00	0.00	YYY	S
68020		A	Incise/drain eyelid lining	1.32	0.51	0.03	1.86	010	S
68040		A	Treatment of eyelid lesions	0.85	0.45	0.02	1.32	000	S
68100		A	Biopsy of eyelid lining	1.35	0.99	0.08	2.40	000	S
68110		A	Remove eyelid lining lesion	1.72	1.24	0.07	3.03	010	S
68115		A	Remove eyelid lining lesion	2.31	1.93	0.11	4.35	010	S
68130		A	Remove eyelid lining lesion	4.75	4.09	0.22	9.06	090	S
68135		A	Remove eyelid lining lesion	1.79	0.74	0.04	2.57	010	S
68200		A	Treat eyelid by injection	0.49	0.52	0.03	1.04	000	S
68320		A	Revise/graft eyelid lining	4.97	6.37	0.42	11.76	090	S
68325		A	Revise/graft eyelid lining	6.96	8.91	0.62	16.49	090	S
68326		A	Revise/graft eyelid lining	6.75	8.62	0.49	15.86	090	S
68328		A	Revise/graft eyelid lining	7.78	9.86	0.82	18.56	090	S
68330		A	Revise eyelid lining	4.53	5.80	0.35	10.68	090	S
68335		A	Revise/graft eyelid lining	6.79	8.69	0.68	16.16	090	S
68340		A	Separate eyelid adhesions	3.92	3.14	0.17	7.23	090	S
68360		A	Revise eyelid lining	4.12	5.28	0.33	9.73	090	S
68382		A	Revise eyelid lining	6.94	8.01	0.42	15.37	090	S
68399		C	Eyelid lining surgery	0.00	0.00	0.00	0.00	YYY	S
68400		A	Incise/drain tear gland	1.64	1.00	0.06	2.70	010	S
68420		A	Incise/drain tear sac	2.25	1.02	0.06	3.33	010	S
68446		A	Incise tear duct opening	0.89	0.76	0.04	1.69	010	S
68500		A	Removal of tear gland	10.47	7.61	0.75	18.83	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
68505		A	Partial removal tear gland	10.39	8.69	0.49	19.57	090	S
68510		A	Biopsy of tear gland	4.61	3.69	0.28	8.58	000	S
68520		A	Removal of tear sac	7.11	9.10	0.51	16.72	090	S
68525		A	Biopsy of tear sac	4.43	3.68	0.23	8.34	000	S
68530		A	Clearance of tear duct	3.61	2.85	0.17	6.63	010	S
68540		A	Remove tear gland lesion	10.10	8.31	0.50	18.91	090	S
68550		A	Remove tear gland lesion	12.06	11.34	0.74	24.74	090	S
68700		A	Repair tear ducts	6.20	2.69	0.15	9.04	090	S
68705		A	Revise tear duct opening	2.01	1.02	0.05	3.08	010	S
68720		A	Create tear sac drain	8.56	9.64	0.74	19.14	090	S
68745		A	Create tear duct drain	8.23	6.56	0.45	15.24	090	S
68750		A	Create tear duct drain	8.21	10.50	0.83	19.54	090	S
68760		A	Close tear duct opening	1.88	0.92	0.04	2.84	010	S
68761		A	Close tear duct opening	1.31	0.92	0.04	2.27	010	S
68770		A	Close tear system fistula	6.62	4.24	0.23	11.09	090	S
68800		D	Dilate tear duct opening(s)	0.00	0.00	0.00	0.00	010	S
68801		A	Dilate tear duct opening	0.89	0.42	0.02	1.33	010	S
68810		A	Probe nasolacrimal duct	1.27	0.55	0.03	1.85	010	S
68811		A	Probe nasolacrimal duct	2.25	1.48	0.09	3.83	010	S
68820		D	Explore tear duct system	0.00	0.00	0.00	0.00	010	S
68825		D	Explore tear duct system	0.00	0.00	0.00	0.00	010	S
68830		D	Reopen tear duct channel	0.00	0.00	0.00	0.00	010	S
68840		A	Explore/irrigate tear ducts	1.22	0.49	0.03	1.74	010	S
68850		A	Injection for tear sac x-ray	0.80	0.51	0.04	1.35	000	S
68889		C	Tear duct system surgery	0.00	0.00	0.00	0.00	YYY	S
69000		A	Drain external ear lesion	1.40	0.35	0.03	1.78	010	S
69005		A	Drain external ear lesion	2.06	1.16	0.13	3.35	010	S
69020		A	Drain outer ear canal lesion	1.43	0.45	0.04	1.92	010	S
69090		N	Pierce earlobes	0.00	0.00	0.00	0.00	XXX	O
69100		A	Biopsy of external ear	0.81	0.66	0.07	1.54	000	S
69105		A	Biopsy of external ear canal	0.85	0.80	0.09	1.74	000	S
69110		A	Partial removal external ear	3.34	2.63	0.37	6.34	090	S
69120		A	Removal of external ear	3.95	0.78	0.07	4.80	090	S
69140		A	Remove ear canal lesion(s)	7.68	8.00	0.88	16.56	090	S
69145		A	Remove ear canal lesion(s)	2.54	2.51	0.28	5.33	090	S
69150		A	Extensive ear canal surgery	13.01	10.46	1.25	24.72	090	S
69155		A	Extensive ear/neck surgery	19.09	15.92	1.61	36.62	090	S
69200		A	Clear outer ear canal	0.77	0.42	0.04	1.23	000	N
69205		A	Clear outer ear canal	1.16	1.07	0.11	2.33	010	S
69210		A	Remove impacted ear wax	0.61	0.23	0.02	0.86	000	N
69220		A	Clean out mastoid cavity	0.83	0.50	0.05	1.38	000	S
69222		A	Clean out mastoid cavity	1.35	0.74	0.08	2.17	010	S
69300		R	Revise external ear	6.36	5.30	0.28	11.94	YYY	S
69310		A	Rebuild outer ear canal	10.59	9.84	1.08	21.51	090	S
69320		A	Rebuild outer ear canal	16.60	14.65	1.66	32.91	090	S
69399		C	Outer ear surgery procedure	0.00	0.00	0.00	0.00	YYY	S
69400		A	Inflate middle ear canal	0.83	0.45	0.05	1.33	000	S
69401		A	Inflate middle ear canal	0.63	0.25	0.03	0.91	000	S
69405		A	Catheterize middle ear canal	2.58	0.48	0.04	3.10	010	S
69410		A	Insert middle ear baffle	0.33	0.60	0.07	1.00	000	S
69421		A	Incision of eardrum	1.28	0.69	0.08	2.05	010	S
69424		A	Remove ventilating tube	1.66	1.14	0.13	2.95	010	S
69433		A	Create eardrum opening	0.85	0.60	0.06	1.51	000	S
69436		A	Create eardrum opening	1.47	1.33	0.15	2.95	010	S
69440		A	Exploration of middle ear	1.91	2.13	0.23	4.27	010	S
69450		A	Eardrum revision	7.31	8.69	0.93	16.93	090	S
69501		A	Mastoidectomy	5.44	6.96	1.15	13.55	090	S
69502		A	Mastoidectomy	8.81	10.90	1.17	20.88	090	S
69505		A	Remove mastoid structures	11.96	13.36	1.45	26.77	090	S
69511		A	Extensive mastoid surgery	12.57	16.09	1.79	30.45	090	S
69530		A	Extensive mastoid surgery	13.10	16.77	1.84	31.71	090	S
69535		A	Remove part of temporal bone	18.04	16.71	1.72	36.47	090	S
69540		A	Remove ear lesion	34.50	25.27	2.85	62.62	090	S
69550		A	Remove ear lesion	1.15	1.27	0.14	2.56	010	S
69552		A	Remove ear lesion	10.70	13.70	2.00	26.40	090	S
69552		A	Remove ear lesion	18.84	16.73	1.86	37.43	090	S

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
69654		A	Remove ear lesion	31.27	22.87	2.83	56.77	090	S
69601		A	Mastoid surgery revision	12.79	14.02	1.55	28.36	090	S
69602		A	Mastoid surgery revision	13.16	16.27	1.75	31.18	090	S
69603		A	Mastoid surgery revision	13.60	17.34	1.88	32.82	090	S
69604		A	Mastoid surgery revision	13.60	17.41	2.70	33.71	090	S
69605		A	Mastoid surgery revision	18.04	14.95	1.88	34.85	090	S
69610		A	Repair of eardrum	4.38	0.93	0.10	5.41	010	S
69620		A	Repair of eardrum	5.74	7.34	1.18	14.24	090	S
69631		A	Repair eardrum structures	9.55	12.22	1.61	23.38	090	S
69632		A	Rebuild eardrum structures	12.41	15.68	1.73	30.02	090	S
69633		A	Rebuild eardrum structures	11.78	15.05	1.78	28.59	090	S
69635		A	Repair eardrum structures	13.02	16.65	1.91	31.58	090	S
69636		A	Rebuild eardrum structures	14.88	19.05	2.11	36.04	090	S
69637		A	Rebuild eardrum structures	14.77	18.90	2.22	35.89	090	S
69641		A	Revise middle ear & mastoid	12.29	15.73	1.87	29.89	090	S
69642		A	Revise middle ear & mastoid	16.37	20.62	2.21	39.20	090	S
69643		A	Revise middle ear & mastoid	14.81	18.95	2.51	36.27	090	S
69644		A	Revise middle ear & mastoid	16.46	21.07	2.70	40.23	090	S
69645		A	Revise middle ear & mastoid	15.60	20.23	2.51	38.34	090	S
69646		A	Revise middle ear & mastoid	17.35	21.97	2.40	41.72	090	S
69650		A	Release middle ear bone	9.40	12.03	1.33	22.76	090	S
69660		A	Revise middle ear bone	11.64	14.90	1.82	28.36	090	S
69661		A	Revise middle ear bone	15.32	18.44	1.93	35.69	090	S
69662		A	Revise middle ear bone	15.04	18.02	1.94	35.00	090	S
69666		A	Repair middle ear structures	9.38	12.00	1.77	23.15	090	S
69667		A	Repair middle ear structures	9.39	12.02	1.86	23.07	090	S
69670		A	Remove mastoid air cells	11.05	10.18	1.08	22.31	090	S
69676		A	Remove middle ear nerve	9.23	8.53	0.86	18.62	090	S
69700		A	Close mastoid fistula	7.97	7.86	0.84	16.67	090	S
69710		N	Implant/replace hearing aid	0.00	0.00	0.00	0.00	XXX	O
69711		A	Remove/repair hearing aid	10.13	8.44	0.44	19.01	090	S
69720		A	Release facial nerve	13.80	17.66	2.27	33.73	090	S
69725		A	Release facial nerve	24.01	14.65	1.51	40.17	090	S
69740		A	Repair facial nerve	15.39	11.83	1.89	28.91	090	S
69745		A	Repair facial nerve	16.10	15.95	1.58	33.58	090	S
69799		C	Middle ear surgery procedure	0.00	0.00	0.00	0.00	YYY	S
69801		A	Incise inner ear	8.19	10.48	1.84	20.51	090	S
69802		A	Incise inner ear	12.44	11.24	1.22	24.90	090	S
69805		A	Explore inner ear	13.18	13.14	2.00	28.32	090	S
69806		A	Explore inner ear	11.82	15.13	2.54	29.49	090	S
69820		A	Establish inner ear window	10.14	8.85	1.00	19.99	090	S
69840		A	Revise inner ear window	10.06	8.49	0.51	19.06	090	S
69805		A	Remove inner ear	10.70	13.70	2.07	26.47	090	S
69910		A	Remove inner ear & mastoid	13.10	16.77	2.34	32.21	090	S
69915		A	Incise inner ear nerve	19.89	17.71	2.02	39.62	090	S
69930		A	Implant cochlear device	16.13	18.56	3.34	38.03	090	S
69949		C	Inner ear surgery procedure	0.00	0.00	0.00	0.00	YYY	S
69950		A	Incise inner ear nerve	24.21	17.99	2.31	44.51	090	S
69955		A	Release facial nerve	25.54	20.28	2.25	48.07	090	S
69960		A	Release inner ear canal	25.54	17.85	1.93	45.32	090	S
69970		A	Remove inner ear lesion	28.54	19.69	2.28	50.49	090	S
69979		C	Temporal bone surgery	0.00	0.00	0.00	0.00	YYY	S
70010		A	Contrast x-ray of brain	1.19	4.85	0.34	6.18	XXX	N
70010	26	A	Contrast x-ray of brain	1.19	0.52	0.08	1.79	XXX	N
70010	TC	A	Contrast x-ray of brain	0.00	4.13	0.28	4.39	XXX	N
70015		A	Contrast x-ray of brain	1.19	1.61	0.17	3.17	XXX	N
70015	26	A	Contrast x-ray of brain	1.19	0.52	0.08	1.79	XXX	N
70015	TC	A	Contrast x-ray of brain	0.00	1.29	0.09	1.38	XXX	N
70030		A	X-ray eye for foreign body	0.17	0.48	0.04	0.69	XXX	N
70030	26	A	X-ray eye for foreign body	0.17	0.08	0.01	0.26	XXX	N
70030	TC	A	X-ray eye for foreign body	0.00	0.40	0.03	0.43	XXX	N
70100		A	X-ray exam of jaw	0.18	0.59	0.04	0.81	XXX	N
70100	26	A	X-ray exam of jaw	0.18	0.09	0.01	0.28	XXX	N
70100	TC	A	X-ray exam of jaw	0.00	0.50	0.03	0.53	XXX	N
70110		A	X-ray exam of jaw	0.25	0.71	0.06	1.02	XXX	N
70110	26	A	X-ray exam of jaw	0.25	0.12	0.02	0.39	XXX	N
70110	TC	A	X-ray exam of jaw	0.00	0.59	0.04	0.63	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
70120		A	X-ray exam of mastoids	0.18	0.88	0.05	0.91	XXX	N
70120	26	A	X-ray exam of mastoids	0.18	0.09	0.01	0.28	XXX	N
70120	TC	A	X-ray exam of mastoids	0.00	0.59	0.04	0.63	XXX	N
70130		A	X-ray exam of mastoids	0.34	0.91	0.07	1.32	XXX	N
70130	26	A	X-ray exam of mastoids	0.34	0.16	0.02	0.52	XXX	N
70130	TC	A	X-ray exam of mastoids	0.00	0.75	0.05	0.80	XXX	N
70134		A	X-ray exam of middle ear	0.34	0.86	0.07	1.27	XXX	N
70134	26	A	X-ray exam of middle ear	0.34	0.16	0.02	0.52	XXX	N
70134	TC	A	X-ray exam of middle ear	0.00	0.70	0.05	0.75	XXX	N
70140		A	X-ray exam of facial bones	0.19	0.88	0.05	0.92	XXX	N
70140	26	A	X-ray exam of facial bones	0.19	0.09	0.01	0.29	XXX	N
70140	TC	A	X-ray exam of facial bones	0.00	0.58	0.04	0.63	XXX	N
70150		A	X-ray exam of facial bones	0.26	0.87	0.07	1.20	XXX	N
70150	26	A	X-ray exam of facial bones	0.26	0.12	0.02	0.40	XXX	N
70150	TC	A	X-ray exam of facial bones	0.00	0.75	0.05	0.80	XXX	N
70160		A	X-ray exam of nasal bones	0.17	0.58	0.04	0.79	XXX	N
70160	26	A	X-ray exam of nasal bones	0.17	0.08	0.01	0.26	XXX	N
70160	TC	A	X-ray exam of nasal bones	0.00	0.50	0.03	0.53	XXX	N
70170		A	X-ray exam of tear duct	0.30	1.04	0.08	1.42	XXX	N
70170	26	A	X-ray exam of tear duct	0.30	0.14	0.02	0.46	XXX	N
70170	TC	A	X-ray exam of tear duct	0.00	0.90	0.06	0.96	XXX	N
70180		A	X-ray exam of eye sockets	0.21	0.69	0.05	0.95	XXX	N
70180	26	A	X-ray exam of eye sockets	0.21	0.10	0.01	0.32	XXX	N
70180	TC	A	X-ray exam of eye sockets	0.00	0.59	0.04	0.63	XXX	N
70200		A	X-ray exam of eye sockets	0.28	0.88	0.07	1.23	XXX	N
70200	26	A	X-ray exam of eye sockets	0.28	0.13	0.02	0.43	XXX	N
70200	TC	A	X-ray exam of eye sockets	0.00	0.75	0.05	0.80	XXX	N
70210		A	X-ray exam of sinuses	0.17	0.67	0.05	0.89	XXX	N
70210	26	A	X-ray exam of sinuses	0.17	0.08	0.01	0.26	XXX	N
70210	TC	A	X-ray exam of sinuses	0.00	0.59	0.04	0.63	XXX	N
70220		A	X-ray exam of sinuses	0.25	0.87	0.07	1.19	XXX	N
70220	26	A	X-ray exam of sinuses	0.25	0.12	0.02	0.39	XXX	N
70220	TC	A	X-ray exam of sinuses	0.00	0.75	0.05	0.80	XXX	N
70240		A	X-ray exam pituitary saddle	0.19	0.49	0.04	0.72	XXX	N
70240	26	A	X-ray exam pituitary saddle	0.19	0.09	0.01	0.29	XXX	N
70240	TC	A	X-ray exam pituitary saddle	0.00	0.40	0.03	0.43	XXX	N
70250		A	X-ray exam of skull	0.24	0.70	0.06	1.00	XXX	N
70250	26	A	X-ray exam of skull	0.24	0.11	0.02	0.37	XXX	N
70250	TC	A	X-ray exam of skull	0.00	0.59	0.04	0.63	XXX	N
70260		A	X-ray exam of skull	0.34	1.01	0.08	1.43	XXX	N
70260	26	A	X-ray exam of skull	0.34	0.16	0.02	0.52	XXX	N
70260	TC	A	X-ray exam of skull	0.00	0.85	0.06	0.91	XXX	N
70300		A	X-ray exam of teeth	0.10	0.30	0.03	0.43	XXX	N
70300	26	A	X-ray exam of teeth	0.10	0.05	0.01	0.16	XXX	N
70300	TC	A	X-ray exam of teeth	0.00	0.25	0.02	0.27	XXX	N
70310		A	X-ray exam of teeth	0.16	0.47	0.04	0.67	XXX	N
70310	26	A	X-ray exam of teeth	0.16	0.07	0.01	0.24	XXX	N
70310	TC	A	X-ray exam of teeth	0.00	0.40	0.03	0.43	XXX	N
70320		A	Full mouth x-ray of teeth	0.22	0.85	0.07	1.14	XXX	N
70320	26	A	Full mouth x-ray of teeth	0.22	0.10	0.02	0.34	XXX	N
70320	TC	A	Full mouth x-ray of teeth	0.00	0.75	0.05	0.80	XXX	N
70328		A	X-ray exam of jaw joint	0.18	0.58	0.04	0.78	XXX	N
70328	26	A	X-ray exam of jaw joint	0.18	0.09	0.01	0.28	XXX	N
70328	TC	A	X-ray exam of jaw joint	0.00	0.47	0.03	0.50	XXX	N
70330		A	X-ray exam of jaw joints	0.24	0.91	0.07	1.22	XXX	N
70330	26	A	X-ray exam of jaw joints	0.24	0.11	0.02	0.37	XXX	N
70330	TC	A	X-ray exam of jaw joints	0.00	0.80	0.05	0.85	XXX	N
70332		A	X-ray exam of jaw joint	0.54	2.25	0.17	2.96	XXX	N
70332	26	A	X-ray exam of jaw joint	0.54	0.25	0.04	0.83	XXX	N
70332	TC	A	X-ray exam of jaw joint	0.00	2.00	0.13	2.13	XXX	N
70336		A	Magnetic image jaw joint	1.48	11.11	0.73	13.32	XXX	N
70336	26	A	Magnetic image jaw joint	1.48	0.43	0.06	1.97	XXX	N
70336	TC	A	Magnetic image jaw joint	0.00	10.68	0.67	11.35	XXX	N
70350		A	X-ray head for orthodontia	0.17	0.44	0.03	0.64	XXX	N
70350	26	A	X-ray head for orthodontia	0.17	0.06	0.01	0.26	XXX	N
70350	TC	A	X-ray head for orthodontia	0.00	0.36	0.02	0.38	XXX	N
70355		A	Panoramic x-ray of jaws	0.20	0.83	0.05	0.88	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
70355	26	A	Panoramic x-ray of jaws	0.20	0.09	0.01	0.30	XXX	N
70355	TC	A	Panoramic x-ray of jaws	0.00	0.54	0.04	0.58	XXX	N
70360		A	X-ray exam of neck	0.17	0.48	0.04	0.69	XXX	N
70360	26	A	X-ray exam of neck	0.17	0.08	0.01	0.26	XXX	N
70360	TC	A	X-ray exam of neck	0.00	0.40	0.03	0.43	XXX	N
70370		A	Throat x-ray & fluoroscopy	0.32	1.39	0.10	1.81	XXX	N
70370	26	A	Throat x-ray & fluoroscopy	0.32	0.15	0.02	0.49	XXX	N
70370	TC	A	Throat x-ray & fluoroscopy	0.00	1.24	0.06	1.32	XXX	N
70371		A	Speech evaluation, complex	0.84	2.38	0.19	3.41	XXX	N
70371	26	A	Speech evaluation, complex	0.84	0.38	0.06	1.28	XXX	N
70371	TC	A	Speech evaluation, complex	0.00	2.00	0.13	2.13	XXX	N
70373		A	Contrast x-ray of larynx	0.44	1.90	0.14	2.48	XXX	N
70373	26	A	Contrast x-ray of larynx	0.44	0.20	0.03	0.67	XXX	N
70373	TC	A	Contrast x-ray of larynx	0.00	1.70	0.11	1.81	XXX	N
70380		A	X-ray exam of salivary gland	0.17	0.72	0.05	0.94	XXX	N
70380	26	A	X-ray exam of salivary gland	0.17	0.08	0.01	0.26	XXX	N
70380	TC	A	X-ray exam of salivary gland	0.00	0.64	0.04	0.68	XXX	N
70390		A	X-ray exam of salivary duct	0.38	1.87	0.14	2.39	XXX	N
70390	26	A	X-ray exam of salivary duct	0.38	0.17	0.03	0.58	XXX	N
70390	TC	A	X-ray exam of salivary duct	0.00	1.70	0.11	1.81	XXX	N
70450		A	CAT scan of head or brain	0.85	4.88	0.35	6.08	XXX	N
70450	26	A	CAT scan of head or brain	0.85	0.38	0.06	1.29	XXX	N
70450	TC	A	CAT scan of head or brain	0.00	4.50	0.29	4.79	XXX	N
70460		A	Contrast CAT scan of head	1.13	5.88	0.43	7.45	XXX	N
70460	26	A	Contrast CAT scan of head	1.13	0.50	0.08	1.71	XXX	N
70460	TC	A	Contrast CAT scan of head	0.00	5.39	0.35	5.74	XXX	N
70470		A	Contrast CAT scans of head	1.27	7.30	0.52	9.09	XXX	N
70470	26	A	Contrast CAT scans of head	1.27	0.56	0.09	1.92	XXX	N
70470	TC	A	Contrast CAT scans of head	0.00	6.74	0.43	7.17	XXX	N
70480		A	CAT scan of skull	1.28	5.07	0.38	6.73	XXX	N
70480	26	A	CAT scan of skull	1.28	0.57	0.09	1.94	XXX	N
70480	TC	A	CAT scan of skull	0.00	4.50	0.29	4.79	XXX	N
70481		A	Contrast CAT scan of skull	1.38	6.00	0.44	7.82	XXX	N
70481	26	A	Contrast CAT scan of skull	1.38	0.61	0.09	2.08	XXX	N
70481	TC	A	Contrast CAT scan of skull	0.00	5.39	0.35	5.74	XXX	N
70482		A	Contrast CAT scans of skull	1.45	7.38	0.53	9.36	XXX	N
70482	26	A	Contrast CAT scans of skull	1.45	0.64	0.10	2.19	XXX	N
70482	TC	A	Contrast CAT scans of skull	0.00	6.74	0.43	7.17	XXX	N
70486		A	CAT scan of face, jaw	1.14	5.00	0.37	6.51	XXX	N
70486	26	A	CAT scan of face, jaw	1.14	0.50	0.08	1.72	XXX	N
70486	TC	A	CAT scan of face, jaw	0.00	4.50	0.29	4.79	XXX	N
70487		A	Contrast CAT scan, face/jaw	1.30	5.96	0.44	7.70	XXX	N
70487	26	A	Contrast CAT scan, face/jaw	1.30	0.57	0.09	1.96	XXX	N
70487	TC	A	Contrast CAT scan, face/jaw	0.00	5.39	0.35	5.74	XXX	N
70488		A	Contrast CAT scans face/jaw	1.42	7.37	0.53	9.32	XXX	N
70488	26	A	Contrast CAT scans face/jaw	1.42	0.63	0.10	2.15	XXX	N
70488	TC	A	Contrast CAT scans face/jaw	0.00	6.74	0.43	7.17	XXX	N
70490		A	CAT scan of neck tissue	1.28	5.07	0.38	6.73	XXX	N
70490	26	A	CAT scan of neck tissue	1.28	0.57	0.09	1.94	XXX	N
70490	TC	A	CAT scan of neck tissue	0.00	4.50	0.29	4.79	XXX	N
70491		A	Contrast CAT of neck tissue	1.38	6.00	0.44	7.82	XXX	N
70491	26	A	Contrast CAT of neck tissue	1.38	0.61	0.09	2.08	XXX	N
70491	TC	A	Contrast CAT of neck tissue	0.00	5.39	0.35	5.74	XXX	N
70492		A	Contrast CAT of neck tissue	1.45	7.38	0.53	9.36	XXX	N
70492	26	A	Contrast CAT of neck tissue	1.45	0.64	0.10	2.19	XXX	N
70492	TC	A	Contrast CAT of neck tissue	0.00	6.74	0.43	7.17	XXX	N
70540		A	Magnetic image, face, neck	1.48	11.34	0.77	13.59	XXX	N
70540	26	A	Magnetic image, face, neck	1.48	0.66	0.10	2.24	XXX	N
70540	TC	A	Magnetic image, face, neck	0.00	10.68	0.67	11.35	XXX	N
70541		R	Magnetic image, head (MRA)	1.81	11.34	0.77	13.92	XXX	N
70541	26	R	Magnetic image, head (MRA)	1.81	0.68	0.10	2.57	XXX	N
70541	TC	R	Magnetic image, head (MRA)	0.00	10.68	0.67	11.35	XXX	N
70551		A	Magnetic image, brain (MRI)	1.48	11.34	0.77	13.59	XXX	N
70551	26	A	Magnetic image, brain (MRI)	1.48	0.66	0.10	2.24	XXX	N
70551	TC	A	Magnetic image, brain (MRI)	0.00	10.68	0.67	11.35	XXX	N
70552		A	Magnetic image, brain (MRI)	1.78	13.61	0.93	16.32	XXX	N
70552	26	A	Magnetic image, brain (MRI)	1.78	0.80	0.12	2.70	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
70552	TC	A	Magnetic image, brain (MRI)	0.00	12.61	0.81	13.62	XXX	N
70553		A	Magnetic image, brain	2.36	24.79	1.65	28.80	XXX	N
70553	26	A	Magnetic image, brain	2.36	1.07	0.16	3.59	XXX	N
70553	TC	A	Magnetic image, brain	0.00	23.72	1.49	25.21	XXX	N
71010		A	Chest x-ray	0.18	0.53	0.04	0.75	XXX	N
71010	26	A	Chest x-ray	0.18	0.08	0.01	0.27	XXX	N
71010	TC	A	Chest x-ray	0.00	0.45	0.03	0.48	XXX	N
71015		A	X-ray exam of chest	0.21	0.60	0.04	0.85	XXX	N
71015	26	A	X-ray exam of chest	0.21	0.10	0.01	0.32	XXX	N
71015	TC	A	X-ray exam of chest	0.00	0.50	0.03	0.53	XXX	N
71020		A	Chest x-ray	0.22	0.69	0.05	0.96	XXX	N
71020	26	A	Chest x-ray	0.22	0.10	0.01	0.33	XXX	N
71020	TC	A	Chest x-ray	0.00	0.59	0.04	0.63	XXX	N
71021		A	Chest x-ray	0.27	0.82	0.07	1.16	XXX	N
71021	26	A	Chest x-ray	0.27	0.12	0.02	0.41	XXX	N
71021	TC	A	Chest x-ray	0.00	0.70	0.05	0.75	XXX	N
71022		A	Chest x-ray	0.31	0.84	0.07	1.22	XXX	N
71022	26	A	Chest x-ray	0.31	0.14	0.02	0.47	XXX	N
71022	TC	A	Chest x-ray	0.00	0.70	0.05	0.75	XXX	N
71023		A	Chest x-ray and fluoroscopy	0.38	0.92	0.08	1.38	XXX	N
71023	26	A	Chest x-ray and fluoroscopy	0.38	0.17	0.03	0.58	XXX	N
71023	TC	A	Chest x-ray and fluoroscopy	0.00	0.75	0.05	0.80	XXX	N
71030		A	Chest x-ray	0.31	0.89	0.07	1.27	XXX	N
71030	26	A	Chest x-ray	0.31	0.14	0.02	0.47	XXX	N
71030	TC	A	Chest x-ray	0.00	0.75	0.05	0.80	XXX	N
71034		A	Chest x-ray & fluoroscopy	0.46	1.58	0.12	2.16	XXX	N
71034	26	A	Chest x-ray & fluoroscopy	0.46	0.21	0.03	0.70	XXX	N
71034	TC	A	Chest x-ray & fluoroscopy	0.00	1.37	0.08	1.46	XXX	N
71035		A	Chest x-ray	0.18	0.58	0.04	0.80	XXX	N
71035	26	A	Chest x-ray	0.18	0.08	0.01	0.27	XXX	N
71035	TC	A	Chest x-ray	0.00	0.50	0.03	0.53	XXX	N
71036		A	X-ray guidance for biopsy	0.54	1.75	0.14	2.43	XXX	N
71036	26	A	X-ray guidance for biopsy	0.54	0.25	0.04	0.83	XXX	N
71036	TC	A	X-ray guidance for biopsy	0.00	1.50	0.10	1.60	XXX	N
71038		A	X-ray guidance for biopsy	0.54	1.85	0.15	2.54	XXX	N
71038	26	A	X-ray guidance for biopsy	0.54	0.25	0.04	0.83	XXX	N
71038	TC	A	X-ray guidance for biopsy	0.00	1.60	0.11	1.71	XXX	N
71040		A	Contrast x-ray of bronchi	0.58	1.66	0.13	2.37	XXX	N
71040	26	A	Contrast x-ray of bronchi	0.58	0.27	0.04	0.89	XXX	N
71040	TC	A	Contrast x-ray of bronchi	0.00	1.39	0.09	1.48	XXX	N
71060		A	Contrast x-ray of bronchi	0.74	2.44	0.19	3.37	XXX	N
71060	26	A	Contrast x-ray of bronchi	0.74	0.34	0.05	1.13	XXX	N
71060	TC	A	Contrast x-ray of bronchi	0.00	2.10	0.14	2.24	XXX	N
71090		A	X-ray & pacemaker insertion	0.54	1.65	0.15	2.34	XXX	N
71090	26	A	X-ray & pacemaker insertion	0.54	0.25	0.04	0.83	XXX	N
71090	TC	A	X-ray & pacemaker insertion	0.00	1.60	0.11	1.71	XXX	N
71100		A	X-ray exam of ribs	0.22	0.64	0.06	0.92	XXX	N
71100	26	A	X-ray exam of ribs	0.22	0.10	0.02	0.34	XXX	N
71100	TC	A	X-ray exam of ribs	0.00	0.54	0.04	0.58	XXX	N
71101		A	X-ray exam of ribs, chest	0.27	0.77	0.06	1.10	XXX	N
71101	26	A	X-ray exam of ribs, chest	0.27	0.13	0.02	0.42	XXX	N
71101	TC	A	X-ray exam of ribs, chest	0.00	0.64	0.04	0.68	XXX	N
71110		A	X-ray exam of ribs	0.27	0.68	0.07	1.22	XXX	N
71110	26	A	X-ray exam of ribs	0.27	0.13	0.02	0.42	XXX	N
71110	TC	A	X-ray exam of ribs	0.00	0.75	0.05	0.80	XXX	N
71111		A	X-ray exam of ribs, chest	0.32	1.00	0.08	1.40	XXX	N
71111	26	A	X-ray exam of ribs, chest	0.32	0.15	0.02	0.49	XXX	N
71111	TC	A	X-ray exam of ribs, chest	0.00	0.85	0.06	0.91	XXX	N
71120		A	X-ray exam of breastbone	0.20	0.71	0.05	0.96	XXX	N
71120	26	A	X-ray exam of breastbone	0.20	0.09	0.01	0.30	XXX	N
71120	TC	A	X-ray exam of breastbone	0.00	0.62	0.04	0.66	XXX	N
71130		A	X-ray exam of breastbone	0.22	0.77	0.05	1.04	XXX	N
71130	26	A	X-ray exam of breastbone	0.22	0.10	0.01	0.33	XXX	N
71130	TC	A	X-ray exam of breastbone	0.00	0.67	0.04	0.71	XXX	N
71250		A	Cat scan of chest	1.16	6.14	0.44	7.74	XXX	N
71250	26	A	Cat scan of chest	1.16	0.51	0.08	1.75	XXX	N
71250	TC	A	Cat scan of chest	0.00	5.83	0.36	6.19	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
71280		A	Contrast CAT scan of chest	1.24	7.29	0.51	9.04	XXX	N
71280 26		A	Contrast CAT scan of chest	1.24	0.55	0.06	1.87	XXX	N
71280 TC		A	Contrast CAT scan of chest	0.00	6.74	0.43	7.17	XXX	N
71270		A	Contrast CAT scans of chest	1.38	9.04	0.61	11.03	XXX	N
71270 26		A	Contrast CAT scans of chest	1.38	0.61	0.09	2.08	XXX	N
71270 TC		A	Contrast CAT scans of chest	0.00	8.43	0.52	8.95	XXX	N
71550		A	Magnetic image, chest	1.60	11.40	0.78	13.78	XXX	N
71550 26		A	Magnetic image, chest	1.60	0.72	0.11	2.43	XXX	N
71550 TC		A	Magnetic image, chest	0.00	10.68	0.67	11.35	XXX	N
71555		N	Magnetic imaging/chest (MRA)	+1.81	11.40	0.78	13.99	XXX	0
71555 26		N	Magnetic imaging/chest (MRA)	+1.81	0.72	0.11	2.64	XXX	0
71555 TC		N	Magnetic imaging/chest (MRA)	+0.00	10.68	0.67	11.35	XXX	0
72010		A	X-ray exam of spine	0.45	1.18	0.09	1.72	XXX	N
72010 26		A	X-ray exam of spine	0.45	0.20	0.03	0.68	XXX	N
72010 TC		A	X-ray exam of spine	0.00	0.98	0.06	1.04	XXX	N
72020		A	X-ray exam of spine	0.15	0.47	0.04	0.66	XXX	N
72020 26		A	X-ray exam of spine	0.15	0.07	0.01	0.23	XXX	N
72020 TC		A	X-ray exam of spine	0.00	0.40	0.03	0.43	XXX	N
72040		A	X-ray exam of neck spine	0.22	0.67	0.05	0.94	XXX	N
72040 26		A	X-ray exam of neck spine	0.22	0.10	0.01	0.33	XXX	N
72040 TC		A	X-ray exam of neck spine	0.00	0.57	0.04	0.61	XXX	N
72050		A	X-ray exam of neck spine	0.31	0.99	0.08	1.38	XXX	N
72050 26		A	X-ray exam of neck spine	0.31	0.14	0.02	0.47	XXX	N
72050 TC		A	X-ray exam of neck spine	0.00	0.85	0.06	0.91	XXX	N
72062		A	X-ray exam of neck spine	0.36	1.25	0.09	1.70	XXX	N
72062 26		A	X-ray exam of neck spine	0.36	0.17	0.02	0.55	XXX	N
72062 TC		A	X-ray exam of neck spine	0.00	1.08	0.07	1.15	XXX	N
72069		A	X-ray exam of trunk spine	0.22	0.57	0.04	0.83	XXX	N
72069 26		A	X-ray exam of trunk spine	0.22	0.10	0.01	0.33	XXX	N
72069 TC		A	X-ray exam of trunk spine	0.00	0.47	0.03	0.50	XXX	N
72070		A	X-ray exam of thorax spine	0.22	0.72	0.05	0.99	XXX	N
72070 26		A	X-ray exam of thorax spine	0.22	0.10	0.01	0.33	XXX	N
72070 TC		A	X-ray exam of thorax spine	0.00	0.62	0.04	0.66	XXX	N
72072		A	X-ray exam of thoracic spine	0.22	0.80	0.06	1.08	XXX	N
72072 26		A	X-ray exam of thoracic spine	0.22	0.10	0.01	0.33	XXX	N
72072 TC		A	X-ray exam of thoracic spine	0.00	0.70	0.05	0.75	XXX	N
72074		A	X-ray exam of thoracic spine	0.22	0.97	0.07	1.26	XXX	N
72074 26		A	X-ray exam of thoracic spine	0.22	0.10	0.01	0.33	XXX	N
72074 TC		A	X-ray exam of thoracic spine	0.00	0.87	0.06	0.93	XXX	N
72080		A	X-ray exam of trunk spine	0.22	0.74	0.05	1.01	XXX	N
72080 26		A	X-ray exam of trunk spine	0.22	0.10	0.01	0.33	XXX	N
72080 TC		A	X-ray exam of trunk spine	0.00	0.64	0.04	0.68	XXX	N
72090		A	X-ray exam of trunk spine	0.28	0.77	0.06	1.11	XXX	N
72090 26		A	X-ray exam of trunk spine	0.28	0.13	0.02	0.43	XXX	N
72090 TC		A	X-ray exam of trunk spine	0.00	0.64	0.04	0.68	XXX	N
72100		A	X-ray exam of lower spine	0.22	0.74	0.05	1.01	XXX	N
72100 26		A	X-ray exam of lower spine	0.22	0.10	0.01	0.33	XXX	N
72100 TC		A	X-ray exam of lower spine	0.00	0.64	0.04	0.68	XXX	N
72110		A	X-ray exam of lower spine	0.31	1.01	0.08	1.40	XXX	N
72110 26		A	X-ray exam of lower spine	0.31	0.14	0.02	0.47	XXX	N
72110 TC		A	X-ray exam of lower spine	0.00	0.87	0.06	0.93	XXX	N
72114		A	X-ray exam of lower spine	0.36	1.30	0.09	1.75	XXX	N
72114 26		A	X-ray exam of lower spine	0.36	0.17	0.02	0.55	XXX	N
72114 TC		A	X-ray exam of lower spine	0.00	1.13	0.07	1.20	XXX	N
72120		A	X-ray exam of lower spine	0.22	0.95	0.07	1.24	XXX	N
72120 26		A	X-ray exam of lower spine	0.22	0.10	0.01	0.33	XXX	N
72120 TC		A	X-ray exam of lower spine	0.00	0.85	0.06	0.91	XXX	N
72125		A	CAT scan of neck spine	1.16	6.14	0.44	7.74	XXX	N
72125 26		A	CAT scan of neck spine	1.16	0.51	0.08	1.75	XXX	N
72125 TC		A	CAT scan of neck spine	0.00	5.63	0.36	5.99	XXX	N
72126		A	Contrast CAT scan of neck	1.22	7.27	0.51	9.00	XXX	N
72126 26		A	Contrast CAT scan of neck	1.22	0.53	0.08	1.83	XXX	N
72126 TC		A	Contrast CAT scan of neck	0.00	6.74	0.43	7.17	XXX	N
72127		A	Contrast CAT scans of neck	1.27	8.99	0.61	10.87	XXX	N
72127 26		A	Contrast CAT scans of neck	1.27	0.56	0.09	1.92	XXX	N
72127 TC		A	Contrast CAT scans of neck	0.00	8.43	0.52	8.95	XXX	N
72128		A	CAT scan of thorax spine	1.16	6.14	0.44	7.74	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
72128	26	A	CAT scan of thorax spine	1.16	0.51	0.08	1.75	XXX	N
72128 TC		A	CAT scan of thorax spine	0.00	5.63	0.36	5.99	XXX	N
72129		A	Contrast CAT scan of thorax	1.22	7.27	0.51	9.00	XXX	N
72129 26		A	Contrast CAT scan of thorax	1.22	0.53	0.08	1.83	XXX	N
72129 TC		A	Contrast CAT scan of thorax	0.00	6.74	0.43	7.17	XXX	N
72130		A	Contrast CAT scans of thorax	1.27	8.99	0.61	10.87	XXX	N
72130 26		A	Contrast CAT scans of thorax	1.27	0.56	0.09	1.92	XXX	N
72130 TC		A	Contrast CAT scans of thorax	0.00	8.43	0.52	8.95	XXX	N
72131		A	CAT scan of lower spine	1.16	0.14	0.44	7.74	XXX	N
72131 26		A	CAT scan of lower spine	1.16	0.51	0.08	1.75	XXX	N
72131 TC		A	CAT scan of lower spine	0.00	5.63	0.36	5.99	XXX	N
72132		A	Contrast CAT of lower spine	1.22	7.27	0.51	9.00	XXX	N
72132 26		A	Contrast CAT of lower spine	1.22	0.53	0.08	1.83	XXX	N
72132 TC		A	Contrast CAT of lower spine	0.00	6.74	0.43	7.17	XXX	N
72133		A	Contrast CAT scans, low spine	1.27	8.99	0.61	10.87	XXX	N
72133 26		A	Contrast CAT scans, low spine	1.27	0.56	0.09	1.92	XXX	N
72133 TC		A	Contrast CAT scans, low spine	0.00	8.43	0.52	8.95	XXX	N
72141		A	Magnetic image, neck spine	1.60	11.40	0.78	13.78	XXX	N
72141 26		A	Magnetic image, neck spine	1.60	0.72	0.11	2.43	XXX	N
72141 TC		A	Magnetic image, neck spine	0.00	10.68	0.67	11.35	XXX	N
72142		A	Magnetic image, neck spine	1.92	13.67	0.94	16.53	XXX	N
72142 26		A	Magnetic image, neck spine	1.92	0.86	0.13	2.91	XXX	N
72142 TC		A	Magnetic image, neck spine	0.00	12.81	0.81	13.62	XXX	N
72146		A	Magnetic image, chest spine	1.60	12.58	0.85	15.03	XXX	N
72146 26		A	Magnetic image, chest spine	1.60	0.72	0.11	2.43	XXX	N
72146 TC		A	Magnetic image, chest spine	0.00	11.86	0.74	12.60	XXX	N
72147		A	Magnetic image, chest spine	1.92	13.67	0.94	16.53	XXX	N
72147 26		A	Magnetic image, chest spine	1.92	0.86	0.13	2.91	XXX	N
72147 TC		A	Magnetic image, chest spine	0.00	12.81	0.81	13.62	XXX	N
72148		A	Magnetic image, lumbar spine	1.48	12.52	0.84	14.84	XXX	N
72148 26		A	Magnetic image, lumbar spine	1.48	0.66	0.10	2.24	XXX	N
72148 TC		A	Magnetic image, lumbar spine	0.00	11.86	0.74	12.60	XXX	N
72149		A	Magnetic image, lumbar spine	1.78	13.61	0.93	16.32	XXX	N
72149 26		A	Magnetic image, lumbar spine	1.78	0.80	0.12	2.70	XXX	N
72149 TC		A	Magnetic image, lumbar spine	0.00	12.81	0.81	13.62	XXX	N
72156		A	Magnetic image, neck spine	2.57	24.87	1.66	29.10	XXX	N
72156 26		A	Magnetic image, neck spine	2.57	1.15	0.17	3.89	XXX	N
72156 TC		A	Magnetic image, neck spine	0.00	23.72	1.49	25.21	XXX	N
72157		A	Magnetic image, chest spine	2.57	24.87	1.66	29.10	XXX	N
72157 26		A	Magnetic image, chest spine	2.57	1.15	0.17	3.89	XXX	N
72157 TC		A	Magnetic image, chest spine	0.00	23.72	1.49	25.21	XXX	N
72158		A	Magnetic image, lumbar spine	2.36	24.79	1.65	28.80	XXX	N
72158 26		A	Magnetic image, lumbar spine	2.36	1.07	0.16	3.59	XXX	N
72158 TC		A	Magnetic image, lumbar spine	0.00	23.72	1.49	25.21	XXX	N
72159		N	Magnetic imaging/spine (MRA)	+1.80	12.52	0.84	15.16	XXX	0
72159 26		N	Magnetic imaging/spine (MRA)	+1.80	0.66	0.10	2.56	XXX	0
72159 TC		N	Magnetic imaging/spine (MRA)	+0.00	11.86	0.74	12.60	XXX	0
72170		A	X-ray exam of pelvis	0.17	0.57	0.04	0.78	XXX	N
72170 26		A	X-ray exam of pelvis	0.17	0.07	0.01	0.25	XXX	N
72170 TC		A	X-ray exam of pelvis	0.00	0.50	0.03	0.53	XXX	N
72190		A	X-ray exam of pelvis	0.21	0.74	0.05	1.00	XXX	N
72190 26		A	X-ray exam of pelvis	0.21	0.10	0.01	0.32	XXX	N
72190 TC		A	X-ray exam of pelvis	0.00	0.64	0.04	0.68	XXX	N
72192		A	CAT scan of pelvis	1.09	6.11	0.43	7.63	XXX	N
72192 26		A	CAT scan of pelvis	1.09	0.48	0.07	1.64	XXX	N
72192 TC		A	CAT scan of pelvis	0.00	5.63	0.36	5.99	XXX	N
72193		A	Contrast CAT scan of pelvis	1.16	7.03	0.49	8.68	XXX	N
72193 26		A	Contrast CAT scan of pelvis	1.16	0.51	0.08	1.75	XXX	N
72193 TC		A	Contrast CAT scan of pelvis	0.00	6.52	0.41	6.93	XXX	N
72194		A	Contrast CAT scans of pelvis	1.22	8.62	0.58	10.42	XXX	N
72194 26		A	Contrast CAT scans of pelvis	1.22	0.53	0.08	1.83	XXX	N
72194 TC		A	Contrast CAT scans of pelvis	0.00	8.09	0.50	8.59	XXX	N
72196		A	Magnetic image, pelvis	1.60	11.40	0.78	13.78	XXX	N
72196 26		A	Magnetic image, pelvis	1.60	0.72	0.11	2.43	XXX	N
72196 TC		A	Magnetic image, pelvis	0.00	10.68	0.67	11.35	XXX	N
72198		N	Magnetic imaging/pelvis (MRA)	+1.80	11.40	0.78	13.98	XXX	0
72198 26		N	Magnetic imaging/pelvis (MRA)	+1.80	0.72	0.11	2.63	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
72188	TC	N	Magnetic imaging/pelvis (MRA)	+0.00	10.68	0.67	11.35	XXX	0
72200		A	X-ray exam sacroiliac joints	0.17	0.58	0.04	0.79	XXX	N
72200	26	A	X-ray exam sacroiliac joints	0.17	0.08	0.01	0.26	XXX	N
72200	TC	A	X-ray exam sacroiliac joints	0.00	0.50	0.03	0.53	XXX	N
72202		A	X-ray exam sacroiliac joints	0.19	0.68	0.05	0.92	XXX	N
72202	26	A	X-ray exam sacroiliac joints	0.19	0.09	0.01	0.29	XXX	N
72202	TC	A	X-ray exam sacroiliac joints	0.00	0.59	0.04	0.63	XXX	N
72220		A	X-ray exam of tailbone	0.17	0.62	0.05	0.84	XXX	N
72220	26	A	X-ray exam of tailbone	0.17	0.08	0.01	0.26	XXX	N
72220	TC	A	X-ray exam of tailbone	0.00	0.54	0.04	0.58	XXX	N
72240		A	Contrast x-ray of neck spine	0.91	4.93	0.35	6.19	XXX	N
72240	26	A	Contrast x-ray of neck spine	0.91	0.41	0.06	1.38	XXX	N
72240	TC	A	Contrast x-ray of neck spine	0.00	4.52	0.29	4.81	XXX	N
72255		A	Contrast x-ray thorax spine	0.91	4.54	0.32	5.77	XXX	N
72255	26	A	Contrast x-ray thorax spine	0.91	0.41	0.06	1.38	XXX	N
72255	TC	A	Contrast x-ray thorax spine	0.00	4.13	0.28	4.39	XXX	N
72265		A	Contrast x-ray lower spine	0.83	4.26	0.31	5.40	XXX	N
72265	26	A	Contrast x-ray lower spine	0.83	0.38	0.05	1.27	XXX	N
72265	TC	A	Contrast x-ray lower spine	0.00	3.88	0.25	4.13	XXX	N
72270		A	Contrast x-ray of spine	1.33	6.40	0.48	8.19	XXX	N
72270	26	A	Contrast x-ray of spine	1.33	0.59	0.09	2.01	XXX	N
72270	TC	A	Contrast x-ray of spine	0.00	5.81	0.37	6.18	XXX	N
72285		A	X-ray of neck spine disk	0.83	8.37	0.58	9.78	XXX	N
72285	26	A	X-ray of neck spine disk	0.83	0.38	0.08	1.27	XXX	N
72285	TC	A	X-ray of neck spine disk	0.00	7.99	0.50	8.49	XXX	N
72295		A	X-ray of lower spine disk	0.83	7.87	0.62	9.22	XXX	N
72295	26	A	X-ray of lower spine disk	0.83	0.38	0.08	1.27	XXX	N
72295	TC	A	X-ray of lower spine disk	0.00	7.49	0.48	7.96	XXX	N
73000		A	X-ray exam of collarbone	0.16	0.57	0.04	0.77	XXX	N
73000	26	A	X-ray exam of collarbone	0.16	0.07	0.01	0.24	XXX	N
73000	TC	A	X-ray exam of collarbone	0.00	0.50	0.03	0.53	XXX	N
73010		A	X-ray exam of shoulder blade	0.17	0.58	0.04	0.79	XXX	N
73010	26	A	X-ray exam of shoulder blade	0.17	0.08	0.01	0.26	XXX	N
73010	TC	A	X-ray exam of shoulder blade	0.00	0.59	0.09	0.53	XXX	N
73020		A	X-ray exam of shoulder	0.15	0.52	0.04	0.71	XXX	N
73020	26	A	X-ray exam of shoulder	0.15	0.07	0.01	0.23	XXX	N
73020	TC	A	X-ray exam of shoulder	0.00	0.45	0.03	0.48	XXX	N
73030		A	X-ray exam of shoulder	0.18	0.62	0.06	0.85	XXX	N
73030	26	A	X-ray exam of shoulder	0.18	0.08	0.01	0.27	XXX	N
73030	TC	A	X-ray exam of shoulder	0.00	0.54	0.04	0.58	XXX	N
73040		A	Contrast x-ray of shoulder	0.54	2.25	0.17	2.96	XXX	N
73040	26	A	Contrast x-ray of shoulder	0.54	0.25	0.04	0.83	XXX	N
73040	TC	A	Contrast x-ray of shoulder	0.00	2.00	0.13	2.13	XXX	N
73050		A	X-ray exam of shoulders	0.20	0.73	0.06	0.99	XXX	N
73050	26	A	X-ray exam of shoulders	0.20	0.09	0.01	0.30	XXX	N
73050	TC	A	X-ray exam of shoulders	0.00	0.64	0.04	0.68	XXX	N
73060		A	X-ray exam of humerus	0.17	0.62	0.06	0.84	XXX	N
73060	26	A	X-ray exam of humerus	0.17	0.08	0.01	0.26	XXX	N
73060	TC	A	X-ray exam of humerus	0.00	0.54	0.04	0.58	XXX	N
73070		A	X-ray exam of elbow	0.15	0.57	0.04	0.76	XXX	N
73070	26	A	X-ray exam of elbow	0.15	0.07	0.01	0.23	XXX	N
73070	TC	A	X-ray exam of elbow	0.00	0.50	0.03	0.53	XXX	N
73080		A	X-ray exam of elbow	0.17	0.62	0.06	0.84	XXX	N
73080	26	A	X-ray exam of elbow	0.17	0.08	0.01	0.26	XXX	N
73080	TC	A	X-ray exam of elbow	0.00	0.54	0.04	0.58	XXX	N
73085		A	Contrast x-ray of elbow	0.54	2.25	0.17	2.96	XXX	N
73085	26	A	Contrast x-ray of elbow	0.54	0.25	0.04	0.83	XXX	N
73085	TC	A	Contrast x-ray of elbow	0.00	2.00	0.13	2.13	XXX	N
73090		A	X-ray exam of forearm	0.16	0.57	0.04	0.77	XXX	N
73090	26	A	X-ray exam of forearm	0.16	0.07	0.01	0.24	XXX	N
73090	TC	A	X-ray exam of forearm	0.00	0.50	0.03	0.53	XXX	N
73092		A	X-ray exam of arm, infant	0.16	0.54	0.04	0.74	XXX	N
73092	26	A	X-ray exam of arm, infant	0.16	0.07	0.01	0.24	XXX	N
73092	TC	A	X-ray exam of arm, infant	0.00	0.47	0.03	0.50	XXX	N
73100		A	X-ray exam of wrist	0.16	0.54	0.04	0.74	XXX	N
73100	26	A	X-ray exam of wrist	0.16	0.07	0.01	0.24	XXX	N
73100	TC	A	X-ray exam of wrist	0.00	0.47	0.03	0.50	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
73110		A	X-ray exam of wrist	0.17	0.59	0.04	0.80	XXX	N
73110	26	A	X-ray exam of wrist	0.17	0.08	0.01	0.26	XXX	N
73110	TC	A	X-ray exam of wrist	0.00	0.51	0.03	0.54	XXX	N
73115		A	Contrast x-ray of wrist	0.54	1.75	0.14	2.43	XXX	N
73115	26	A	Contrast x-ray of wrist	0.54	0.25	0.04	0.83	XXX	N
73115	TC	A	Contrast x-ray of wrist	0.00	1.50	0.10	1.60	XXX	N
73120		A	X-ray exam of hand	0.16	0.54	0.04	0.74	XXX	N
73120	26	A	X-ray exam of hand	0.16	0.07	0.01	0.24	XXX	N
73120	TC	A	X-ray exam of hand	0.00	0.47	0.03	0.50	XXX	N
73130		A	X-ray exam of hand	0.17	0.59	0.04	0.80	XXX	N
73130	26	A	X-ray exam of hand	0.17	0.08	0.01	0.26	XXX	N
73130	TC	A	X-ray exam of hand	0.00	0.51	0.03	0.54	XXX	N
73140		A	X-ray exam of finger(s)	0.13	0.46	0.04	0.63	XXX	N
73140	26	A	X-ray exam of finger(s)	0.13	0.06	0.01	0.20	XXX	N
73140	TC	A	X-ray exam of finger(s)	0.00	0.40	0.03	0.43	XXX	N
73200		A	CAT scan of arm	1.09	5.21	0.37	6.67	XXX	N
73200	26	A	CAT scan of arm	1.09	0.48	0.07	1.64	XXX	N
73200	TC	A	CAT scan of arm	0.00	4.73	0.30	5.03	XXX	N
73201		A	Contrast CAT scan of arm	1.16	6.14	0.44	7.74	XXX	N
73201	26	A	Contrast CAT scan of arm	1.16	0.51	0.08	1.75	XXX	N
73201	TC	A	Contrast CAT scan of arm	0.00	5.63	0.36	5.99	XXX	N
73202		A	Contrast CAT scans of arm	1.22	7.61	0.53	9.36	XXX	N
73202	26	A	Contrast CAT scans of arm	1.22	0.53	0.08	1.83	XXX	N
73202	TC	A	Contrast CAT scans of arm	0.00	7.08	0.45	7.53	XXX	N
73220		A	Magnetic image, arm, hand	1.48	11.34	0.77	13.59	XXX	N
73220	26	A	Magnetic image, arm, hand	1.48	0.66	0.10	2.24	XXX	N
73220	TC	A	Magnetic image, arm, hand	0.00	10.68	0.67	11.35	XXX	N
73221		A	Magnetic image, joint of arm	1.48	11.11	0.73	13.32	XXX	N
73221	26	A	Magnetic image, joint of arm	1.48	0.43	0.06	1.97	XXX	N
73221	TC	A	Magnetic image, joint of arm	0.00	10.68	0.67	11.35	XXX	N
73225		N	Magnetic imaging/upper (MRA)	+1.73	11.34	0.77	13.84	XXX	0
73225	26	N	Magnetic imaging/upper (MRA)	+1.73	0.66	0.10	2.49	XXX	0
73225	TC	N	Magnetic imaging/upper (MRA)	+0.00	10.68	0.67	11.35	XXX	0
73500		A	X-ray exam of hip	0.17	0.53	0.04	0.74	XXX	N
73500	26	A	X-ray exam of hip	0.17	0.08	0.01	0.26	XXX	N
73500	TC	A	X-ray exam of hip	0.00	0.45	0.03	0.48	XXX	N
73510		A	X-ray exam of hip	0.21	0.64	0.05	0.90	XXX	N
73510	26	A	X-ray exam of hip	0.21	0.10	0.01	0.32	XXX	N
73510	TC	A	X-ray exam of hip	0.00	0.54	0.04	0.58	XXX	N
73520		A	X-ray exam of hips	0.26	0.76	0.06	1.08	XXX	N
73520	26	A	X-ray exam of hips	0.26	0.12	0.02	0.40	XXX	N
73520	TC	A	X-ray exam of hips	0.00	0.64	0.04	0.68	XXX	N
73525		A	Contrast x-ray of hip	0.54	2.25	0.17	2.96	XXX	N
73525	26	A	Contrast x-ray of hip	0.54	0.25	0.04	0.83	XXX	N
73525	TC	A	Contrast x-ray of hip	0.00	2.00	0.13	2.13	XXX	N
73530		A	X-ray exam of hip	0.29	0.63	0.05	0.97	XXX	N
73530	26	A	X-ray exam of hip	0.29	0.13	0.02	0.44	XXX	N
73530	TC	A	X-ray exam of hip	0.00	0.50	0.03	0.53	XXX	N
73540		A	X-ray exam of pelvis & hips	0.20	0.64	0.05	0.89	XXX	N
73540	26	A	X-ray exam of pelvis & hips	0.20	0.10	0.01	0.31	XXX	N
73540	TC	A	X-ray exam of pelvis & hips	0.00	0.54	0.04	0.58	XXX	N
73550		A	X-ray exam of thigh	0.17	0.62	0.05	0.84	XXX	N
73550	26	A	X-ray exam of thigh	0.17	0.08	0.01	0.26	XXX	N
73550	TC	A	X-ray exam of thigh	0.00	0.54	0.04	0.58	XXX	N
73560		A	X-ray exam of knee	0.17	0.57	0.04	0.78	XXX	N
73560	26	A	X-ray exam of knee	0.17	0.07	0.01	0.25	XXX	N
73560	TC	A	X-ray exam of knee	0.00	0.50	0.03	0.53	XXX	N
73562		A	X-ray exam of knee	0.18	0.63	0.05	0.86	XXX	N
73562	26	A	X-ray exam of knee	0.18	0.09	0.01	0.28	XXX	N
73562	TC	A	X-ray exam of knee	0.00	0.54	0.04	0.58	XXX	N
73564		A	X-ray exam of knee	0.22	0.69	0.06	0.97	XXX	N
73564	26	A	X-ray exam of knee	0.22	0.10	0.02	0.34	XXX	N
73564	TC	A	X-ray exam of knee	0.00	0.59	0.04	0.63	XXX	N
73565		A	X-ray exam of knee	0.17	0.54	0.04	0.75	XXX	N
73565	26	A	X-ray exam of knee	0.17	0.07	0.01	0.25	XXX	N
73565	TC	A	X-ray exam of knee	0.00	0.47	0.03	0.50	XXX	N
73580		A	Contrast x-ray of knee joint	0.54	2.75	0.21	3.50	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
73580	26	A	Contrast x-ray of knee joint	0.54	0.25	0.04	0.83	XXX	N
73580	TC	A	Contrast x-ray of knee joint	0.00	2.50	0.17	2.67	XXX	N
73590		A	X-ray exam of lower leg	0.17	0.57	0.04	0.78	XXX	N
73590	26	A	X-ray exam of lower leg	0.17	0.07	0.01	0.25	XXX	N
73590	TC	A	X-ray exam of lower leg	0.00	0.50	0.03	0.53	XXX	N
73592		A	X-ray exam of leg, infant	0.16	0.54	0.04	0.74	XXX	N
73592	26	A	X-ray exam of leg, infant	0.16	0.07	0.01	0.24	XXX	N
73592	TC	A	X-ray exam of leg, infant	0.00	0.47	0.03	0.50	XXX	N
73600		A	X-ray exam of ankle	0.16	0.54	0.04	0.74	XXX	N
73600	26	A	X-ray exam of ankle	0.16	0.07	0.01	0.24	XXX	N
73600	TC	A	X-ray exam of ankle	0.00	0.47	0.03	0.50	XXX	N
73610		A	X-ray exam of ankle	0.17	0.59	0.04	0.80	XXX	N
73610	26	A	X-ray exam of ankle	0.17	0.09	0.01	0.26	XXX	N
73610	TC	A	X-ray exam of ankle	0.00	0.51	0.03	0.54	XXX	N
73615		A	Contrast x-ray of ankle	0.54	2.25	0.17	2.96	XXX	N
73615	26	A	Contrast x-ray of ankle	0.54	0.25	0.04	0.83	XXX	N
73615	TC	A	Contrast x-ray of ankle	0.00	2.00	0.13	2.13	XXX	N
73620		A	X-ray exam of foot	0.16	0.54	0.04	0.74	XXX	N
73620	26	A	X-ray exam of foot	0.16	0.07	0.01	0.24	XXX	N
73620	TC	A	X-ray exam of foot	0.00	0.47	0.03	0.50	XXX	N
73630		A	X-ray exam of foot	0.17	0.59	0.04	0.80	XXX	N
73630	26	A	X-ray exam of foot	0.17	0.08	0.01	0.26	XXX	N
73630	TC	A	X-ray exam of foot	0.00	0.51	0.03	0.54	XXX	N
73650		A	X-ray exam of heel	0.16	0.52	0.04	0.72	XXX	N
73650	26	A	X-ray exam of heel	0.16	0.07	0.01	0.24	XXX	N
73650	TC	A	X-ray exam of heel	0.00	0.45	0.03	0.48	XXX	N
73660		A	X-ray exam of toe(s)	0.13	0.46	0.04	0.63	XXX	N
73660	26	A	X-ray exam of toe(s)	0.13	0.06	0.01	0.20	XXX	N
73660	TC	A	X-ray exam of toe(s)	0.00	0.40	0.03	0.43	XXX	N
73700		A	CAT scan of leg	1.09	5.21	0.37	6.67	XXX	N
73700	26	A	CAT scan of leg	1.09	0.48	0.07	1.64	XXX	N
73700	TC	A	CAT scan of leg	0.00	4.73	0.30	5.03	XXX	N
73701		A	Contrast CAT scan of leg	1.16	6.14	0.44	7.74	XXX	N
73701	26	A	Contrast CAT scan of leg	1.16	0.51	0.08	1.75	XXX	N
73701	TC	A	Contrast CAT scan of leg	0.00	5.63	0.36	5.99	XXX	N
73702		A	Contrast CAT scans of leg	1.22	7.61	0.53	9.36	XXX	N
73702	26	A	Contrast CAT scans of leg	1.22	0.53	0.08	1.83	XXX	N
73702	TC	A	Contrast CAT scans of leg	0.00	7.06	0.45	7.53	XXX	N
73720		A	Magnetic image, leg, foot	1.48	11.34	0.77	13.59	XXX	N
73720	26	A	Magnetic image, leg, foot	1.48	0.66	0.10	2.24	XXX	N
73720	TC	A	Magnetic image, leg, foot	0.00	10.68	0.67	11.35	XXX	N
73721		A	Magnetic image, joint of leg	1.48	11.11	0.73	13.32	XXX	N
73721	26	A	Magnetic image, joint of leg	1.48	0.43	0.06	1.97	XXX	N
73721	TC	A	Magnetic image, joint of leg	0.00	10.68	0.67	11.35	XXX	N
73725		N	Magnetic imaging/lower (MRA)	+1.82	11.34	0.77	13.93	XXX	O
73725	26	N	Magnetic imaging/lower (MRA)	+1.82	0.66	0.10	2.58	XXX	O
73725	TC	N	Magnetic imaging/lower (MRA)	+0.00	10.68	0.67	11.35	XXX	O
74000		A	X-ray exam of abdomen	0.18	0.58	0.04	0.80	XXX	N
74000	26	A	X-ray exam of abdomen	0.18	0.08	0.01	0.27	XXX	N
74000	TC	A	X-ray exam of abdomen	0.00	0.50	0.03	0.53	XXX	N
74010		A	X-ray exam of abdomen	0.23	0.65	0.06	0.94	XXX	N
74010	26	A	X-ray exam of abdomen	0.23	0.11	0.02	0.36	XXX	N
74010	TC	A	X-ray exam of abdomen	0.00	0.54	0.04	0.58	XXX	N
74020		A	X-ray exam of abdomen	0.27	0.72	0.06	1.05	XXX	N
74020	26	A	X-ray exam of abdomen	0.27	0.13	0.02	0.42	XXX	N
74020	TC	A	X-ray exam of abdomen	0.00	0.59	0.04	0.63	XXX	N
74022		A	X-ray exam series, abdomen	0.32	0.85	0.07	1.24	XXX	N
74022	26	A	X-ray exam series, abdomen	0.32	0.15	0.02	0.49	XXX	N
74022	TC	A	X-ray exam series, abdomen	0.00	0.70	0.05	0.75	XXX	N
74150		A	CAT scan of abdomen	1.19	5.91	0.43	7.53	XXX	N
74150	26	A	CAT scan of abdomen	1.19	0.52	0.06	1.79	XXX	N
74150	TC	A	CAT scan of abdomen	0.00	5.39	0.36	5.74	XXX	N
74160		A	Contrast CAT scan of abdomen	1.27	7.06	0.50	8.85	XXX	N
74160	26	A	Contrast CAT scan of abdomen	1.27	0.56	0.09	1.92	XXX	N
74160	TC	A	Contrast CAT scan of abdomen	0.00	6.52	0.41	6.93	XXX	N
74170		A	Contrast CAT scans, abdomen	1.40	8.71	0.80	10.71	XXX	N
74170	26	A	Contrast CAT scans, abdomen	1.40	0.62	0.10	2.12	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
74170	TC	A	Contrast CAT scans, abdomen	0.00	8.09	0.50	8.59	XXX	N
74181		A	Magnetic image, abdomen (MRI)	1.60	11.40	0.78	13.78	XXX	N
74181	26	A	Magnetic image, abdomen (MRI)	1.60	0.72	0.11	2.43	XXX	N
74181	TC	A	Magnetic image, abdomen (MRI)	0.00	10.68	0.67	11.35	XXX	N
74185		N	Magnetic image/abdomen (MRA)	+1.80	11.40	0.78	13.98	XXX	O
74185	26	N	Magnetic image/abdomen (MRA)	+1.80	0.72	0.11	2.63	XXX	O
74185	TC	N	Magnetic image/abdomen (MRA)	+0.00	10.68	0.67	11.35	XXX	O
74190		A	X-ray exam of peritoneum	0.48	1.37	0.10	1.95	XXX	N
74190	26	A	X-ray exam of peritoneum	0.48	0.13	0.02	0.63	XXX	N
74190	TC	A	X-ray exam of peritoneum	0.00	1.24	0.06	1.32	XXX	N
74210		A	Contrast x-ray exam of throat	0.36	1.29	0.09	1.74	XXX	N
74210	26	A	Contrast x-ray exam of throat	0.36	0.16	0.02	0.54	XXX	N
74210	TC	A	Contrast x-ray exam of throat	0.00	1.13	0.07	1.20	XXX	N
74220		A	Contrast x-ray exam, esophagus	0.46	1.34	0.10	1.90	XXX	N
74220	26	A	Contrast x-ray exam, esophagus	0.46	0.21	0.03	0.70	XXX	N
74220	TC	A	Contrast x-ray exam, esophagus	0.00	1.13	0.07	1.20	XXX	N
74230		A	Cinema x-ray throat/esophagus	0.53	1.49	0.12	2.14	XXX	N
74230	26	A	Cinema x-ray throat/esophagus	0.53	0.25	0.04	0.82	XXX	N
74230	TC	A	Cinema x-ray throat/esophagus	0.00	1.24	0.08	1.32	XXX	N
74235		A	Remove esophagus obstruction	1.19	3.02	0.25	4.46	XXX	N
74235	26	A	Remove esophagus obstruction	1.19	0.52	0.08	1.79	XXX	N
74235	TC	A	Remove esophagus obstruction	0.00	2.50	0.17	2.67	XXX	N
74240		A	X-ray exam upper GI tract	0.69	1.71	0.14	2.54	XXX	N
74240	26	A	X-ray exam upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74240	TC	A	X-ray exam upper GI tract	0.00	1.39	0.09	1.48	XXX	N
74241		A	X-ray exam upper GI tract	0.69	1.74	0.14	2.57	XXX	N
74241	26	A	X-ray exam upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74241	TC	A	X-ray exam upper GI tract	0.00	1.42	0.09	1.51	XXX	N
74245		A	X-ray exam upper GI tract	0.91	2.68	0.21	3.80	XXX	N
74245	26	A	X-ray exam upper GI tract	0.91	0.41	0.06	1.38	XXX	N
74245	TC	A	X-ray exam upper GI tract	0.00	2.27	0.15	2.42	XXX	N
74246		A	Contrast x-ray upper GI tract	0.69	1.89	0.15	2.73	XXX	N
74246	26	A	Contrast x-ray upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74246	TC	A	Contrast x-ray upper GI tract	0.00	1.57	0.10	1.67	XXX	N
74247		A	Contrast x-ray upper GI tract	0.69	1.92	0.18	2.77	XXX	N
74247	26	A	Contrast x-ray upper GI tract	0.69	0.32	0.05	1.06	XXX	N
74247	TC	A	Contrast x-ray upper GI tract	0.00	1.60	0.11	1.71	XXX	N
74249		A	Contrast x-ray upper GI tract	0.91	2.86	0.22	3.99	XXX	N
74249	26	A	Contrast x-ray upper GI tract	0.91	0.41	0.06	1.38	XXX	N
74249	TC	A	Contrast x-ray upper GI tract	0.00	2.45	0.16	2.61	XXX	N
74250		A	X-ray exam of small bowel	0.47	1.45	0.11	2.03	XXX	N
74250	26	A	X-ray exam of small bowel	0.47	0.21	0.03	0.71	XXX	N
74250	TC	A	X-ray exam of small bowel	0.00	1.24	0.08	1.32	XXX	N
74251		A	X-ray exam of small bowel	0.69	1.45	0.11	2.25	XXX	N
74251	26	A	X-ray exam of small bowel	0.69	0.21	0.03	0.93	XXX	N
74251	TC	A	X-ray exam of small bowel	0.00	1.24	0.08	1.32	XXX	N
74260		A	X-ray exam of small bowel	0.50	1.65	0.12	2.27	XXX	N
74260	26	A	X-ray exam of small bowel	0.50	0.23	0.03	0.76	XXX	N
74260	TC	A	X-ray exam of small bowel	0.00	1.42	0.09	1.51	XXX	N
74270		A	Contrast x-ray exam of colon	0.69	1.94	0.16	2.79	XXX	N
74270	26	A	Contrast x-ray exam of colon	0.69	0.32	0.05	1.06	XXX	N
74270	TC	A	Contrast x-ray exam of colon	0.00	1.62	0.11	1.73	XXX	N
74280		A	Contrast x-ray exam of colon	0.99	2.58	0.21	3.78	XXX	N
74280	26	A	Contrast x-ray exam of colon	0.99	0.45	0.07	1.51	XXX	N
74280	TC	A	Contrast x-ray exam of colon	0.00	2.13	0.14	2.27	XXX	N
74283		A	Contrast x-ray exam of colon	2.02	3.34	0.30	5.66	XXX	N
74283	26	A	Contrast x-ray exam of colon	2.02	0.90	0.14	3.06	XXX	N
74283	TC	A	Contrast x-ray exam of colon	0.00	2.44	0.16	2.60	XXX	N
74290		A	Contrast x-ray, gallbladder	0.32	0.85	0.07	1.24	XXX	N
74290	26	A	Contrast x-ray, gallbladder	0.32	0.15	0.02	0.49	XXX	N
74290	TC	A	Contrast x-ray, gallbladder	0.00	0.70	0.05	0.75	XXX	N
74291		A	Contrast x-rays, gallbladder	0.20	0.49	0.04	0.73	XXX	N
74291	26	A	Contrast x-rays, gallbladder	0.20	0.09	0.01	0.30	XXX	N
74291	TC	A	Contrast x-rays, gallbladder	0.00	0.40	0.03	0.43	XXX	N
74300		C	X-ray bile ducts, pancreas	0.00	0.00	0.00	0.00	XXX	N
74300	26	A	X-ray bile ducts, pancreas	0.36	0.17	0.02	0.55	XXX	N
74300	TC	C	X-ray bile ducts, pancreas	0.00	0.00	0.00	0.00	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
74301		C	Additional x-rays at surgery	0.00	0.00	0.00	0.00	XXX	N
74301	26	A	Additional x-rays at surgery	0.21	0.10	0.01	0.32	XXX	N
74301	TC	C	Additional x-rays at surgery	0.00	0.00	0.00	0.00	XXX	N
74305		A	X-ray bile ducts, pancreas	0.42	0.94	0.08	1.44	XXX	N
74305	26	A	X-ray bile ducts, pancreas	0.42	0.19	0.03	0.64	XXX	N
74305	TC	A	X-ray bile ducts, pancreas	0.00	0.75	0.05	0.80	XXX	N
74320		A	Contrast x-ray of bile ducts	0.54	3.25	0.28	4.02	XXX	N
74320	26	A	Contrast x-ray of bile ducts	0.54	0.25	0.04	0.83	XXX	N
74320	TC	A	Contrast x-ray of bile ducts	0.00	3.00	0.19	3.19	XXX	N
74327		A	X-ray for bile stone removal	0.70	2.00	0.16	2.86	XXX	N
74327	26	A	X-ray for bile stone removal	0.70	0.32	0.05	1.07	XXX	N
74327	TC	A	X-ray for bile stone removal	0.00	1.68	0.11	1.79	XXX	N
74326		A	X-ray for bile duct endoscopy	0.70	3.32	0.24	4.26	XXX	N
74326	26	A	X-ray for bile duct endoscopy	0.70	0.32	0.05	1.07	XXX	N
74326	TC	A	X-ray for bile duct endoscopy	0.00	3.00	0.19	3.19	XXX	N
74329		A	X-ray for pancreas endoscopy	0.70	3.32	0.24	4.26	XXX	N
74329	26	A	X-ray for pancreas endoscopy	0.70	0.32	0.05	1.07	XXX	N
74329	TC	A	X-ray for pancreas endoscopy	0.00	3.00	0.19	3.19	XXX	N
74330		A	X-ray, bile/pancreas endoscopy	0.90	3.32	0.24	4.46	XXX	N
74330	26	A	X-ray, bile/pancreas endoscopy	0.90	0.32	0.05	1.27	XXX	N
74330	TC	A	X-ray, bile/pancreas endoscopy	0.00	3.00	0.19	3.19	XXX	N
74340		A	X-ray guide for GI tube	0.54	2.75	0.21	3.50	XXX	N
74340	26	A	X-ray guide for GI tube	0.54	0.25	0.04	0.83	XXX	N
74340	TC	A	X-ray guide for GI tube	0.00	2.50	0.17	2.67	XXX	N
74350		A	X-ray guide, stomach tube	0.76	3.35	0.24	4.35	XXX	N
74350	26	A	X-ray guide, stomach tube	0.76	0.35	0.05	1.16	XXX	N
74350	TC	A	X-ray guide, stomach tube	0.00	3.00	0.19	3.19	XXX	N
74355		A	X-ray guide, intestinal tube	0.76	2.85	0.22	3.83	XXX	N
74355	26	A	X-ray guide, intestinal tube	0.76	0.35	0.05	1.16	XXX	N
74355	TC	A	X-ray guide, intestinal tube	0.00	2.50	0.17	2.67	XXX	N
74360		A	X-ray guide, GI dilation	0.54	3.25	0.23	4.02	XXX	N
74360	26	A	X-ray guide, GI dilation	0.54	0.25	0.04	0.83	XXX	N
74360	TC	A	X-ray guide, GI dilation	0.00	3.00	0.19	3.19	XXX	N
74363		A	X-ray, bile duct dilation	0.88	6.21	0.43	7.52	XXX	N
74363	26	A	X-ray, bile duct dilation	0.88	0.40	0.06	1.34	XXX	N
74363	TC	A	X-ray, bile duct dilation	0.00	5.81	0.37	6.18	XXX	N
74400		A	Contrast x-ray urinary tract	0.49	1.82	0.14	2.45	XXX	N
74400	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74400	TC	A	Contrast x-ray urinary tract	0.00	1.60	0.11	1.71	XXX	N
74405		A	Contrast x-ray urinary tract	0.49	2.11	0.16	2.76	XXX	N
74405	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74405	TC	A	Contrast x-ray urinary tract	0.00	1.89	0.13	2.02	XXX	N
74410		A	Contrast x-ray urinary tract	0.49	2.08	0.15	2.72	XXX	N
74410	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74410	TC	A	Contrast x-ray urinary tract	0.00	1.86	0.12	1.98	XXX	N
74415		A	Contrast x-ray urinary tract	0.49	2.24	0.16	2.89	XXX	N
74415	26	A	Contrast x-ray urinary tract	0.49	0.22	0.03	0.74	XXX	N
74415	TC	A	Contrast x-ray urinary tract	0.00	2.02	0.13	2.15	XXX	N
74420		A	Contrast x-ray urinary tract	0.36	2.68	0.19	3.21	XXX	N
74420	26	A	Contrast x-ray urinary tract	0.36	0.16	0.02	0.54	XXX	N
74420	TC	A	Contrast x-ray urinary tract	0.00	2.50	0.17	2.67	XXX	N
74425		A	Contrast x-ray urinary tract	0.36	1.40	0.10	1.86	XXX	N
74425	26	A	Contrast x-ray urinary tract	0.36	0.16	0.02	0.54	XXX	N
74425	TC	A	Contrast x-ray urinary tract	0.00	1.24	0.06	1.32	XXX	N
74430		A	Contrast x-ray of bladder	0.32	1.15	0.09	1.56	XXX	N
74430	26	A	Contrast x-ray of bladder	0.32	0.16	0.02	0.49	XXX	N
74430	TC	A	Contrast x-ray of bladder	0.00	1.00	0.07	1.07	XXX	N
74440		A	X-ray exam male genital tract	0.38	1.25	0.10	1.73	XXX	N
74440	26	A	X-ray exam male genital tract	0.38	0.17	0.03	0.58	XXX	N
74440	TC	A	X-ray exam male genital tract	0.00	1.08	0.07	1.15	XXX	N
74445		A	X-ray exam of penis	1.14	1.58	0.15	2.87	XXX	N
74445	26	A	X-ray exam of penis	1.14	0.50	0.08	1.72	XXX	N
74445	TC	A	X-ray exam of penis	0.00	1.08	0.07	1.15	XXX	N
74450		A	X-ray exam urethra/bladder	0.33	1.54	0.11	1.98	XXX	N
74450	26	A	X-ray exam urethra/bladder	0.33	0.15	0.02	0.50	XXX	N
74450	TC	A	X-ray exam urethra/bladder	0.00	1.39	0.09	1.48	XXX	N
74455		A	X-ray exam urethra/bladder	0.33	1.65	0.12	2.10	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
74455	26	A	X-ray exam urethra/bladder	0.33	0.15	0.02	0.50	XXX	N
74455	TC	A	X-ray exam urethra/bladder	0.00	1.50	0.10	1.60	XXX	N
74470		A	X-ray exam of kidney lesion	0.54	1.44	0.12	2.10	XXX	N
74470	26	A	X-ray exam of kidney lesion	0.54	0.25	0.04	0.83	XXX	N
74470	TC	A	X-ray exam of kidney lesion	0.00	1.19	0.08	1.27	XXX	N
74475		A	X-ray control catheter insert	0.54	4.13	0.29	4.96	XXX	N
74475	26	A	X-ray control catheter insert	0.54	0.25	0.04	0.83	XXX	N
74475	TC	A	X-ray control catheter insert	0.00	3.88	0.25	4.13	XXX	N
74480		A	X-ray control catheter insert	0.54	4.13	0.29	4.96	XXX	N
74480	26	A	X-ray control catheter insert	0.54	0.25	0.04	0.83	XXX	N
74480	TC	A	X-ray control catheter insert	0.00	3.88	0.25	4.13	XXX	N
74485		A	X-ray guide, GU dilation	0.54	3.25	0.23	4.02	XXX	N
74485	26	A	X-ray guide, GU dilation	0.54	0.25	0.04	0.83	XXX	N
74485	TC	A	X-ray guide, GU dilation	0.00	3.00	0.19	3.19	XXX	N
74710		A	X-ray measurement of pelvis	0.34	1.16	0.06	1.56	XXX	N
74710	26	A	X-ray measurement of pelvis	0.34	0.16	0.02	0.52	XXX	N
74710	TC	A	X-ray measurement of pelvis	0.00	1.00	0.07	1.07	XXX	N
74740		A	X-ray female genital tract	0.38	1.41	0.11	1.90	XXX	N
74740	26	A	X-ray female genital tract	0.38	0.17	0.03	0.58	XXX	N
74740	TC	A	X-ray female genital tract	0.00	1.24	0.08	1.32	XXX	N
74742		A	X-ray fallopian tube	0.61	3.25	0.23	4.09	XXX	N
74742	26	A	X-ray fallopian tube	0.61	0.25	0.04	0.90	XXX	N
74742	TC	A	X-ray fallopian tube	0.00	3.00	0.19	3.19	XXX	N
74775		A	X-ray exam of perineum	0.62	1.88	0.13	2.43	XXX	N
74775	26	A	X-ray exam of perineum	0.62	0.29	0.04	0.95	XXX	N
74775	TC	A	X-ray exam of perineum	0.00	1.99	0.09	1.48	XXX	N
75552		A	Magnetic image, myocardium	1.60	11.40	0.78	13.78	XXX	N
75552	26	A	Magnetic image, myocardium	1.60	0.72	0.11	2.43	XXX	N
75552	TC	A	Magnetic image, myocardium	0.00	10.68	0.67	11.35	XXX	N
75553		A	Magnetic image, myocardium	2.00	11.40	0.78	14.18	XXX	N
75553	26	A	Magnetic image, myocardium	2.00	0.72	0.11	2.83	XXX	N
75553	TC	A	Magnetic image, myocardium	0.00	10.68	0.67	11.35	XXX	N
75554		A	Cardiac MRI/function	1.83	11.40	0.78	14.01	XXX	N
75554	26	A	Cardiac MRI/function	1.83	0.72	0.11	2.66	XXX	N
75554	TC	A	Cardiac MRI/function	0.00	10.68	0.67	11.35	XXX	N
75555		A	Cardiac MRI/limited study	1.74	11.40	0.78	13.92	XXX	N
75555	26	A	Cardiac MRI/limited study	1.74	0.72	0.11	2.57	XXX	N
75555	TC	A	Cardiac MRI/limited study	0.00	10.68	0.67	11.35	XXX	N
75556		A	Cardiac MRI/flow mapping	0.00	0.00	0.00	0.00	XXX	N
75600		A	Contrast x-ray exam of aorta	0.49	12.23	0.76	13.50	XXX	N
75600	26	A	Contrast x-ray exam of aorta	0.49	0.22	0.03	0.74	XXX	N
75600	TC	A	Contrast x-ray exam of aorta	0.00	12.01	0.75	12.76	XXX	N
75605		A	Contrast x-ray exam of aorta	1.14	12.51	0.83	14.48	XXX	N
75605	26	A	Contrast x-ray exam of aorta	1.14	0.50	0.08	1.72	XXX	N
75605	TC	A	Contrast x-ray exam of aorta	0.00	12.01	0.75	12.76	XXX	N
75625		A	Contrast x-ray exam of aorta	1.14	12.51	0.83	14.48	XXX	N
75625	26	A	Contrast x-ray exam of aorta	1.14	0.50	0.08	1.72	XXX	N
75625	TC	A	Contrast x-ray exam of aorta	0.00	12.01	0.75	12.76	XXX	N
75630		A	X-ray aorta, leg arteries	1.79	13.09	0.88	15.76	XXX	N
75630	26	A	X-ray aorta, leg arteries	1.79	0.58	0.09	2.46	XXX	N
75630	TC	A	X-ray aorta, leg arteries	0.00	12.51	0.79	13.30	XXX	N
75650		A	Artery x-rays, head & neck	1.49	12.67	0.85	15.01	XXX	N
75650	26	A	Artery x-rays, head & neck	1.49	0.86	0.10	2.25	XXX	N
75650	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75658		A	X-ray exam of arm arteries	1.31	12.59	0.84	14.74	XXX	N
75658	26	A	X-ray exam of arm arteries	1.31	0.58	0.09	1.98	XXX	N
75658	TC	A	X-ray exam of arm arteries	0.00	12.01	0.75	12.76	XXX	N
75660		A	Artery x-rays, head & neck	1.31	12.59	0.84	14.74	XXX	N
75660	26	A	Artery x-rays, head & neck	1.31	0.58	0.09	1.98	XXX	N
75660	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75662		A	Artery x-rays, head & neck	1.66	12.75	0.86	15.27	XXX	N
75662	26	A	Artery x-rays, head & neck	1.66	0.74	0.11	2.51	XXX	N
75662	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75665		A	Artery x-rays, head & neck	1.31	12.59	0.84	14.74	XXX	N
75665	26	A	Artery x-rays, head & neck	1.31	0.58	0.09	1.98	XXX	N
75665	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75671		A	Artery x-rays, head & neck	1.66	12.75	0.86	15.27	XXX	N

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 3 Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
75671	26	A	Artery x-rays, head & neck	1.66	0.74	0.11	2.51	XXX	N
75671	TC	A	Artery x-rays, head & neck	0.00	12.01	0.75	12.76	XXX	N
75676	A	A	Artery x-rays, neck	1.31	12.59	0.84	14.74	XXX	N
75676	26	A	Artery x-rays, neck	1.31	0.58	0.08	1.98	XXX	N
75676	TC	A	Artery x-rays, neck	0.00	12.01	0.75	12.76	XXX	N
75680	A	A	Artery x-rays, neck	1.66	12.75	0.86	15.27	XXX	N
75680	26	A	Artery x-rays, neck	1.66	0.74	0.11	2.51	XXX	N
75680	TC	A	Artery x-rays, neck	0.00	12.01	0.75	12.76	XXX	N
75685	A	A	Artery x-rays, spine	1.31	12.59	0.84	14.74	XXX	N
75685	26	A	Artery x-rays, spine	1.31	0.58	0.08	1.98	XXX	N
75685	TC	A	Artery x-rays, spine	0.00	12.01	0.75	12.76	XXX	N
75705	A	A	Artery x-rays, spine	2.18	12.99	0.90	16.07	XXX	N
75705	26	A	Artery x-rays, spine	2.18	0.98	0.15	3.31	XXX	N
75705	TC	A	Artery x-rays, spine	0.00	12.01	0.75	12.76	XXX	N
75710	A	A	Artery x-rays, arm/leg	1.14	12.51	0.83	14.48	XXX	N
75710	26	A	Artery x-rays, arm/leg	1.14	0.50	0.08	1.72	XXX	N
75710	TC	A	Artery x-rays, arm/leg	0.00	12.01	0.75	12.76	XXX	N
75716	A	A	Artery x-rays, arms/legs	1.31	12.59	0.84	14.74	XXX	N
75716	26	A	Artery x-rays, arms/legs	1.31	0.58	0.08	1.98	XXX	N
75716	TC	A	Artery x-rays, arms/legs	0.00	12.01	0.75	12.76	XXX	N
75722	A	A	Artery x-rays, kidney	1.14	12.51	0.83	14.48	XXX	N
75722	26	A	Artery x-rays, kidney	1.14	0.50	0.08	1.72	XXX	N
75722	TC	A	Artery x-rays, kidney	0.00	12.01	0.75	12.76	XXX	N
75724	A	A	Artery x-rays, kidneys	1.49	12.67	0.85	15.01	XXX	N
75724	26	A	Artery x-rays, kidneys	1.49	0.66	0.10	2.25	XXX	N
75724	TC	A	Artery x-rays, kidneys	0.00	12.01	0.75	12.76	XXX	N
75726	A	A	Artery x-rays, abdomen	1.14	12.51	0.83	14.48	XXX	N
75726	26	A	Artery x-rays, abdomen	1.14	0.50	0.08	1.72	XXX	N
75726	TC	A	Artery x-rays, abdomen	0.00	12.01	0.75	12.76	XXX	N
75731	A	A	Artery x-rays, adrenal gland	1.14	12.51	0.83	14.48	XXX	N
75731	26	A	Artery x-rays, adrenal gland	1.14	0.50	0.08	1.72	XXX	N
75731	TC	A	Artery x-rays, adrenal gland	0.00	12.01	0.75	12.76	XXX	N
75733	A	A	Artery x-rays, adrenal glands	1.31	12.59	0.84	14.74	XXX	N
75733	26	A	Artery x-rays, adrenal glands	1.31	0.58	0.08	1.98	XXX	N
75733	TC	A	Artery x-rays, adrenal glands	0.00	12.01	0.75	12.76	XXX	N
75736	A	A	Artery x-rays, pelvis	1.14	12.51	0.83	14.48	XXX	N
75736	26	A	Artery x-rays, pelvis	1.14	0.50	0.08	1.72	XXX	N
75736	TC	A	Artery x-rays, pelvis	0.00	12.01	0.75	12.76	XXX	N
75741	A	A	Artery x-rays, lung	1.31	12.59	0.84	14.74	XXX	N
75741	26	A	Artery x-rays, lung	1.31	0.58	0.08	1.98	XXX	N
75741	TC	A	Artery x-rays, lung	0.00	12.01	0.75	12.76	XXX	N
75743	A	A	Artery x-rays, lungs	1.66	12.75	0.86	15.27	XXX	N
75743	26	A	Artery x-rays, lungs	1.66	0.74	0.11	2.51	XXX	N
75743	TC	A	Artery x-rays, lungs	0.00	12.01	0.75	12.76	XXX	N
75746	A	A	Artery x-rays, lung	1.14	12.51	0.83	14.48	XXX	N
75746	26	A	Artery x-rays, lung	1.14	0.50	0.08	1.72	XXX	N
75746	TC	A	Artery x-rays, lung	0.00	12.01	0.75	12.76	XXX	N
75756	A	A	Artery x-rays, chest	1.14	12.51	0.83	14.48	XXX	N
75756	26	A	Artery x-rays, chest	1.14	0.50	0.08	1.72	XXX	N
75756	TC	A	Artery x-rays, chest	0.00	12.01	0.75	12.76	XXX	N
75774	A	A	Artery x-ray, each vessel	0.36	12.17	0.77	13.30	XXX	N
75774	26	A	Artery x-ray, each vessel	0.36	0.16	0.02	0.54	XXX	N
75774	TC	A	Artery x-ray, each vessel	0.00	12.01	0.75	12.76	XXX	N
75790	A	A	Visualize A-V shunt	1.84	2.12	0.21	4.17	XXX	N
75790	26	A	Visualize A-V shunt	1.84	0.83	0.12	2.79	XXX	N
75790	TC	A	Visualize A-V shunt	0.00	1.29	0.09	1.38	XXX	N
75801	A	A	Lymph vessel x-ray, arm/leg	0.81	5.53	0.38	6.72	XXX	N
75801	26	A	Lymph vessel x-ray, arm/leg	0.81	0.37	0.05	1.23	XXX	N
75801	TC	A	Lymph vessel x-ray, arm/leg	0.00	5.16	0.33	5.49	XXX	N
75803	A	A	Lymph vessel x-ray, arms/legs	1.17	5.67	0.41	7.25	XXX	N
75803	26	A	Lymph vessel x-ray, arms/legs	1.17	0.51	0.08	1.76	XXX	N
75803	TC	A	Lymph vessel x-ray, arms/legs	0.00	5.16	0.33	5.49	XXX	N
75805	A	A	Lymph vessel x-ray, trunk	0.81	6.18	0.42	7.41	XXX	N
75805	26	A	Lymph vessel x-ray, trunk	0.81	0.37	0.05	1.23	XXX	N
75805	TC	A	Lymph vessel x-ray, trunk	0.00	5.81	0.37	6.18	XXX	N
75807	A	A	Lymph vessel x-ray, trunk	1.17	6.32	0.45	7.94	XXX	N
75807	26	A	Lymph vessel x-ray, trunk	1.17	0.51	0.08	1.76	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
75807	TC	A	Lymph vessel x-ray, trunk	0.00	5.81	0.37	6.18	XXX	N
75809	A	A	Nonvascular shunt, x-ray	0.47	0.94	0.08	1.49	XXX	N
75809	26	A	Nonvascular shunt, x-ray	0.47	0.19	0.03	0.69	XXX	N
75809	TC	A	Nonvascular shunt, x-ray	0.00	0.75	0.05	0.80	XXX	N
75810	A	A	Vein x-ray, spleen/liver	1.14	12.51	0.83	14.48	XXX	N
75810	26	A	Vein x-ray, spleen/liver	1.14	0.50	0.08	1.72	XXX	N
75810	TC	A	Vein x-ray, spleen/liver	0.00	12.01	0.75	12.76	XXX	N
75820	A	A	Vein x-ray, arm/leg	0.70	1.22	0.11	2.03	XXX	N
75820	26	A	Vein x-ray, arm/leg	0.70	0.32	0.05	1.07	XXX	N
75820	TC	A	Vein x-ray, arm/leg	0.00	0.90	0.06	0.96	XXX	N
75822	A	A	Vein x-ray, arms/legs	1.08	1.88	0.16	3.10	XXX	N
75822	26	A	Vein x-ray, arms/legs	1.08	0.47	0.07	1.60	XXX	N
75822	TC	A	Vein x-ray, arms/legs	0.00	1.41	0.09	1.50	XXX	N
75825	A	A	Vein x-ray, trunk	1.14	12.51	0.83	14.48	XXX	N
75825	26	A	Vein x-ray, trunk	1.14	0.50	0.08	1.72	XXX	N
75825	TC	A	Vein x-ray, trunk	0.00	12.01	0.75	12.76	XXX	N
75827	A	A	Vein x-ray, chest	1.14	12.51	0.83	14.48	XXX	N
75827	26	A	Vein x-ray, chest	1.14	0.50	0.08	1.72	XXX	N
75827	TC	A	Vein x-ray, chest	0.00	12.01	0.75	12.76	XXX	N
75831	A	A	Vein x-ray, kidney	1.14	12.51	0.83	14.48	XXX	N
75831	26	A	Vein x-ray, kidney	1.14	0.50	0.08	1.72	XXX	N
75831	TC	A	Vein x-ray, kidney	0.00	12.01	0.75	12.76	XXX	N
75833	A	A	Vein x-ray, kidneys	1.49	12.67	0.85	15.01	XXX	N
75833	26	A	Vein x-ray, kidneys	1.49	0.66	0.10	2.25	XXX	N
75833	TC	A	Vein x-ray, kidneys	0.00	12.01	0.75	12.76	XXX	N
75840	A	A	Vein x-ray, adrenal gland	1.14	12.51	0.83	14.48	XXX	N
75840	26	A	Vein x-ray, adrenal gland	1.14	0.50	0.08	1.72	XXX	N
75840	TC	A	Vein x-ray, adrenal gland	0.00	12.01	0.75	12.76	XXX	N
75842	A	A	Vein x-ray, adrenal glands	1.49	12.67	0.85	15.01	XXX	N
75842	26	A	Vein x-ray, adrenal glands	1.49	0.66	0.10	2.25	XXX	N
75842	TC	A	Vein x-ray, adrenal glands	0.00	12.01	0.75	12.76	XXX	N
75880	A	A	Vein x-ray, neck	1.14	12.51	0.83	14.48	XXX	N
75880	26	A	Vein x-ray, neck	1.14	0.50	0.08	1.72	XXX	N
75880	TC	A	Vein x-ray, neck	0.00	12.01	0.75	12.76	XXX	N
75870	A	A	Vein x-ray, skull	1.14	12.51	0.83	14.48	XXX	N
75870	26	A	Vein x-ray, skull	1.14	0.50	0.08	1.72	XXX	N
75870	TC	A	Vein x-ray, skull	0.00	12.01	0.75	12.76	XXX	N
75872	A	A	Vein x-ray, skull	1.14	12.51	0.83	14.48	XXX	N
75872	26	A	Vein x-ray, skull	1.14	0.50	0.08	1.72	XXX	N
75872	TC	A	Vein x-ray, skull	0.00	12.01	0.75	12.76	XXX	N
75880	A	A	Vein x-ray, eye socket	0.70	1.22	0.11	2.03	XXX	N
75880	26	A	Vein x-ray, eye socket	0.70	0.32	0.05	1.07	XXX	N
75880	TC	A	Vein x-ray, eye socket	0.00	0.90	0.06	0.96	XXX	N
75885	A	A	Vein x-ray, liver	1.44	12.65	0.85	14.94	XXX	N
75885	26	A	Vein x-ray, liver	1.44	0.64	0.10	2.18	XXX	N
75885	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75887	A	A	Vein x-ray, liver	1.44	12.65	0.85	14.94	XXX	N
75887	26	A	Vein x-ray, liver	1.44	0.64	0.10	2.18	XXX	N
75887	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75889	A	A	Vein x-ray, liver	1.14	12.51	0.83	14.48	XXX	N
75889	26	A	Vein x-ray, liver	1.14	0.50	0.08	1.72	XXX	N
75889	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75891	A	A	Vein x-ray, liver	1.14	12.51	0.83	14.48	XXX	N
75891	26	A	Vein x-ray, liver	1.14	0.50	0.08	1.72	XXX	N
75891	TC	A	Vein x-ray, liver	0.00	12.01	0.75	12.76	XXX	N
75893	A	A	Venous sampling by catheter	0.54	12.26	0.79	13.59	XXX	N
75893	26	A	Venous sampling by catheter	0.54	0.25	0.04	0.83	XXX	N
75893	TC	A	Venous sampling by catheter	0.00	12.01	0.75	12.76	XXX	N
75894	A	A	X-rays, transcatheter therapy	1.31	23.58	1.53	26.42	XXX	N
75894	26	A	X-rays, transcatheter therapy	1.31	0.58	0.09	1.98	XXX	N
75894	TC	A	X-rays, transcatheter therapy	0.00	23.00	1.44	24.44	XXX	N
75896	A	A	X-rays, transcatheter therapy	1.31	20.58	1.34	23.23	XXX	N
75896	26	A	X-rays, transcatheter therapy	1.31	0.58	0.09	1.98	XXX	N
75896	TC	A	X-rays, transcatheter therapy	0.00	20.00	1.25	21.25	XXX	N
75898	A	A	Follow-up angiogram	1.65	1.74	0.18	3.57	XXX	N
75898	26	A	Follow-up angiogram	1.65	0.74	0.11	2.50	XXX	N
75898	TC	A	Follow-up angiogram	0.00	1.00	0.07	1.07	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
75900		A	Arterial catheter exchange	0.49	20.22	1.29	22.00	XXX	N
75900	26	A	Arterial catheter exchange	0.49	0.23	0.93	0.75	XXX	N
75900	TC	A	Arterial catheter exchange	0.00	19.99	1.26	21.25	XXX	N
75940		A	X-ray placement, vein filter	0.54	12.26	0.79	13.59	XXX	N
75940	26	A	X-ray placement, vein filter	0.54	0.25	0.94	0.83	XXX	N
75940	TC	A	X-ray placement, vein filter	0.00	12.01	0.75	12.76	XXX	N
75945		A	Intravascular us	0.29	4.57	0.31	5.17	XXX	N
75945	26	A	Intravascular us	0.29	0.22	0.93	0.54	XXX	N
75945	TC	A	Intravascular us	0.00	4.35	0.28	4.63	XXX	N
75946		A	Intravascular us	0.29	2.40	0.17	2.86	XXX	N
75946	26	A	Intravascular us	0.29	0.22	0.93	0.54	XXX	N
75946	TC	A	Intravascular us	0.00	2.18	0.14	2.32	XXX	N
75950		A	Transcatheter intro, stent	0.82	14.57	0.94	16.33	XXX	N
75950	26	A	Transcatheter intro, stent	0.82	0.37	0.96	1.29	XXX	N
75950	TC	A	Transcatheter intro, stent	0.00	14.20	0.88	15.08	XXX	N
75961		A	Retrieval, broken catheter	4.25	11.91	0.90	17.06	XXX	N
75961	26	A	Retrieval, broken catheter	4.25	1.90	0.28	6.43	XXX	N
75961	TC	A	Retrieval, broken catheter	0.00	10.01	0.62	10.63	XXX	N
75962		A	Repair arterial blockage	0.54	15.25	0.98	16.77	XXX	N
75962	26	A	Repair arterial blockage	0.54	0.25	0.94	0.83	XXX	N
75962	TC	A	Repair arterial blockage	0.00	15.00	0.94	15.94	XXX	N
75964		A	Repair artery blockage, each	0.36	8.16	0.82	9.04	XXX	N
75964	26	A	Repair artery blockage, each	0.36	0.16	0.82	0.54	XXX	N
75964	TC	A	Repair artery blockage, each	0.00	8.00	0.50	8.50	XXX	N
75966		A	Repair arterial blockage	1.31	15.58	1.83	17.92	XXX	N
75966	26	A	Repair arterial blockage	1.31	0.58	0.99	1.98	XXX	N
75966	TC	A	Repair arterial blockage	0.00	15.00	0.94	15.94	XXX	N
75968		A	Repair artery blockage, each	0.36	8.16	0.82	9.04	XXX	N
75968	26	A	Repair artery blockage, each	0.36	0.16	0.82	0.54	XXX	N
75968	TC	A	Repair artery blockage, each	0.00	8.00	0.50	8.50	XXX	N
75970		A	Vascular biopsy	0.83	11.36	0.75	12.96	XXX	N
75970	26	A	Vascular biopsy	0.83	0.38	0.96	1.27	XXX	N
75970	TC	A	Vascular biopsy	0.00	11.00	0.99	11.99	XXX	N
75978		A	Repair venous blockage	0.54	15.48	0.98	17.00	XXX	N
75978	26	A	Repair venous blockage	0.54	0.48	0.94	1.06	XXX	N
75978	TC	A	Repair venous blockage	0.00	15.00	0.94	15.94	XXX	N
75980		A	Contrast xray exam bile duct	1.44	5.80	0.43	7.67	XXX	N
75980	26	A	Contrast xray exam bile duct	1.44	0.64	0.10	2.18	XXX	N
75980	TC	A	Contrast xray exam bile duct	0.00	5.16	0.33	5.49	XXX	N
75982		A	Contrast xray exam bile duct	1.44	6.45	0.47	8.36	XXX	N
75982	26	A	Contrast xray exam bile duct	1.44	0.64	0.10	2.18	XXX	N
75982	TC	A	Contrast xray exam bile duct	0.00	5.81	0.37	6.18	XXX	N
75984		A	Xray control catheter change	0.72	2.19	0.17	3.08	XXX	N
75984	26	A	Xray control catheter change	0.72	0.33	0.05	1.10	XXX	N
75984	TC	A	Xray control catheter change	0.00	1.86	0.12	1.98	XXX	N
75989		A	Abscess drainage under x-ray	1.19	3.52	0.27	4.98	XXX	N
75989	26	A	Abscess drainage under x-ray	1.19	0.82	0.08	1.79	XXX	N
75989	TC	A	Abscess drainage under x-ray	0.00	3.00	0.19	3.19	XXX	N
75992		A	Atherectomy, x-ray exam	0.54	15.25	0.98	16.77	XXX	N
75992	26	A	Atherectomy, x-ray exam	0.54	0.25	0.94	0.83	XXX	N
75992	TC	A	Atherectomy, x-ray exam	0.00	15.00	0.94	15.94	XXX	N
75993		A	Atherectomy, x-ray exam	0.36	8.16	0.82	9.04	XXX	N
75993	26	A	Atherectomy, x-ray exam	0.36	0.16	0.82	0.54	XXX	N
75993	TC	A	Atherectomy, x-ray exam	0.00	8.00	0.50	8.50	XXX	N
75994		A	Atherectomy, x-ray exam	1.31	15.58	1.83	17.92	XXX	N
75994	26	A	Atherectomy, x-ray exam	1.31	0.58	0.99	1.98	XXX	N
75994	TC	A	Atherectomy, x-ray exam	0.00	15.00	0.94	15.94	XXX	N
75995		A	Atherectomy, x-ray exam	1.31	15.58	1.83	17.92	XXX	N
75995	26	A	Atherectomy, x-ray exam	1.31	0.58	0.99	1.98	XXX	N
75995	TC	A	Atherectomy, x-ray exam	0.00	15.00	0.94	15.94	XXX	N
75996		A	Atherectomy, x-ray exam	0.36	8.16	0.82	9.04	XXX	N
75996	26	A	Atherectomy, x-ray exam	0.36	0.16	0.82	0.54	XXX	N
75996	TC	A	Atherectomy, x-ray exam	0.00	8.00	0.50	8.50	XXX	N
76000		A	Fluoroscope examination	0.17	1.31	0.09	1.57	XXX	N
76000	26	A	Fluoroscope examination	0.17	0.07	0.01	0.25	XXX	N
76000	TC	A	Fluoroscope examination	0.00	1.24	0.08	1.32	XXX	N
76001		A	Fluoroscope exam, extensive	0.67	2.81	0.22	3.70	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
76001	26	A	Fluoroscope exam, extensive	0.67	0.31	0.05	1.03	XXX	N
76001	TC	A	Fluoroscope exam, extensive	0.00	2.50	0.17	2.67	XXX	N
76003		A	Needle localization by x-ray	0.54	1.49	0.12	2.15	XXX	N
76003	26	A	Needle localization by x-ray	0.54	0.25	0.04	0.83	XXX	N
76003	TC	A	Needle localization by x-ray	0.00	1.24	0.08	1.32	XXX	N
76010		A	X-ray, nose to rectum	0.18	0.58	0.04	0.80	XXX	N
76010	26	A	X-ray, nose to rectum	0.18	0.06	0.01	0.27	XXX	N
76010	TC	A	X-ray, nose to rectum	0.00	0.50	0.03	0.53	XXX	N
76020		A	X-rays for bone age	0.19	0.59	0.04	0.82	XXX	N
76020	26	A	X-rays for bone age	0.19	0.09	0.01	0.29	XXX	N
76020	TC	A	X-rays for bone age	0.00	0.50	0.03	0.53	XXX	N
76040		A	X-rays, bone evaluation	0.27	0.88	0.07	1.22	XXX	N
76040	26	A	X-rays, bone evaluation	0.27	0.13	0.02	0.42	XXX	N
76040	TC	A	X-rays, bone evaluation	0.00	0.75	0.05	0.80	XXX	N
76061		A	X-rays, bone survey	0.45	1.15	0.09	1.69	XXX	N
76061	26	A	X-rays, bone survey	0.45	0.20	0.03	0.68	XXX	N
76061	TC	A	X-rays, bone survey	0.00	0.95	0.06	1.01	XXX	N
76082		A	X-rays, bone survey	0.54	1.62	0.13	2.29	XXX	N
76082	26	A	X-rays, bone survey	0.54	0.25	0.04	0.83	XXX	N
76082	TC	A	X-rays, bone survey	0.00	1.37	0.08	1.46	XXX	N
76085		A	X-rays, bone evaluation	0.28	0.83	0.07	1.18	XXX	N
76085	26	A	X-rays, bone evaluation	0.28	0.13	0.02	0.43	XXX	N
76085	TC	A	X-rays, bone evaluation	0.00	0.70	0.05	0.75	XXX	N
76086		A	Joint(s) survey, single film	0.31	1.20	0.09	1.60	XXX	N
76086	26	A	Joint(s) survey, single film	0.31	0.14	0.02	0.47	XXX	N
76086	TC	A	Joint(s) survey, single film	0.00	1.06	0.07	1.13	XXX	N
76070		G	CT scan, bone density study	+0.25	2.93	0.20	3.38	XXX	N
76070	26	G	CT scan, bone density study	+0.25	0.12	0.02	0.39	XXX	N
76070	TC	G	CT scan, bone density study	+0.00	2.81	0.18	2.99	XXX	N
76075		G	Dual energy x-ray study	+0.30	3.07	0.21	3.58	XXX	N
76075	26	G	Dual energy x-ray study	+0.30	0.12	0.02	0.44	XXX	N
76075	TC	G	Dual energy x-ray study	+0.00	2.95	0.19	3.14	XXX	N
76080		A	X-ray exam of fistula	0.54	1.25	0.11	1.90	XXX	N
76080	26	A	X-ray exam of fistula	0.54	0.25	0.04	0.83	XXX	N
76080	TC	A	X-ray exam of fistula	0.00	1.00	0.07	1.07	XXX	N
76086		A	X-ray of mammary duct	0.36	2.67	0.19	3.22	XXX	N
76086	26	A	X-ray of mammary duct	0.36	0.17	0.02	0.55	XXX	N
76086	TC	A	X-ray of mammary duct	0.00	2.50	0.17	2.67	XXX	N
76088		A	X-ray of mammary ducts	0.45	3.89	0.25	4.39	XXX	N
76088	26	A	X-ray of mammary ducts	0.45	0.20	0.03	0.68	XXX	N
76088	TC	A	X-ray of mammary ducts	0.00	3.49	0.22	3.71	XXX	N
76090		A	Mammogram, one breast	0.58	1.12	0.09	1.79	XXX	N
76090	26	A	Mammogram, one breast	0.58	0.12	0.02	0.72	XXX	N
76090	TC	A	Mammogram, one breast	0.00	1.00	0.07	1.07	XXX	N
76091		A	Mammogram, both breasts	0.69	1.42	0.11	2.22	XXX	N
76091	26	A	Mammogram, both breasts	0.69	0.18	0.03	0.90	XXX	N
76091	TC	A	Mammogram, both breasts	0.00	1.24	0.08	1.32	XXX	N
76092		X	Mammogram, screening	0.00	0.00	0.00	0.00	XXX	D
76093		A	Magnetic image, breast	1.63	17.52	1.16	20.31	XXX	N
76093	26	A	Magnetic image, breast	1.63	0.72	0.11	2.46	XXX	N
76093	TC	A	Magnetic image, breast	0.00	16.80	1.05	17.85	XXX	N
76094		A	Magnetic image, both breasts	1.63	23.51	1.53	26.67	XXX	N
76094	26	A	Magnetic image, both breasts	1.63	0.72	0.11	2.46	XXX	N
76094	TC	A	Magnetic image, both breasts	0.00	22.79	1.42	24.21	XXX	N
76095		A	Stereotactic breast biopsy	1.59	7.54	0.54	9.67	XXX	N
76095	26	A	Stereotactic breast biopsy	1.59	0.71	0.11	2.41	XXX	N
76095	TC	A	Stereotactic breast biopsy	0.00	5.83	0.43	6.26	XXX	N
76096		A	X-ray of needle wire, breast	0.56	1.50	0.12	2.18	XXX	N
76096	26	A	X-ray of needle wire, breast	0.56	0.26	0.04	0.86	XXX	N
76096	TC	A	X-ray of needle wire, breast	0.00	1.24	0.08	1.32	XXX	N
76098		A	X-ray exam, breast specimen	0.16	0.47	0.04	0.67	XXX	N
76098	26	A	X-ray exam, breast specimen	0.16	0.07	0.01	0.24	XXX	N
76098	TC	A	X-ray exam, breast specimen	0.00	0.40	0.03	0.43	XXX	N
76100		A	X-ray exam of body section	0.58	1.46	0.12	2.16	XXX	N
76100	26	A	X-ray exam of body section	0.58	0.27	0.04	0.89	XXX	N
76100	TC	A	X-ray exam of body section	0.00	1.19	0.08	1.27	XXX	N
76101		A	Complex body section x-ray	0.58	1.62	0.13	2.33	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
76101	26	A	Complex body section x-ray	0.58	0.27	0.04	0.89	XXX	N
76101	TC	A	Complex body section x-ray	0.00	1.35	0.09	1.44	XXX	N
76102		A	Complex body section x-rays	0.58	1.92	0.15	2.65	XXX	N
76102	26	A	Complex body section x-rays	0.58	0.27	0.04	0.89	XXX	N
76102	TC	A	Complex body section x-rays	0.00	1.85	0.11	1.96	XXX	N
76120		A	Cinematic x-rays	0.38	1.17	0.10	1.65	XXX	N
76120	26	A	Cinematic x-rays	0.38	0.17	0.03	0.58	XXX	N
76120	TC	A	Cinematic x-rays	0.00	1.00	0.07	1.07	XXX	N
76125		A	Cinematic x-rays	0.27	0.87	0.07	1.21	XXX	N
76125	26	A	Cinematic x-rays	0.27	0.12	0.02	0.41	XXX	N
76125	TC	A	Cinematic x-rays	0.00	0.75	0.05	0.80	XXX	N
76140		G	X-ray consultation	0.00	0.00	0.00	0.00	XXX	0
76150		A	X-ray exam, dry process	0.00	0.40	0.03	0.43	XXX	N
76350		C	Special x-ray contrast study	0.00	0.00	0.00	0.00	XXX	N
76355		A	CAT scan for localization	1.21	8.40	0.57	10.18	XXX	N
76355	26	A	CAT scan for localization	1.21	0.53	0.08	1.82	XXX	N
76355	TC	A	CAT scan for localization	0.00	7.87	0.49	8.36	XXX	N
76360		A	CAT scan for needle biopsy	1.16	8.37	0.57	10.10	XXX	N
76360	26	A	CAT scan for needle biopsy	1.16	0.50	0.08	1.74	XXX	N
76360	TC	A	CAT scan for needle biopsy	0.00	7.87	0.49	8.36	XXX	N
76365		A	CAT scan for cyst aspiration	1.16	8.37	0.57	10.10	XXX	N
76365	26	A	CAT scan for cyst aspiration	1.16	0.50	0.08	1.74	XXX	N
76365	TC	A	CAT scan for cyst aspiration	0.00	7.87	0.49	8.36	XXX	N
76370		A	CAT scan for therapy guide	0.85	3.19	0.24	4.28	XXX	N
76370	26	A	CAT scan for therapy guide	0.85	0.38	0.06	1.29	XXX	N
76370	TC	A	CAT scan for therapy guide	0.00	2.81	0.18	2.99	XXX	N
76375		A	CAT scans, other planes	0.16	3.44	0.22	3.82	XXX	N
76375	26	A	CAT scans, other planes	0.16	0.07	0.01	0.24	XXX	N
76375	TC	A	CAT scans, other planes	0.00	3.37	0.21	3.58	XXX	N
76380		A	CAT scan follow-up study	0.98	3.78	0.28	5.04	XXX	N
76380	26	A	CAT scan follow-up study	0.98	0.44	0.07	1.49	XXX	N
76380	TC	A	CAT scan follow-up study	0.00	3.34	0.21	3.55	XXX	N
76400		A	Magnetic image, bone marrow	1.60	11.40	0.78	13.78	XXX	N
76400	26	A	Magnetic image, bone marrow	1.60	0.72	0.11	2.43	XXX	N
76400	TC	A	Magnetic image, bone marrow	0.00	10.68	0.67	11.35	XXX	N
76499		C	Radiographic procedure	0.00	0.00	0.00	0.00	XXX	N
76499	26	C	Radiographic procedure	0.00	0.00	0.00	0.00	XXX	N
76499	TC	C	Radiographic procedure	0.00	0.00	0.00	0.00	XXX	N
76506		A	Echo exam of head	0.83	1.64	0.13	2.40	XXX	N
76506	26	A	Echo exam of head	0.83	0.29	0.04	0.96	XXX	N
76506	TC	A	Echo exam of head	0.00	1.35	0.09	1.44	XXX	N
76511		A	Echo exam of eye	0.94	1.44	0.12	2.50	XXX	N
76511	26	A	Echo exam of eye	0.94	0.25	0.04	1.23	XXX	N
76511	TC	A	Echo exam of eye	0.00	1.19	0.08	1.27	XXX	N
76512		A	Echo exam of eye	0.65	1.75	0.15	2.55	XXX	N
76512	26	A	Echo exam of eye	0.65	0.30	0.05	1.01	XXX	N
76512	TC	A	Echo exam of eye	0.00	1.45	0.10	1.55	XXX	N
76513		A	Echo exam of eye, water bath	0.85	1.75	0.15	2.55	XXX	N
76513	26	A	Echo exam of eye, water bath	0.65	0.30	0.05	1.01	XXX	N
76513	TC	A	Echo exam of eye, water bath	0.00	1.45	0.10	1.55	XXX	N
76516		A	Echo exam of eye	0.54	1.44	0.12	2.10	XXX	N
76516	26	A	Echo exam of eye	0.54	0.25	0.04	0.83	XXX	N
76516	TC	A	Echo exam of eye	0.00	1.19	0.08	1.27	XXX	N
76519		A	Echo exam of eye	0.54	1.44	0.12	2.10	XXX	N
76519	26	A	Echo exam of eye	0.54	0.25	0.04	0.83	XXX	N
76519	TC	A	Echo exam of eye	0.00	1.19	0.08	1.27	XXX	N
76529		A	Echo exam of eye	0.57	1.55	0.13	2.25	XXX	N
76529	26	A	Echo exam of eye	0.57	0.25	0.04	0.87	XXX	N
76529	TC	A	Echo exam of eye	0.00	1.30	0.09	1.39	XXX	N
76536		A	Echo exam of head and neck	0.56	1.61	0.13	2.30	XXX	N
76536	26	A	Echo exam of head and neck	0.56	0.26	0.04	0.86	XXX	N
76536	TC	A	Echo exam of head and neck	0.00	1.35	0.09	1.44	XXX	N
76604		A	Echo exam of chest	0.55	1.50	0.12	2.17	XXX	N
76604	26	A	Echo exam of chest	0.55	0.26	0.04	0.85	XXX	N
76604	TC	A	Echo exam of chest	0.00	1.24	0.08	1.32	XXX	N
76645		A	Echo exam of breast	0.54	1.25	0.11	1.90	XXX	N
76645	26	A	Echo exam of breast	0.54	0.25	0.04	0.83	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
76645	TC	A	Echo exam of breast	0.00	1.00	0.07	1.07	XXX	N
76700		A	Echo exam of abdomen	0.81	2.25	0.17	3.23	XXX	N
76700	26	A	Echo exam of abdomen	0.81	0.37	0.05	1.23	XXX	N
76700	TC	A	Echo exam of abdomen	0.00	1.88	0.12	2.00	XXX	N
76705		A	Echo exam of abdomen	0.59	1.62	0.13	2.34	XXX	N
76705	26	A	Echo exam of abdomen	0.59	0.27	0.04	0.90	XXX	N
76705	TC	A	Echo exam of abdomen	0.00	1.35	0.09	1.44	XXX	N
76770		A	Echo exam abdomen back wall	0.74	2.22	0.17	3.13	XXX	N
76770	26	A	Echo exam abdomen back wall	0.74	0.34	0.05	1.13	XXX	N
76770	TC	A	Echo exam abdomen back wall	0.00	1.88	0.12	2.00	XXX	N
76775		A	Echo exam abdomen back wall	0.58	1.62	0.13	2.33	XXX	N
76775	26	A	Echo exam abdomen back wall	0.58	0.27	0.04	0.89	XXX	N
76775	TC	A	Echo exam abdomen back wall	0.00	1.35	0.09	1.44	XXX	N
76778		A	Echo exam kidney transplant	0.74	2.22	0.17	3.13	XXX	N
76778	26	A	Echo exam kidney transplant	0.74	0.34	0.05	1.13	XXX	N
76778	TC	A	Echo exam kidney transplant	0.00	1.88	0.12	2.00	XXX	N
76800		A	Echo exam spinal canal	1.13	1.85	0.17	3.15	XXX	N
76800	26	A	Echo exam spinal canal	1.13	0.50	0.08	1.71	XXX	N
76800	TC	A	Echo exam spinal canal	0.00	1.35	0.09	1.44	XXX	N
76805		A	Echo exam of pregnant uterus	0.99	2.45	0.20	3.64	XXX	N
76805	26	A	Echo exam of pregnant uterus	0.99	0.45	0.07	1.51	XXX	N
76805	TC	A	Echo exam of pregnant uterus	0.00	2.00	0.13	2.13	XXX	N
76810		A	Echo exam of pregnant uterus	1.97	4.88	0.38	7.23	XXX	N
76810	26	A	Echo exam of pregnant uterus	1.97	0.88	0.13	2.98	XXX	N
76810	TC	A	Echo exam of pregnant uterus	0.00	4.00	0.25	4.25	XXX	N
76815		A	Echo exam of pregnant uterus	0.65	1.65	0.13	2.43	XXX	N
76815	26	A	Echo exam of pregnant uterus	0.65	0.30	0.04	0.99	XXX	N
76815	TC	A	Echo exam of pregnant uterus	0.00	1.35	0.09	1.44	XXX	N
76816		A	Echo exam followup or repeat	0.57	1.32	0.11	2.00	XXX	N
76816	26	A	Echo exam followup or repeat	0.57	0.26	0.04	0.87	XXX	N
76816	TC	A	Echo exam followup or repeat	0.00	1.06	0.07	1.13	XXX	N
76818		A	Fetal biophysical profile	0.77	1.89	0.15	2.81	XXX	N
76818	26	A	Fetal biophysical profile	0.77	0.35	0.05	1.17	XXX	N
76818	TC	A	Fetal biophysical profile	0.00	1.54	0.10	1.64	XXX	N
76825		A	Echo exam of fetal heart	1.67	2.23	0.17	4.07	XXX	N
76825	26	A	Echo exam of fetal heart	1.67	0.35	0.05	2.07	XXX	N
76825	TC	A	Echo exam of fetal heart	0.00	1.88	0.12	2.00	XXX	N
76826		A	Echo exam of fetal heart	0.83	1.35	0.10	2.28	XXX	N
76826	26	A	Echo exam of fetal heart	0.83	0.68	0.05	1.56	XXX	N
76826	TC	A	Echo exam of fetal heart	0.00	0.67	0.05	0.72	XXX	N
76827		A	Echo exam of fetal heart	0.58	2.33	0.18	3.09	XXX	N
76827	26	A	Echo exam of fetal heart	0.58	0.69	0.05	1.32	XXX	N
76827	TC	A	Echo exam of fetal heart	0.00	1.64	0.13	1.77	XXX	N
76828		A	Echo exam of fetal heart	0.56	1.34	0.11	2.01	XXX	N
76828	26	A	Echo exam of fetal heart	0.56	0.28	0.02	0.86	XXX	N
76828	TC	A	Echo exam of fetal heart	0.00	1.06	0.09	1.15	XXX	N
76830		A	Echo exam, transvaginal	0.69	1.77	0.15	2.61	XXX	N
76830	26	A	Echo exam, transvaginal	0.69	0.32	0.05	1.06	XXX	N
76830	TC	A	Echo exam, transvaginal	0.00	1.45	0.10	1.55	XXX	N
76856		A	Echo exam of pelvis	0.69	1.77	0.15	2.61	XXX	N
76856	26	A	Echo exam of pelvis	0.69	0.32	0.05	1.06	XXX	N
76856	TC	A	Echo exam of pelvis	0.00	1.45	0.10	1.55	XXX	N
76857		A	Echo exam of pelvis	0.38	1.17	0.10	1.65	XXX	N
76857	26	A	Echo exam of pelvis	0.38	0.17	0.03	0.58	XXX	N
76857	TC	A	Echo exam of pelvis	0.00	1.00	0.07	1.07	XXX	N
76870		A	Echo exam of scrotum	0.64	1.74	0.14	2.52	XXX	N
76870	26	A	Echo exam of scrotum	0.64	0.29	0.04	0.97	XXX	N
76870	TC	A	Echo exam of scrotum	0.00	1.45	0.10	1.55	XXX	N
76872		A	Echo exam, transrectal	0.69	1.77	0.15	2.61	XXX	N
76872	26	A	Echo exam, transrectal	0.69	0.32	0.05	1.06	XXX	N
76872	TC	A	Echo exam, transrectal	0.00	1.45	0.10	1.55	XXX	N
76880		A	Echo exam of extremity	0.59	1.62	0.13	2.34	XXX	N
76880	26	A	Echo exam of extremity	0.59	0.27	0.04	0.90	XXX	N
76880	TC	A	Echo exam of extremity	0.00	1.35	0.09	1.44	XXX	N
76930		A	Echo guide for heart sac tap	0.67	1.76	0.15	2.58	XXX	N
76930	26	A	Echo guide for heart sac tap	0.67	0.31	0.05	1.03	XXX	N
76930	TC	A	Echo guide for heart sac tap	0.00	1.45	0.10	1.55	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
76932		A	Echo guide for heart biopsy	0.67	1.76	0.15	2.58	XXX	N
76932	26	A	Echo guide for heart biopsy	0.67	0.31	0.05	1.03	XXX	N
76932	TC	A	Echo guide for heart biopsy	0.00	1.45	0.10	1.55	XXX	N
76934		A	Echo guide for chest tap	0.67	1.76	0.15	2.58	XXX	N
76934	26	A	Echo guide for chest tap	0.67	0.31	0.05	1.03	XXX	N
76934	TC	A	Echo guide for chest tap	0.00	1.45	0.10	1.55	XXX	N
76936		A	Echo guide for artery repair	1.99	7.24	0.48	9.71	XXX	N
76936	26	A	Echo guide for artery repair	1.99	1.24	0.10	3.33	XXX	N
76936	TC	A	Echo guide for artery repair	0.00	6.00	0.38	6.38	XXX	N
76938		A	Echo exam for drainage	0.67	1.76	0.15	2.58	XXX	N
76938	26	A	Echo exam for drainage	0.67	0.31	0.05	1.03	XXX	N
76938	TC	A	Echo exam for drainage	0.00	1.45	0.10	1.55	XXX	N
76941		A	Echo guide for transfusion	1.34	2.07	0.19	3.60	XXX	N
76941	26	A	Echo guide for transfusion	1.34	0.61	0.10	2.05	XXX	N
76941	TC	A	Echo guide for transfusion	0.00	1.46	0.09	1.55	XXX	N
76942		A	Echo guide for biopsy	0.67	1.76	0.15	2.58	XXX	N
76942	26	A	Echo guide for biopsy	0.67	0.31	0.05	1.03	XXX	N
76942	TC	A	Echo guide for biopsy	0.00	1.45	0.10	1.55	XXX	N
76945		A	Echo guide, villus sampling	0.67	2.07	0.19	2.93	XXX	N
76945	26	A	Echo guide, villus sampling	0.67	0.61	0.10	1.38	XXX	N
76945	TC	A	Echo guide, villus sampling	0.00	1.46	0.09	1.55	XXX	N
76946		A	Echo guide for amniocentesis	0.38	1.62	0.13	2.13	XXX	N
76946	26	A	Echo guide for amniocentesis	0.38	0.17	0.03	0.58	XXX	N
76946	TC	A	Echo guide for amniocentesis	0.00	1.45	0.10	1.55	XXX	N
76948		A	Echo guide, ova aspiration	0.38	1.62	0.13	2.13	XXX	N
76948	26	A	Echo guide, ova aspiration	0.38	0.17	0.03	0.58	XXX	N
76948	TC	A	Echo guide, ova aspiration	0.00	1.45	0.10	1.55	XXX	N
76950		A	Echo guidance radiotherapy	0.58	1.51	0.12	2.21	XXX	N
76950	26	A	Echo guidance radiotherapy	0.58	0.27	0.04	0.89	XXX	N
76950	TC	A	Echo guidance radiotherapy	0.00	1.24	0.08	1.32	XXX	N
76960		A	Echo guidance radiotherapy	0.58	1.51	0.12	2.21	XXX	N
76960	26	A	Echo guidance radiotherapy	0.58	0.27	0.04	0.89	XXX	N
76960	TC	A	Echo guidance radiotherapy	0.00	1.24	0.08	1.32	XXX	N
76965		A	Echo guidance radiotherapy	1.34	7.38	0.52	9.24	XXX	N
76965	26	A	Echo guidance radiotherapy	1.34	2.07	0.19	3.60	XXX	N
76965	TC	A	Echo guidance radiotherapy	0.00	5.31	0.33	5.64	XXX	N
76970		A	Ultrasound exam follow-up	0.40	1.18	0.10	1.68	XXX	N
76970	26	A	Ultrasound exam follow-up	0.40	0.18	0.03	0.61	XXX	N
76970	TC	A	Ultrasound exam follow-up	0.00	1.00	0.07	1.07	XXX	N
76975		A	GI endoscopic ultrasound	0.81	1.79	0.15	2.75	XXX	N
76975	26	A	GI endoscopic ultrasound	0.81	0.34	0.05	1.20	XXX	N
76975	TC	A	GI endoscopic ultrasound	0.00	1.45	0.10	1.55	XXX	N
76986		A	Echo exam at surgery	1.20	3.03	0.25	4.48	XXX	N
76986	26	A	Echo exam at surgery	1.20	0.53	0.08	1.81	XXX	N
76986	TC	A	Echo exam at surgery	0.00	2.50	0.17	2.67	XXX	N
76999		C	Echo examination procedure	0.00	0.00	0.00	0.00	XXX	N
76999	26	C	Echo examination procedure	0.00	0.00	0.00	0.00	XXX	N
76999	TC	C	Echo examination procedure	0.00	0.00	0.00	0.00	XXX	N
77261		A	Radiation therapy planning	1.39	0.62	0.09	2.10	XXX	N
77262		A	Radiation therapy planning	2.11	0.94	0.14	3.19	XXX	N
77263		A	Radiation therapy planning	3.14	1.40	0.20	4.74	XXX	N
77280		A	Set radiation therapy field	0.70	3.63	0.26	4.59	XXX	N
77280	26	A	Set radiation therapy field	0.70	0.32	0.05	1.07	XXX	N
77280	TC	A	Set radiation therapy field	0.00	3.31	0.21	3.52	XXX	N
77285		A	Set radiation therapy field	1.05	5.77	0.41	7.23	XXX	N
77285	26	A	Set radiation therapy field	1.05	0.46	0.07	1.58	XXX	N
77285	TC	A	Set radiation therapy field	0.00	5.31	0.34	5.65	XXX	N
77290		A	Set radiation therapy field	1.56	6.90	0.50	8.96	XXX	N
77290	26	A	Set radiation therapy field	1.56	0.70	0.11	2.37	XXX	N
77290	TC	A	Set radiation therapy field	0.00	6.20	0.39	6.59	XXX	N
77295		A	Set radiation therapy field	4.57	28.68	1.93	35.18	XXX	N
77295	26	A	Set radiation therapy field	4.57	2.06	0.23	6.86	XXX	N
77295	TC	A	Set radiation therapy field	0.00	26.62	1.70	28.32	XXX	N
77299		C	Radiation therapy planning	0.00	0.00	0.00	0.00	XXX	N
77299	26	C	Radiation therapy planning	0.00	0.00	0.00	0.00	XXX	N
77299	TC	C	Radiation therapy planning	0.00	0.00	0.00	0.00	XXX	N
77300		A	Radiation therapy dose plan	0.62	1.56	0.12	2.30	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
77300	26	A	Radiation therapy dose plan	0.62	0.28	0.04	0.94	XXX	N
77300	TC	A	Radiation therapy dose plan	0.00	1.28	0.08	1.36	XXX	N
77305		A	Radiation therapy dose plan	0.70	2.09	0.17	2.96	XXX	N
77305	26	A	Radiation therapy dose plan	0.70	0.32	0.05	1.07	XXX	N
77305	TC	A	Radiation therapy dose plan	0.00	1.77	0.12	1.89	XXX	N
77310		A	Radiation therapy dose plan	1.05	2.68	0.22	3.95	XXX	N
77310	26	A	Radiation therapy dose plan	1.05	0.46	0.07	1.58	XXX	N
77310	TC	A	Radiation therapy dose plan	0.00	2.22	0.15	2.37	XXX	N
77315		A	Radiation therapy dose plan	1.56	3.23	0.28	5.07	XXX	N
77315	26	A	Radiation therapy dose plan	1.56	0.70	0.11	2.37	XXX	N
77315	TC	A	Radiation therapy dose plan	0.00	2.53	0.17	2.70	XXX	N
77321		A	Radiation therapy port plan	0.95	4.29	0.30	5.53	XXX	N
77321	26	A	Radiation therapy port plan	0.95	0.43	0.06	1.44	XXX	N
77321	TC	A	Radiation therapy port plan	0.00	3.85	0.24	4.09	XXX	N
77326		A	Radiation therapy dose plan	0.93	2.67	0.21	3.81	XXX	N
77326	26	A	Radiation therapy dose plan	0.93	0.42	0.06	1.41	XXX	N
77326	TC	A	Radiation therapy dose plan	0.00	2.25	0.15	2.40	XXX	N
77327		A	Radiation therapy dose plan	1.39	3.93	0.30	5.62	XXX	N
77327	26	A	Radiation therapy dose plan	1.39	0.62	0.09	2.10	XXX	N
77327	TC	A	Radiation therapy dose plan	0.00	3.31	0.21	3.52	XXX	N
77328		A	Radiation therapy dose plan	2.09	5.66	0.44	8.19	XXX	N
77328	26	A	Radiation therapy dose plan	2.09	0.83	0.14	3.16	XXX	N
77328	TC	A	Radiation therapy dose plan	0.00	4.73	0.30	5.03	XXX	N
77331		A	Special radiation dosimetry	0.87	0.87	0.09	1.83	XXX	N
77331	26	A	Special radiation dosimetry	0.87	0.39	0.06	1.32	XXX	N
77331	TC	A	Special radiation dosimetry	0.00	0.48	0.03	0.51	XXX	N
77332		A	Radiation treatment aid(s)	0.54	1.53	0.12	2.19	XXX	N
77332	26	A	Radiation treatment aid(s)	0.54	0.25	0.04	0.83	XXX	N
77332	TC	A	Radiation treatment aid(s)	0.00	1.28	0.08	1.36	XXX	N
77333		A	Radiation treatment aid(s)	0.84	2.19	0.18	3.21	XXX	N
77333	26	A	Radiation treatment aid(s)	0.84	0.38	0.06	1.28	XXX	N
77333	TC	A	Radiation treatment aid(s)	0.00	1.81	0.12	1.93	XXX	N
77334		A	Radiation treatment aid(s)	1.24	3.64	0.27	5.15	XXX	N
77334	26	A	Radiation treatment aid(s)	1.24	0.54	0.08	1.86	XXX	N
77334	TC	A	Radiation treatment aid(s)	0.00	3.10	0.19	3.29	XXX	N
77338		A	Radiation physics consult	0.00	2.84	0.18	3.02	XXX	N
77370		A	Radiation physics consult	0.00	3.33	0.21	3.54	XXX	N
77399		C	External radiation dosimetry	0.00	0.00	0.00	0.00	XXX	N
77399	26	C	External radiation dosimetry	0.00	0.00	0.00	0.00	XXX	N
77399	TC	C	External radiation dosimetry	0.00	0.00	0.00	0.00	XXX	N
77401		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77402		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77403		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77404		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77406		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77407		A	Radiation treatment delivery	0.00	1.69	0.11	1.80	XXX	N
77408		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77409		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77411		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77412		A	Radiation treatment delivery	0.00	1.99	0.13	2.12	XXX	N
77413		A	Radiation treatment delivery	0.00	2.22	0.15	2.37	XXX	N
77414		A	Radiation treatment delivery	0.00	2.22	0.15	2.37	XXX	N
77416		A	Radiation treatment delivery	0.00	2.22	0.15	2.37	XXX	N
77417		A	Radiology port film(s)	0.00	0.56	0.04	0.60	XXX	N
77419		A	Weekly radiation therapy	3.60	1.61	0.23	5.44	XXX	N
77420		A	Weekly radiation therapy	1.61	0.72	0.11	2.44	XXX	N
77425		A	Weekly radiation therapy	2.44	1.10	0.17	3.71	XXX	N
77430		A	Weekly radiation therapy	3.60	1.61	0.23	5.44	XXX	N
77431		A	Radiation therapy management	1.81	0.81	0.12	2.74	XXX	N
77432		A	Stereotactic radiation trmt	7.83	4.94	0.40	13.27	XXX	N
77470		A	Special radiation treatment	2.09	11.55	0.80	14.44	XXX	N
77470	26	A	Special radiation treatment	2.09	0.93	0.14	3.16	XXX	N
77470	TC	A	Special radiation treatment	0.00	10.62	0.66	11.28	XXX	N
77499		C	Radiation therapy management	0.00	0.00	0.00	0.00	XXX	N
77499	26	C	Radiation therapy management	0.00	0.00	0.00	0.00	XXX	N
77499	TC	C	Radiation therapy management	0.00	0.00	0.00	0.00	XXX	N
77600		A	Hyperthermia treatment	1.56	3.60	0.29	5.45	ZZZ	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
77600	26	A	Hyperthermia treatment	1.58	0.70	0.11	2.37	ZZZ	N
77600	TC	A	Hyperthermia treatment	0.00	2.80	0.18	3.08	ZZZ	N
77605		A	Hyperthermia treatment	2.09	4.80	0.39	7.28	ZZZ	N
77605	26	A	Hyperthermia treatment	2.09	0.93	0.14	3.16	ZZZ	N
77605	TC	A	Hyperthermia treatment	0.00	3.87	0.25	4.12	ZZZ	N
77610		A	Hyperthermia treatment	1.56	3.60	0.29	5.45	ZZZ	N
77610	26	A	Hyperthermia treatment	1.56	0.70	0.11	2.37	ZZZ	N
77610	TC	A	Hyperthermia treatment	0.00	2.90	0.18	3.08	ZZZ	N
77615		A	Hyperthermia treatment	2.09	4.80	0.39	7.28	ZZZ	N
77615	26	A	Hyperthermia treatment	2.09	0.93	0.14	3.16	ZZZ	N
77615	TC	A	Hyperthermia treatment	0.00	3.87	0.25	4.12	ZZZ	N
77620		A	Hyperthermia treatment	1.56	3.60	0.29	5.45	ZZZ	N
77620	26	A	Hyperthermia treatment	1.56	0.70	0.11	2.37	ZZZ	N
77620	TC	A	Hyperthermia treatment	0.00	2.90	0.18	3.08	ZZZ	N
77760		A	Intrase radioactive materials	4.59	3.32	0.38	8.29	090	N
77760	26	A	Intrase radioactive materials	4.59	2.05	0.30	6.94	090	N
77760	TC	A	Intrase radioactive materials	0.00	1.27	0.08	1.35	090	N
77761		A	Radioelement application	3.56	3.65	0.39	7.60	090	N
77761	26	A	Radioelement application	3.56	1.59	0.23	5.38	090	N
77761	TC	A	Radioelement application	0.00	2.39	0.16	2.55	090	N
77762		A	Radioelement application	5.35	5.83	0.57	11.75	090	N
77762	26	A	Radioelement application	5.35	2.39	0.35	8.09	090	N
77762	TC	A	Radioelement application	0.00	3.44	0.22	3.66	090	N
77763		A	Radioelement application	8.01	7.88	0.77	16.64	090	N
77763	26	A	Radioelement application	8.01	3.58	0.50	12.09	090	N
77763	TC	A	Radioelement application	0.00	4.28	0.27	4.55	090	N
77776		A	Radioelement application	4.66	4.16	0.45	9.27	XXX	N
77776	26	A	Radioelement application	4.66	2.09	0.31	7.06	XXX	N
77776	TC	A	Radioelement application	0.00	2.07	0.14	2.21	XXX	N
77777		A	Radioelement application	6.99	7.17	0.71	14.87	090	N
77777	26	A	Radioelement application	6.99	3.13	0.45	10.57	090	N
77777	TC	A	Radioelement application	0.00	4.04	0.26	4.30	090	N
77778		A	Radioelement application	10.46	9.58	0.98	21.02	090	N
77778	26	A	Radioelement application	10.46	4.89	0.67	15.82	090	N
77778	TC	A	Radioelement application	0.00	4.89	0.31	5.20	090	N
77781		A	High intensity brachytherapy	1.55	20.04	1.32	22.91	090	N
77781	26	A	High intensity brachytherapy	1.55	0.89	0.11	2.35	090	N
77781	TC	A	High intensity brachytherapy	0.00	10.35	1.21	20.56	090	N
77782		A	High intensity brachytherapy	2.33	20.40	1.37	24.10	090	N
77782	26	A	High intensity brachytherapy	2.33	1.05	0.16	3.54	090	N
77782	TC	A	High intensity brachytherapy	0.00	19.35	1.21	20.56	090	N
77783		A	High intensity brachytherapy	3.49	20.90	1.44	25.83	090	N
77783	26	A	High intensity brachytherapy	3.49	1.55	0.23	5.27	090	N
77783	TC	A	High intensity brachytherapy	0.00	19.35	1.21	20.56	090	N
77784		A	High intensity brachytherapy	5.24	21.69	1.66	28.49	090	N
77784	26	A	High intensity brachytherapy	5.24	2.34	0.35	7.93	090	N
77784	TC	A	High intensity brachytherapy	0.00	19.35	1.21	20.56	090	N
77789		A	Radioelement application	1.05	0.89	0.10	2.04	090	N
77789	26	A	Radioelement application	1.05	0.46	0.07	1.58	090	N
77789	TC	A	Radioelement application	0.00	0.43	0.03	0.46	090	N
77790		A	Radioelement handling	1.05	0.94	0.10	2.09	XXX	N
77790	26	A	Radioelement handling	1.05	0.48	0.07	1.58	XXX	N
77790	TC	A	Radioelement handling	0.00	0.48	0.03	0.51	XXX	N
77799		C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	XXX	N
77799	26	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	XXX	N
77799	TC	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	XXX	N
78000		A	Thyroid, single uptake	0.19	1.01	0.07	1.27	XXX	N
78000	26	A	Thyroid, single uptake	0.19	0.09	0.01	0.29	XXX	N
78000	TC	A	Thyroid, single uptake	0.00	0.92	0.06	0.98	XXX	N
78001		A	Thyroid, multiple uptakes	0.26	1.36	0.10	1.72	XXX	N
78001	26	A	Thyroid, multiple uptakes	0.26	0.12	0.02	0.40	XXX	N
78001	TC	A	Thyroid, multiple uptakes	0.00	1.24	0.08	1.32	XXX	N
78003		A	Thyroid suppress/stimul	0.33	1.07	0.08	1.48	XXX	N
78003	26	A	Thyroid suppress/stimul	0.33	0.15	0.02	0.50	XXX	N
78003	TC	A	Thyroid suppress/stimul	0.00	0.92	0.06	0.98	XXX	N
78006		A	Thyroid, imaging with uptake	0.49	2.49	0.18	3.16	XXX	N
78006	26	A	Thyroid, imaging with uptake	0.49	0.22	0.03	0.74	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
78006	TC	A	Thyroid, imaging with uptake	0.00	2.27	0.15	2.42	XXX	N
78007		A	Thyroid, image, mult uptakes	0.50	2.68	0.19	3.37	XXX	N
78007	26	A	Thyroid, image, mult uptakes	0.50	0.23	0.03	0.76	XXX	N
78007	TC	A	Thyroid, image, mult uptakes	0.00	2.45	0.16	2.61	XXX	N
78010		A	Thyroid imaging	0.39	1.90	0.14	2.43	XXX	N
78010	26	A	Thyroid imaging	0.39	0.17	0.03	0.59	XXX	N
78010	TC	A	Thyroid imaging	0.00	1.73	0.11	1.84	XXX	N
78011		A	Thyroid imaging with flow	0.45	2.50	0.18	3.13	XXX	N
78011	26	A	Thyroid imaging with flow	0.45	0.21	0.03	0.69	XXX	N
78011	TC	A	Thyroid imaging with flow	0.00	2.29	0.15	2.44	XXX	N
78015		A	Thyroid met imaging	0.67	2.76	0.21	3.64	XXX	N
78015	26	A	Thyroid met imaging	0.67	0.31	0.05	1.03	XXX	N
78015	TC	A	Thyroid met imaging	0.00	2.45	0.16	2.61	XXX	N
78016		A	Thyroid met imaging/studies	0.82	3.70	0.27	4.79	XXX	N
78016	26	A	Thyroid met imaging/studies	0.82	0.38	0.06	1.26	XXX	N
78016	TC	A	Thyroid met imaging/studies	0.00	3.32	0.21	3.53	XXX	N
78017		A	Thyroid met imaging, mult	0.87	3.94	0.28	5.09	XXX	N
78017	26	A	Thyroid met imaging, mult	0.87	0.39	0.06	1.32	XXX	N
78017	TC	A	Thyroid met imaging, mult	0.00	3.55	0.22	3.77	XXX	N
78018		A	Thyroid, met imaging, body	0.95	5.50	0.39	6.94	XXX	N
78018	26	A	Thyroid, met imaging, body	0.95	0.43	0.06	1.44	XXX	N
78018	TC	A	Thyroid, met imaging, body	0.00	5.17	0.33	5.50	XXX	N
78070		A	Parathyroid nuclear imaging	0.82	1.95	0.15	2.93	XXX	N
78070	26	A	Parathyroid nuclear imaging	0.82	0.23	0.04	1.09	XXX	N
78070	TC	A	Parathyroid nuclear imaging	0.00	1.73	0.11	1.84	XXX	N
78075		A	Adrenal nuclear imaging	0.74	5.51	0.38	6.63	XXX	N
78075	26	A	Adrenal nuclear imaging	0.74	0.34	0.05	1.13	XXX	N
78075	TC	A	Adrenal nuclear imaging	0.00	5.17	0.33	5.50	XXX	N
78099		C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78099	26	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78099	TC	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78102		A	Bone marrow imaging, ltd	0.55	2.19	0.17	2.91	XXX	N
78102	26	A	Bone marrow imaging, ltd	0.55	0.25	0.04	0.84	XXX	N
78102	TC	A	Bone marrow imaging, ltd	0.00	1.94	0.13	2.07	XXX	N
78103		A	Bone marrow imaging, mult	0.75	3.36	0.24	4.35	XXX	N
78103	26	A	Bone marrow imaging, mult	0.75	0.34	0.05	1.14	XXX	N
78103	TC	A	Bone marrow imaging, mult	0.00	3.02	0.19	3.21	XXX	N
78104		A	Bone marrow imaging, body	0.80	4.25	0.30	5.35	XXX	N
78104	26	A	Bone marrow imaging, body	0.80	0.37	0.05	1.22	XXX	N
78104	TC	A	Bone marrow imaging, body	0.00	3.88	0.25	4.13	XXX	N
78110		A	Plasma volume, single	0.19	0.99	0.07	1.25	XXX	N
78110	26	A	Plasma volume, single	0.19	0.09	0.01	0.29	XXX	N
78110	TC	A	Plasma volume, single	0.00	0.90	0.06	0.96	XXX	N
78111		A	Plasma volume, multiple	0.22	2.55	0.18	2.95	XXX	N
78111	26	A	Plasma volume, multiple	0.22	0.10	0.02	0.34	XXX	N
78111	TC	A	Plasma volume, multiple	0.00	2.45	0.16	2.61	XXX	N
78120		A	Red cell mass, single	0.23	1.76	0.13	2.12	XXX	N
78120	26	A	Red cell mass, single	0.23	0.11	0.02	0.36	XXX	N
78120	TC	A	Red cell mass, single	0.00	1.65	0.11	1.76	XXX	N
78121		A	Red cell mass, multiple	0.32	2.92	0.19	3.43	XXX	N
78121	26	A	Red cell mass, multiple	0.32	0.15	0.02	0.49	XXX	N
78121	TC	A	Red cell mass, multiple	0.00	2.77	0.17	2.94	XXX	N
78122		A	Blood volume	0.45	4.59	0.31	5.35	XXX	N
78122	26	A	Blood volume	0.45	0.20	0.03	0.68	XXX	N
78122	TC	A	Blood volume	0.00	4.39	0.28	4.67	XXX	N
78130		A	Red cell survival study	0.61	3.00	0.21	3.82	XXX	N
78130	26	A	Red cell survival study	0.61	0.28	0.04	0.93	XXX	N
78130	TC	A	Red cell survival study	0.00	2.72	0.17	2.89	XXX	N
78135		A	Red cell survival kinetics	0.64	4.93	0.34	5.91	XXX	N
78135	26	A	Red cell survival kinetics	0.64	0.29	0.04	0.97	XXX	N
78135	TC	A	Red cell survival kinetics	0.00	4.64	0.30	4.94	XXX	N
78140		A	Red cell sequestration	0.61	4.03	0.28	4.92	XXX	N
78140	26	A	Red cell sequestration	0.61	0.28	0.04	0.93	XXX	N
78140	TC	A	Red cell sequestration	0.00	3.75	0.24	3.99	XXX	N
78160		A	Plasma iron turnover	0.33	3.64	0.24	4.21	XXX	N
78160	26	A	Plasma iron turnover	0.33	0.15	0.02	0.50	XXX	N
78160	TC	A	Plasma iron turnover	0.00	3.49	0.22	3.71	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
78162		A	Iron absorption exam	0.45	3.25	0.22	3.92	XXX	N
78162	26	A	Iron absorption exam	0.45	0.20	0.03	0.68	XXX	N
78162	TC	A	Iron absorption exam	0.00	3.05	0.19	3.24	XXX	N
78170		A	Red cell iron utilization	0.41	5.24	0.35	6.00	XXX	N
78170	26	A	Red cell iron utilization	0.41	0.18	0.03	0.62	XXX	N
78170	TC	A	Red cell iron utilization	0.00	5.05	0.32	5.36	XXX	N
78172		C	Total body iron estimation	0.00	0.00	0.00	0.00	XXX	N
78172	26	A	Total body iron estimation	0.53	0.25	0.04	0.82	XXX	N
78172	TC	C	Total body iron estimation	0.00	0.00	0.00	0.00	XXX	N
78185		A	Spleen imaging	0.40	2.43	0.18	3.01	XXX	N
78185	26	A	Spleen imaging	0.40	0.15	0.03	0.61	XXX	N
78185	TC	A	Spleen imaging	0.00	2.25	0.15	2.40	XXX	N
78190		A	Platelet survival, kinetics	1.06	5.93	0.42	7.44	XXX	N
78190	26	A	Platelet survival, kinetics	1.06	0.48	0.07	1.64	XXX	N
78190	TC	A	Platelet survival, kinetics	0.00	5.45	0.35	5.80	XXX	N
78191		A	Platelet survival	0.61	7.27	0.48	8.36	XXX	N
78191	26	A	Platelet survival	0.61	0.28	0.04	0.93	XXX	N
78191	TC	A	Platelet survival	0.00	6.99	0.44	7.43	XXX	N
78195		A	Lymph system imaging	1.20	4.20	0.30	5.70	XXX	N
78195	26	A	Lymph system imaging	1.20	0.32	0.05	1.57	XXX	N
78195	TC	A	Lymph system imaging	0.00	3.88	0.25	4.13	XXX	N
78199		C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78199	26	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78199	TC	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78201		A	Liver imaging	0.44	2.44	0.18	3.06	XXX	N
78201	26	A	Liver imaging	0.44	0.19	0.03	0.66	XXX	N
78201	TC	A	Liver imaging	0.00	2.25	0.15	2.40	XXX	N
78202		A	Liver imaging with flow	0.51	2.96	0.21	3.70	XXX	N
78202	26	A	Liver imaging with flow	0.51	0.23	0.04	0.78	XXX	N
78202	TC	A	Liver imaging with flow	0.00	2.75	0.17	2.92	XXX	N
78205		A	Liver imaging (3D)	0.71	5.96	0.41	7.08	XXX	N
78205	26	A	Liver imaging (3D)	0.71	0.33	0.05	1.09	XXX	N
78205	TC	A	Liver imaging (3D)	0.00	5.63	0.36	5.99	XXX	N
78215		A	Liver and spleen imaging	0.48	3.02	0.20	3.71	XXX	N
78215	26	A	Liver and spleen imaging	0.48	0.22	0.03	0.74	XXX	N
78215	TC	A	Liver and spleen imaging	0.00	2.80	0.17	2.97	XXX	N
78216		A	Liver & spleen image, flow	0.57	3.58	0.25	4.40	XXX	N
78216	26	A	Liver & spleen image, flow	0.57	0.26	0.04	0.87	XXX	N
78216	TC	A	Liver & spleen image, flow	0.00	3.32	0.21	3.53	XXX	N
78220		A	Liver function study	0.49	3.77	0.25	4.51	XXX	N
78220	26	A	Liver function study	0.49	0.22	0.03	0.74	XXX	N
78220	TC	A	Liver function study	0.00	3.55	0.22	3.77	XXX	N
78223		A	Hepatobiliary imaging	0.84	3.87	0.28	4.99	XXX	N
78223	26	A	Hepatobiliary imaging	0.84	0.38	0.06	1.28	XXX	N
78223	TC	A	Hepatobiliary imaging	0.00	3.49	0.22	3.71	XXX	N
78230		A	Salivary gland imaging	0.45	2.28	0.17	2.90	XXX	N
78230	26	A	Salivary gland imaging	0.45	0.21	0.03	0.69	XXX	N
78230	TC	A	Salivary gland imaging	0.00	2.07	0.14	2.21	XXX	N
78231		A	Serial salivary imaging	0.52	3.26	0.23	4.01	XXX	N
78231	26	A	Serial salivary imaging	0.52	0.24	0.04	0.80	XXX	N
78231	TC	A	Serial salivary imaging	0.00	3.02	0.19	3.21	XXX	N
78232		A	Salivary gland function exam	0.47	3.59	0.24	4.30	XXX	N
78232	26	A	Salivary gland function exam	0.47	0.22	0.03	0.72	XXX	N
78232	TC	A	Salivary gland function exam	0.00	3.37	0.21	3.58	XXX	N
78255		A	Esophageal motility study	0.74	3.08	0.22	4.05	XXX	N
78255	26	A	Esophageal motility study	0.74	0.34	0.05	1.13	XXX	N
78255	TC	A	Esophageal motility study	0.00	2.75	0.17	2.92	XXX	N
78261		A	Gastric mucosa imaging	0.69	4.23	0.30	5.22	XXX	N
78261	26	A	Gastric mucosa imaging	0.69	0.32	0.05	1.06	XXX	N
78261	TC	A	Gastric mucosa imaging	0.00	3.91	0.25	4.16	XXX	N
78262		A	Gastroesophageal reflux exam	0.68	4.36	0.31	5.35	XXX	N
78262	26	A	Gastroesophageal reflux exam	0.68	0.31	0.05	1.04	XXX	N
78262	TC	A	Gastroesophageal reflux exam	0.00	4.05	0.26	4.31	XXX	N
78264		A	Gastric emptying study	0.75	4.29	0.30	5.37	XXX	N
78264	26	A	Gastric emptying study	0.75	0.36	0.05	1.19	XXX	N
78264	TC	A	Gastric emptying study	0.00	3.93	0.25	4.18	XXX	N
78270		A	Vit B-12 absorption exam	0.20	1.57	0.11	1.88	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
78270	26	A	Vit B-12 absorption exam	0.20	0.10	0.01	0.31	XXX	N
78270	TC	A	Vit B-12 absorption exam	0.00	1.47	0.10	1.57	XXX	N
78271		A	Vit B-12 absorp exam, IF	0.20	1.67	0.11	1.98	XXX	N
78271	26	A	Vit B-12 absorp exam, IF	0.20	0.10	0.01	0.31	XXX	N
78271	TC	A	Vit B-12 absorp exam, IF	0.00	1.57	0.10	1.67	XXX	N
78272		A	Vit B-12 absorp, combined	0.27	2.34	0.17	2.78	XXX	N
78272	26	A	Vit B-12 absorp, combined	0.27	0.13	0.02	0.42	XXX	N
78272	TC	A	Vit B-12 absorp, combined	0.00	2.21	0.15	2.36	XXX	N
78278		A	Acute GI blood loss imaging	0.99	5.09	0.37	6.45	XXX	N
78278	26	A	Acute GI blood loss imaging	0.99	0.45	0.07	1.51	XXX	N
78278	TC	A	Acute GI blood loss imaging	0.00	4.64	0.30	4.94	XXX	N
78282		C	GI protein loss exam	0.00	0.00	0.00	0.00	XXX	N
78282	26	C	GI protein loss exam	0.35	0.17	0.03	0.55	XXX	N
78282	TC	C	GI protein loss exam	0.00	0.00	0.00	0.00	XXX	N
78290		A	Meckel's divert exam	0.68	3.21	0.23	4.12	XXX	N
78290	26	A	Meckel's divert exam	0.68	0.31	0.05	1.04	XXX	N
78290	TC	A	Meckel's divert exam	0.00	2.90	0.18	3.08	XXX	N
78291		A	Leveen/shunt patency exam	0.88	3.31	0.24	4.43	XXX	N
78291	26	A	Leveen/shunt patency exam	0.88	0.39	0.06	1.33	XXX	N
78291	TC	A	Leveen/shunt patency exam	0.00	2.92	0.18	3.10	XXX	N
78299		C	GI nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78299	26	C	GI nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78299	TC	C	GI nuclear procedure	0.00	0.00	0.00	0.00	XXX	N
78300		A	Bone imaging, limited area	0.62	2.66	0.20	3.48	XXX	N
78300	26	A	Bone imaging, limited area	0.62	0.29	0.04	0.95	XXX	N
78300	TC	A	Bone imaging, limited area	0.00	2.37	0.16	2.53	XXX	N
78305		A	Bone imaging, multiple areas	0.83	3.87	0.28	4.98	XXX	N
78305	26	A	Bone imaging, multiple areas	0.83	0.38	0.06	1.27	XXX	N
78305	TC	A	Bone imaging, multiple areas	0.00	3.49	0.22	3.71	XXX	N
78306		A	Bone imaging, whole body	0.86	4.46	0.32	5.64	XXX	N
78306	26	A	Bone imaging, whole body	0.86	0.39	0.05	1.31	XXX	N
78306	TC	A	Bone imaging, whole body	0.00	4.07	0.26	4.33	XXX	N
78315		A	Bone imaging, 3 phase	1.02	5.00	0.36	6.38	XXX	N
78315	26	A	Bone imaging, 3 phase	1.02	0.45	0.07	1.54	XXX	N
78315	TC	A	Bone imaging, 3 phase	0.00	4.55	0.29	4.84	XXX	N
78320		A	Bone imaging (3D)	1.04	6.09	0.43	7.56	XXX	N
78320	26	A	Bone imaging (3D)	1.04	0.46	0.07	1.57	XXX	N
78320	TC	A	Bone imaging (3D)	0.00	5.63	0.36	5.99	XXX	N
78350		G	Bone mineral, single photon	+0.22	0.82	0.07	1.11	XXX	N
78350	26	G	Bone mineral, single photon	+0.22	0.10	0.02	0.34	XXX	N
78350	TC	G	Bone mineral, single photon	+0.00	0.72	0.05	0.77	XXX	N
78351		N	Bone mineral, dual photon	+0.30	0.19	0.02	0.51	XXX	D
78399		C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78399	26	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78399	TC	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78414		C	Non-imaging heart function	0.00	0.00	0.00	0.00	XXX	N
78414	26	A	Non-imaging heart function	0.45	0.20	0.03	0.68	XXX	N
78414	TC	C	Non-imaging heart function	0.00	0.00	0.00	0.00	XXX	N
78428		A	Cardiac shunt imaging	0.78	2.51	0.19	3.48	XXX	N
78428	26	A	Cardiac shunt imaging	0.78	0.36	0.05	1.19	XXX	N
78428	TC	A	Cardiac shunt imaging	0.00	2.15	0.14	2.29	XXX	N
78445		A	Vascular flow imaging	0.49	2.01	0.15	2.65	XXX	N
78445	26	A	Vascular flow imaging	0.49	0.24	0.04	0.77	XXX	N
78445	TC	A	Vascular flow imaging	0.00	1.77	0.11	1.88	XXX	N
78455		A	Venous thrombosis study	0.73	4.13	0.29	5.15	XXX	N
78455	26	A	Venous thrombosis study	0.73	0.33	0.05	1.11	XXX	N
78455	TC	A	Venous thrombosis study	0.00	3.80	0.24	4.04	XXX	N
78457		A	Venous thrombosis imaging	0.77	2.88	0.22	3.87	XXX	N
78457	26	A	Venous thrombosis imaging	0.77	0.35	0.05	1.17	XXX	N
78457	TC	A	Venous thrombosis imaging	0.00	2.53	0.17	2.70	XXX	N
78458		A	Ven thrombosis images, bilateral	0.90	4.23	0.30	5.43	XXX	N
78458	26	A	Ven thrombosis images, bilateral	0.90	0.40	0.06	1.36	XXX	N
78458	TC	A	Ven thrombosis images, bilateral	0.00	3.83	0.24	4.07	XXX	N
78459		G	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	XXX	D
78459	26	G	Heart muscle imaging (PET)	+1.88	1.34	0.10	3.32	XXX	D
78459	TC	G	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	XXX	D
78460		A	Heart muscle blood single	0.86	2.64	0.21	3.71	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOO	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
78460	26	A	Heart muscle blood single	0.86	0.39	0.06	1.31	XXX	N
78460	TC	A	Heart muscle blood single	0.00	2.25	0.15	2.40	XXX	N
78461		A	Heart muscle blood multiple	1.23	5.04	0.37	6.64	XXX	N
78461	26	A	Heart muscle blood multiple	1.23	0.54	0.08	1.85	XXX	N
78461	TC	A	Heart muscle blood multiple	0.00	4.50	0.29	4.79	XXX	N
78464		A	Heart image (3D) single	1.09	7.22	0.50	8.81	XXX	N
78464	26	A	Heart image (3D) single	1.09	0.48	0.07	1.64	XXX	N
78464	TC	A	Heart image (3D) single	0.00	6.74	0.43	7.17	XXX	N
78465		A	Heart image (3D) multiple	1.46	11.89	0.80	14.15	XXX	N
78465	26	A	Heart image (3D) multiple	1.46	0.65	0.10	2.21	XXX	N
78465	TC	A	Heart image (3D) multiple	0.00	11.24	0.70	11.94	XXX	N
78466		A	Heart infarct image	0.89	2.82	0.22	3.73	XXX	N
78466	26	A	Heart infarct image	0.89	0.32	0.05	1.06	XXX	N
78466	TC	A	Heart infarct image	0.00	2.50	0.17	2.67	XXX	N
78466		A	Heart infarct image, EF	0.80	3.85	0.27	4.92	XXX	N
78466	26	A	Heart infarct image, EF	0.80	0.36	0.05	1.21	XXX	N
78466	TC	A	Heart infarct image, EF	0.00	3.49	0.22	3.71	XXX	N
78469		A	Heart infarct image (3D)	0.92	5.39	0.38	6.69	XXX	N
78469	26	A	Heart infarct image (3D)	0.92	0.41	0.06	1.39	XXX	N
78469	TC	A	Heart infarct image (3D)	0.00	4.98	0.32	5.30	XXX	N
78472		A	Gated heart, resting	0.98	5.69	0.41	7.08	XXX	N
78472	26	A	Gated heart, resting	0.98	0.44	0.07	1.49	XXX	N
78472	TC	A	Gated heart, resting	0.00	5.25	0.34	5.59	XXX	N
78473		A	Gated heart, multiple	1.47	8.52	0.59	10.58	XXX	N
78473	26	A	Gated heart, multiple	1.47	0.65	0.10	2.22	XXX	N
78473	TC	A	Gated heart, multiple	0.00	7.87	0.49	8.36	XXX	N
78478		A	Heart wall motion (add-on)	0.62	1.76	0.14	2.52	XXX	N
78478	26	A	Heart wall motion (add-on)	0.62	0.28	0.04	0.94	XXX	N
78478	TC	A	Heart wall motion (add-on)	0.00	1.48	0.10	1.58	XXX	N
78490		A	Heart function, (add-on)	0.62	1.76	0.14	2.52	XXX	N
78490	26	A	Heart function, (add-on)	0.62	0.28	0.04	0.94	XXX	N
78490	TC	A	Heart function, (add-on)	0.00	1.48	0.10	1.58	XXX	N
78481		A	Heart first pass single	0.98	5.42	0.39	6.79	XXX	N
78481	26	A	Heart first pass single	0.98	0.44	0.07	1.49	XXX	N
78481	TC	A	Heart first pass single	0.00	4.98	0.32	5.30	XXX	N
78483		A	Heart first pass multiple	1.47	8.15	0.57	10.19	XXX	N
78483	26	A	Heart first pass multiple	1.47	0.65	0.10	2.22	XXX	N
78483	TC	A	Heart first pass multiple	0.00	7.50	0.47	7.97	XXX	N
78499		C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78499	26	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78499	TC	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78580		A	Lung perfusion imaging	0.74	3.61	0.26	4.61	XXX	N
78580	26	A	Lung perfusion imaging	0.74	0.34	0.05	1.13	XXX	N
78580	TC	A	Lung perfusion imaging	0.00	3.27	0.21	3.48	XXX	N
78584		A	Lung V/Q image single breath	0.99	3.50	0.26	4.75	XXX	N
78584	26	A	Lung V/Q image single breath	0.99	0.45	0.07	1.51	XXX	N
78584	TC	A	Lung V/Q image single breath	0.00	3.05	0.19	3.24	XXX	N
78585		A	Lung V/Q imaging	1.09	5.85	0.41	7.35	XXX	N
78585	26	A	Lung V/Q imaging	1.09	0.48	0.07	1.64	XXX	N
78585	TC	A	Lung V/Q imaging	0.00	5.37	0.34	5.71	XXX	N
78586		A	Aerosol lung image, single	0.40	2.65	0.19	3.24	XXX	N
78586	26	A	Aerosol lung image, single	0.40	0.18	0.03	0.61	XXX	N
78586	TC	A	Aerosol lung image, single	0.00	2.47	0.16	2.63	XXX	N
78587		A	Aerosol lung image, multiple	0.49	2.89	0.20	3.58	XXX	N
78587	26	A	Aerosol lung image, multiple	0.49	0.22	0.03	0.74	XXX	N
78587	TC	A	Aerosol lung image, multiple	0.00	2.67	0.17	2.84	XXX	N
78591		A	Vent image, 1 breath, 1 proj	0.40	2.90	0.20	3.50	XXX	N
78591	26	A	Vent image, 1 breath, 1 proj	0.40	0.18	0.03	0.61	XXX	N
78591	TC	A	Vent image, 1 breath, 1 proj	0.00	2.72	0.17	2.89	XXX	N
78593		A	Vent image, 1 proj, gas	0.49	3.51	0.24	4.24	XXX	N
78593	26	A	Vent image, 1 proj, gas	0.49	0.22	0.03	0.74	XXX	N
78593	TC	A	Vent image, 1 proj, gas	0.00	3.29	0.21	3.50	XXX	N
78594		A	Vent image, mult proj, gas	0.53	5.00	0.34	5.87	XXX	N
78594	26	A	Vent image, mult proj, gas	0.53	0.25	0.04	0.82	XXX	N
78594	TC	A	Vent image, mult proj, gas	0.00	4.75	0.30	5.05	XXX	N
78596		A	Lung differential function	1.27	7.30	0.52	9.09	XXX	N
78596	26	A	Lung differential function	1.27	0.56	0.09	1.92	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ^{1/} HCPCS ²	MOO	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
78596	TC	A	Lung differential function	0.00	6.74	0.43	7.17	XXX	N
78599		C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78599	26	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78599	TC	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78600		A	Brain imaging, fld static	0.00	0.00	0.00	0.00	XXX	N
78600	26	A	Brain imaging, fld static	0.44	2.95	0.20	3.59	XXX	N
78600	TC	A	Brain imaging, fld static	0.44	0.20	0.03	0.67	XXX	N
78601		A	Brain imaging, fld static	0.00	2.75	0.17	2.92	XXX	N
78601	26	A	Brain fld imaging & flow	0.51	3.48	0.24	4.23	XXX	N
78601	TC	A	Brain fld imaging & flow	0.51	0.24	0.04	0.79	XXX	N
78605		A	Brain fld imaging & flow	0.00	3.24	0.20	3.44	XXX	N
78605	26	A	Brain imaging, complete	0.53	3.49	0.24	4.26	XXX	N
78605	TC	A	Brain imaging, complete	0.53	0.25	0.04	0.82	XXX	N
78606		A	Brain imaging, complete	0.00	3.24	0.20	3.44	XXX	N
78606	26	A	Brain imaging comp & flow	0.64	3.98	0.27	4.89	XXX	N
78606	TC	A	Brain imaging comp & flow	0.64	0.29	0.04	0.97	XXX	N
78607		A	Brain imaging comp & flow	0.00	3.69	0.23	3.92	XXX	N
78607	26	A	Brain imaging (3D)	1.23	6.79	0.47	8.49	XXX	N
78607	TC	A	Brain imaging (3D)	1.23	0.54	0.08	1.85	XXX	N
78608		N	Brain imaging (PET)	0.00	6.25	0.39	6.64	XXX	N
78609		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	XXX	O
78610		A	Brain flow imaging only	0.30	1.64	0.12	2.06	XXX	N
78610	26	A	Brain flow imaging only	0.30	0.14	0.02	0.46	XXX	N
78610	TC	A	Brain flow imaging only	0.00	1.50	0.10	1.60	XXX	N
78615		A	Cerebral blood flow imaging	0.42	3.86	0.26	4.54	XXX	N
78615	26	A	Cerebral blood flow imaging	0.42	0.19	0.03	0.64	XXX	N
78615	TC	A	Cerebral blood flow imaging	0.00	3.67	0.23	3.90	XXX	N
78630		A	Cerebrospinal fluid scan	0.68	5.11	0.36	6.15	XXX	N
78630	26	A	Cerebrospinal fluid scan	0.68	0.31	0.05	1.04	XXX	N
78630	TC	A	Cerebrospinal fluid scan	0.00	4.80	0.31	5.11	XXX	N
78635		A	CSF ventriculography	0.61	2.70	0.20	3.51	XXX	N
78635	26	A	CSF ventriculography	0.61	0.28	0.04	0.93	XXX	N
78635	TC	A	CSF ventriculography	0.00	2.42	0.16	2.58	XXX	N
78645		A	CSF shunt evaluation	0.57	3.53	0.25	4.35	XXX	N
78645	26	A	CSF shunt evaluation	0.57	0.26	0.04	0.87	XXX	N
78645	TC	A	CSF shunt evaluation	0.00	3.27	0.21	3.48	XXX	N
78647		A	Cerebrospinal fluid scan	0.90	6.04	0.42	7.36	XXX	N
78647	26	A	Cerebrospinal fluid scan	0.90	0.41	0.06	1.37	XXX	N
78647	TC	A	Cerebrospinal fluid scan	0.00	5.63	0.36	5.99	XXX	N
78650		A	CSF leakage imaging	0.61	4.70	0.32	5.63	XXX	N
78650	26	A	CSF leakage imaging	0.61	0.28	0.04	0.93	XXX	N
78650	TC	A	CSF leakage imaging	0.00	4.42	0.28	4.70	XXX	N
78660		A	Nuclear exam of tear flow	0.53	2.27	0.17	2.97	XXX	N
78660	26	A	Nuclear exam of tear flow	0.53	0.25	0.04	0.82	XXX	N
78660	TC	A	Nuclear exam of tear flow	0.00	2.02	0.13	2.15	XXX	N
78699		C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78699	26	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78699	TC	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78700		A	Kidney imaging, static	0.45	3.10	0.21	3.76	XXX	N
78700	26	A	Kidney imaging, static	0.45	0.20	0.03	0.68	XXX	N
78700	TC	A	Kidney imaging, static	0.00	2.90	0.18	3.08	XXX	N
78701		A	Kidney imaging with flow	0.49	3.61	0.24	4.34	XXX	N
78701	26	A	Kidney imaging with flow	0.49	0.22	0.03	0.74	XXX	N
78701	TC	A	Kidney imaging with flow	0.00	3.39	0.21	3.60	XXX	N
78704		A	Imaging renogram	0.74	4.11	0.29	5.14	XXX	N
78704	26	A	Imaging renogram	0.74	0.34	0.05	1.13	XXX	N
78704	TC	A	Imaging renogram	0.00	3.77	0.24	4.01	XXX	N
78707		A	Kidney flow & function image	0.94	4.68	0.33	5.95	XXX	N
78707	26	A	Kidney flow & function image	0.94	0.42	0.06	1.42	XXX	N
78707	TC	A	Kidney flow & function image	0.00	4.26	0.27	4.53	XXX	N
78710		A	Kidney imaging (3D)	0.66	5.93	0.41	7.00	XXX	N
78710	26	A	Kidney imaging (3D)	0.66	0.30	0.05	1.01	XXX	N
78710	TC	A	Kidney imaging (3D)	0.00	5.63	0.36	5.99	XXX	N
78715		A	Renal vascular flow exam	0.30	1.64	0.12	2.06	XXX	N
78715	26	A	Renal vascular flow exam	0.30	0.14	0.02	0.46	XXX	N
78715	TC	A	Renal vascular flow exam	0.00	1.50	0.10	1.60	XXX	N
78725		A	Kidney function study	0.38	1.87	0.14	2.39	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
78725	26	A	Kidney function study	0.38	0.17	0.03	0.58	XXX	N
78725	TC	A	Kidney function study	0.00	1.70	0.11	1.81	XXX	N
78726	A	A	Kidney function w/intervent	0.87	3.21	0.24	4.32	XXX	N
78726	26	A	Kidney function w/intervent	0.87	0.39	0.08	1.32	XXX	N
78726	TC	A	Kidney function w/intervent	0.00	2.82	0.18	3.00	XXX	N
78727	A	A	Kidney transplant evaluation	0.99	4.25	0.31	5.55	XXX	N
78727	26	A	Kidney transplant evaluation	0.99	0.45	0.07	1.51	XXX	N
78727	TC	A	Kidney transplant evaluation	0.00	3.80	0.24	4.04	XXX	N
78730	A	A	Urinary bladder retention	0.36	1.55	0.11	2.02	XXX	N
78730	26	A	Urinary bladder retention	0.36	0.16	0.02	0.54	XXX	N
78730	TC	A	Urinary bladder retention	0.00	1.39	0.09	1.48	XXX	N
78740	A	A	Ureteral reflux study	0.57	2.28	0.17	3.02	XXX	N
78740	26	A	Ureteral reflux study	0.57	0.26	0.04	0.87	XXX	N
78740	TC	A	Ureteral reflux study	0.00	2.02	0.13	2.15	XXX	N
78760	A	A	Testicular imaging	0.66	2.85	0.21	3.72	XXX	N
78760	26	A	Testicular imaging	0.66	0.30	0.04	1.00	XXX	N
78760	TC	A	Testicular imaging	0.00	2.55	0.17	2.72	XXX	N
78761	A	A	Testicular imaging & flow	0.71	3.39	0.24	4.33	XXX	N
78761	26	A	Testicular imaging & flow	0.71	0.33	0.05	1.09	XXX	N
78761	TC	A	Testicular imaging & flow	0.00	3.05	0.19	3.24	XXX	N
78799	A	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78799	26	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78799	TC	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	XXX	N
78800	A	A	Tumor imaging, limited area	0.66	3.54	0.24	4.44	XXX	N
78800	26	A	Tumor imaging, limited area	0.66	0.30	0.04	1.00	XXX	N
78800	TC	A	Tumor imaging, limited area	0.00	3.24	0.20	3.44	XXX	N
78801	A	A	Tumor imaging, mult areas	0.79	4.39	0.31	5.49	XXX	N
78801	26	A	Tumor imaging, mult areas	0.79	0.36	0.05	1.20	XXX	N
78801	TC	A	Tumor imaging, mult areas	0.00	4.03	0.26	4.29	XXX	N
78802	A	A	Tumor imaging, whole body	0.86	5.66	0.40	6.92	XXX	N
78802	26	A	Tumor imaging, whole body	0.86	0.39	0.06	1.31	XXX	N
78802	TC	A	Tumor imaging, whole body	0.00	5.27	0.34	5.61	XXX	N
78803	A	A	Tumor imaging (3D)	1.09	6.73	0.46	8.28	XXX	N
78803	26	A	Tumor imaging (3D)	1.09	0.48	0.07	1.64	XXX	N
78803	TC	A	Tumor imaging (3D)	0.00	6.25	0.39	6.64	XXX	N
78805	A	A	Abscess imaging, ltd area	0.73	3.57	0.25	4.55	XXX	N
78805	26	A	Abscess imaging, ltd area	0.73	0.33	0.05	1.11	XXX	N
78805	TC	A	Abscess imaging, ltd area	0.00	3.24	0.20	3.44	XXX	N
78806	A	A	Abscess imaging, whole body	0.86	6.51	0.45	7.82	XXX	N
78806	26	A	Abscess imaging, whole body	0.86	0.38	0.06	1.30	XXX	N
78806	TC	A	Abscess imaging, whole body	0.00	6.13	0.39	6.52	XXX	N
78807	A	A	Nuclear localization/abscess	1.09	6.73	0.46	8.28	XXX	N
78807	26	A	Nuclear localization/abscess	1.09	0.48	0.07	1.64	XXX	N
78807	TC	A	Nuclear localization/abscess	0.00	6.25	0.39	6.64	XXX	N
78810	A	N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	XXX	0
78810	26	N	Tumor imaging (PET)	+1.93	1.37	0.10	3.40	XXX	0
78810	TC	N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	XXX	0
78890	A	B	Nuclear medicine data proc	+0.05	1.26	0.08	1.39	XXX	0
78890	26	B	Nuclear medicine data proc	+0.05	0.02	0.00	0.07	XXX	0
78890	TC	B	Nuclear medicine data proc	+0.00	1.24	0.08	1.32	XXX	0
78891	A	B	Nuclear med data proc	+0.10	2.55	0.18	2.83	XXX	0
78891	26	B	Nuclear med data proc	+0.10	0.05	0.01	0.16	XXX	0
78891	TC	B	Nuclear med data proc	+0.00	2.50	0.17	2.67	XXX	0
78990	A	G	Provide diag radionuclide(s)	0.00	0.00	0.00	0.00	XXX	0
78999	A	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	XXX	N
78999	26	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	XXX	N
78999	TC	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	XXX	N
79000	A	A	Initial hyperthyroid therapy	1.80	3.31	0.29	5.40	XXX	N
79000	26	A	Initial hyperthyroid therapy	1.80	0.81	0.12	2.73	XXX	N
79000	TC	A	Initial hyperthyroid therapy	0.00	2.50	0.17	2.67	XXX	N
79001	A	A	Repeat hyperthyroid therapy	1.05	1.70	0.15	2.90	XXX	N
79001	26	A	Repeat hyperthyroid therapy	1.05	0.46	0.07	1.58	XXX	N
79001	TC	A	Repeat hyperthyroid therapy	0.00	1.24	0.08	1.32	XXX	N
79020	A	A	Thyroid ablation	1.81	3.31	0.29	5.41	XXX	N
79020	26	A	Thyroid ablation	1.81	0.81	0.12	2.74	XXX	N
79020	TC	A	Thyroid ablation	0.00	2.50	0.17	2.67	XXX	N
79030	A	A	Thyroid ablation, carcinoma	2.10	3.44	0.31	5.85	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
79030	26	A	Thyroid ablation, carcinoma	2.10	0.94	0.14	3.18	XXX	N
79030	TC	A	Thyroid ablation, carcinoma	0.00	2.50	0.17	2.67	XXX	N
79035	A	A	Thyroid metastatic therapy	2.52	3.83	0.34	6.49	XXX	N
79035	26	A	Thyroid metastatic therapy	2.52	1.13	0.17	3.82	XXX	N
79035	TC	A	Thyroid metastatic therapy	0.00	2.50	0.17	2.67	XXX	N
79100	A	A	Hematopoietic nuclear therapy	1.32	3.08	0.28	4.68	XXX	N
79100	26	A	Hematopoietic nuclear therapy	1.32	0.58	0.09	1.99	XXX	N
79100	TC	A	Hematopoietic nuclear therapy	0.00	2.50	0.17	2.67	XXX	N
79200	A	A	Intracavitary nuc treatment	1.99	3.39	0.31	5.69	XXX	N
79200	26	A	Intracavitary nuc treatment	1.99	0.89	0.14	3.02	XXX	N
79200	TC	A	Intracavitary nuc treatment	0.00	2.50	0.17	2.67	XXX	N
79300	A	C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	XXX	N
79300	26	A	Interstitial nuclear therapy	1.80	0.71	0.11	2.42	XXX	N
79300	TC	A	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	XXX	N
79400	A	A	Nonhemato nuclear therapy	1.96	3.37	0.30	5.63	XXX	N
79400	26	A	Nonhemato nuclear therapy	1.96	0.87	0.13	2.96	XXX	N
79400	TC	A	Nonhemato nuclear therapy	0.00	2.50	0.17	2.67	XXX	N
79420	A	C	Intravascular nuc therapy	0.00	0.00	0.00	0.00	XXX	N
79420	26	A	Intravascular nuc therapy	1.51	0.67	0.10	2.28	XXX	N
79420	TC	A	Intravascular nuc therapy	0.00	0.00	0.00	0.00	XXX	N
79440	A	A	Nuclear joint therapy	1.99	3.39	0.31	5.69	XXX	N
79440	26	A	Nuclear joint therapy	1.99	0.89	0.14	3.02	XXX	N
79440	TC	A	Nuclear joint therapy	0.00	2.50	0.17	2.67	XXX	N
79900	A	C	Provide ther radiopharm(s)	0.00	0.00	0.00	0.00	XXX	N
79999	A	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	XXX	N
79999	26	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	XXX	N
79999	TC	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	XXX	N
80002	A	X	1-2 clinical chem tests	0.00	0.00	0.00	0.00	XXX	0
80003	A	X	3 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80004	A	X	4 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80005	A	X	5 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80006	A	X	6 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80007	A	X	7 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80008	A	X	8 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80009	A	X	9 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80010	A	X	10 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80011	A	X	11 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80012	A	X	12 clinical chemistry tests	0.00	0.00	0.00	0.00	XXX	0
80016	A	X	13-16 blood/urine tests	0.00	0.00	0.00	0.00	XXX	0
80018	A	X	17-18 blood/urine tests	0.00	0.00	0.00	0.00	XXX	0
80019	A	X	19 blood/urine tests	0.00	0.00	0.00	0.00	XXX	0
80050	A	X	General health panel	0.00	0.00	0.00	0.00	XXX	0
80055	A	G	Obstetric panel	0.00	0.00	0.00	0.00	XXX	0
80058	A	X	Hepatic function panel	0.00	0.00	0.00	0.00	XXX	0
80059	A	X	Hepatitis panel	0.00	0.00	0.00	0.00	XXX	0
80061	A	X	Lipid panel	0.00	0.00	0.00	0.00	XXX	0
80072	A	X	Arthritis panel	0.00	0.00	0.00	0.00	XXX	0
80090	A	X	Torch antibody panel	0.00	0.00	0.00	0.00	XXX	0
80091	A	X	Thyroid panel	0.00	0.00	0.00	0.00	XXX	0
80092	A	X	Thyroid panel w/TSH	0.00	0.00	0.00	0.00	XXX	0
80100	A	X	Drug screen	0.00	0.00	0.00	0.00	XXX	0
80101	A	X	Drug screen	0.00	0.00	0.00	0.00	XXX	0
80102	A	X	Drug confirmation	0.00	0.00	0.00	0.00	XXX	0
80103	A	X	Drug analysis, tissue prep	0.00	0.00	0.00	0.00	XXX	0
80150	A	X	Assay of amikacin	0.00	0.00	0.00	0.00	XXX	0
80152	A	X	Assay of amitriptyline	0.00	0.00	0.00	0.00	XXX	0
80154	A	X	Assay of benzodiazepines	0.00	0.00	0.00	0.00	XXX	0
80156	A	X	Assay carbamazepine	0.00	0.00	0.00	0.00	XXX	0
80158	A	X	Assay of cyclosporine	0.00	0.00	0.00	0.00	XXX	0
80160	A	X	Assay of desipramine	0.00	0.00	0.00	0.00	XXX	0
80162	A	X	Assay for digoxin	0.00	0.00	0.00	0.00	XXX	0
80164	A	X	Assay, dipropylacetic acid	0.00	0.00	0.00	0.00	XXX	0
80166	A	X	Assay of doxepin	0.00	0.00	0.00	0.00	XXX	0
80168	A	X	Assay of ethosuximide	0.00	0.00	0.00	0.00	XXX	0
80170	A	X	Gentamicin	0.00	0.00	0.00	0.00	XXX	0
80172	A	X	Assay for gold	0.00	0.00	0.00	0.00	XXX	0
80174	A	X	Assay of imipramine	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
80176		X	Assay for lidocaine	0.00	0.00	0.00	0.00	XXX	0
80178		X	Assay for lithium	0.00	0.00	0.00	0.00	XXX	0
80182		X	Assay for nortriptyline	0.00	0.00	0.00	0.00	XXX	0
80184		X	Assay for phenobarbital	0.00	0.00	0.00	0.00	XXX	0
80185		X	Assay for phenytoin	0.00	0.00	0.00	0.00	XXX	0
80186		X	Assay for phenytoin, free	0.00	0.00	0.00	0.00	XXX	0
80188		X	Assay for primidone	0.00	0.00	0.00	0.00	XXX	0
80190		X	Assay for procainamide	0.00	0.00	0.00	0.00	XXX	0
80192		X	Assay for procainamide	0.00	0.00	0.00	0.00	XXX	0
80194		X	Assay for quinidine	0.00	0.00	0.00	0.00	XXX	0
80196		X	Assay for salicylate	0.00	0.00	0.00	0.00	XXX	0
80197		X	Assay for tacrolimus	0.00	0.00	0.00	0.00	XXX	0
80198		X	Assay for theophylline	0.00	0.00	0.00	0.00	XXX	0
80200		X	Assay for tobramycin	0.00	0.00	0.00	0.00	XXX	0
80202		X	Assay for vancomycin	0.00	0.00	0.00	0.00	XXX	0
80298		X	Quantitative assay, drug	0.00	0.00	0.00	0.00	XXX	0
80400		X	Acth stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80402		X	Acth stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80406		X	Acth stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80408		X	Aldosterone suppression eval	0.00	0.00	0.00	0.00	XXX	0
80410		X	Calcitonin stim panel	0.00	0.00	0.00	0.00	XXX	0
80412		X	CRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80414		X	Testosterone response	0.00	0.00	0.00	0.00	XXX	0
80415		X	Estradiol response panel	0.00	0.00	0.00	0.00	XXX	0
80416		X	Renin stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80417		X	Renin stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80418		X	Plutary evaluation panel	0.00	0.00	0.00	0.00	XXX	0
80420		X	Dexamethasone panel	0.00	0.00	0.00	0.00	XXX	0
80422		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80424		X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80426		X	Gonadotropin hormone panel	0.00	0.00	0.00	0.00	XXX	0
80428		X	Growth hormone panel	0.00	0.00	0.00	0.00	XXX	0
80430		X	Growth hormone panel	0.00	0.00	0.00	0.00	XXX	0
80432		X	Insulin suppression panel	0.00	0.00	0.00	0.00	XXX	0
80434		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80436		X	Insulin tolerance panel	0.00	0.00	0.00	0.00	XXX	0
80438		X	Metyrapone panel	0.00	0.00	0.00	0.00	XXX	0
80439		X	TRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80440		X	TRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80440		X	TRH stimulation panel	0.00	0.00	0.00	0.00	XXX	0
80500		A	Lab pathology consultation	0.37	0.20	0.01	0.58	XXX	N
80502		A	Lab pathology consultation	1.33	0.33	0.02	1.68	XXX	N
81000		X	Urinalysis, nonauto, w/scope	0.00	0.00	0.00	0.00	XXX	0
81001		X	Urinalysis, auto, w/scope	0.00	0.00	0.00	0.00	XXX	0
81002		X	Urinalysis nonauto w/o scope	0.00	0.00	0.00	0.00	XXX	0
81003		X	Urinalysis, auto, w/o scope	0.00	0.00	0.00	0.00	XXX	0
81005		X	Urinalysis	0.00	0.00	0.00	0.00	XXX	0
81007		X	Urine screen for bacteria	0.00	0.00	0.00	0.00	XXX	0
81015		X	Microscopic exam of urine	0.00	0.00	0.00	0.00	XXX	0
81020		X	Urinalysis, glass test	0.00	0.00	0.00	0.00	XXX	0
81025		X	Urine pregnancy test	0.00	0.00	0.00	0.00	XXX	0
81050		X	Urinalysis, volume measure	0.00	0.00	0.00	0.00	XXX	0
81089		X	Urinalysis test procedure	0.00	0.00	0.00	0.00	XXX	0
82000		X	Assay blood acetaldhyde	0.00	0.00	0.00	0.00	XXX	0
82003		X	Assay acetaminophen	0.00	0.00	0.00	0.00	XXX	0
82008		X	Test for acetone/ketones	0.00	0.00	0.00	0.00	XXX	0
82010		X	Acetone assay	0.00	0.00	0.00	0.00	XXX	0
82013		X	Acetylcholinesterase assay	0.00	0.00	0.00	0.00	XXX	0
82024		X	ACTH	0.00	0.00	0.00	0.00	XXX	0
82030		X	ADP & AMP	0.00	0.00	0.00	0.00	XXX	0
82040		X	Assay serum albumin	0.00	0.00	0.00	0.00	XXX	0
82042		X	Assay urine albumin	0.00	0.00	0.00	0.00	XXX	0
82043		X	Microalbumin, quantitative	0.00	0.00	0.00	0.00	XXX	0
82044		X	Microalbumin, semiquant	0.00	0.00	0.00	0.00	XXX	0
82055		X	Assay ethanol	0.00	0.00	0.00	0.00	XXX	0
82075		X	Assay breath ethanol	0.00	0.00	0.00	0.00	XXX	0
82085		X	Assay of aldolase	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
82088		X	Aldosterone	0.00	0.00	0.00	0.00	XXX	0
82101		X	Assay of urine alkaloids	0.00	0.00	0.00	0.00	XXX	0
82103		X	Alpha-1-antitrypsin, total	0.00	0.00	0.00	0.00	XXX	0
82104		X	Alpha-1-antitrypsin, pheno	0.00	0.00	0.00	0.00	XXX	0
82105		X	Alpha-fetoprotein, serum	0.00	0.00	0.00	0.00	XXX	0
82106		X	Alpha-fetoprotein; amniotic	0.00	0.00	0.00	0.00	XXX	0
82108		X	Assay, aluminum	0.00	0.00	0.00	0.00	XXX	0
82128		X	Test for amino acids	0.00	0.00	0.00	0.00	XXX	0
82130		X	Amino acids analysis	0.00	0.00	0.00	0.00	XXX	0
82131		X	Amino acids	0.00	0.00	0.00	0.00	XXX	0
82135		X	Assay, aminolevulinic acid	0.00	0.00	0.00	0.00	XXX	0
82140		X	Assay of ammonia	0.00	0.00	0.00	0.00	XXX	0
82143		X	Amniotic fluid scan	0.00	0.00	0.00	0.00	XXX	0
82145		X	Assay of amphetamines	0.00	0.00	0.00	0.00	XXX	0
82150		X	Assay of amylase	0.00	0.00	0.00	0.00	XXX	0
82154		X	Androstenediol glucuronide	0.00	0.00	0.00	0.00	XXX	0
82157		X	Assay of androstenedione	0.00	0.00	0.00	0.00	XXX	0
82160		X	Androstereone assay	0.00	0.00	0.00	0.00	XXX	0
82163		X	Assay of angiotensin II	0.00	0.00	0.00	0.00	XXX	0
82164		X	Angiotensin I enzyme test	0.00	0.00	0.00	0.00	XXX	0
82172		X	Apolipoprotein	0.00	0.00	0.00	0.00	XXX	0
82175		X	Assay of arsenic	0.00	0.00	0.00	0.00	XXX	0
82180		X	Assay of ascorbic acid	0.00	0.00	0.00	0.00	XXX	0
82190		X	Atomic absorption	0.00	0.00	0.00	0.00	XXX	0
82205		X	Assay of barbiturates	0.00	0.00	0.00	0.00	XXX	0
82232		X	Beta-2 protein	0.00	0.00	0.00	0.00	XXX	0
82239		X	Bile acids, total	0.00	0.00	0.00	0.00	XXX	0
82240		X	Bile acids, cholyglycine	0.00	0.00	0.00	0.00	XXX	0
82250		X	Assay bilirubin	0.00	0.00	0.00	0.00	XXX	0
82251		X	Assay bilirubin	0.00	0.00	0.00	0.00	XXX	0
82252		X	Focal bilirubin test	0.00	0.00	0.00	0.00	XXX	0
82270		X	Test feces for blood	0.00	0.00	0.00	0.00	XXX	0
82273		X	Test for blood, other source	0.00	0.00	0.00	0.00	XXX	0
82286		X	Assay of bradykinin	0.00	0.00	0.00	0.00	XXX	0
82300		X	Assay cadmium	0.00	0.00	0.00	0.00	XXX	0
82306		X	Assay of vitamin D	0.00	0.00	0.00	0.00	XXX	0
82307		X	Assay of vitamin D	0.00	0.00	0.00	0.00	XXX	0
82308		X	Assay of calcitonin	0.00	0.00	0.00	0.00	XXX	0
82310		X	Assay calcium	0.00	0.00	0.00	0.00	XXX	0
82330		X	Assay calcium	0.00	0.00	0.00	0.00	XXX	0
82331		X	Calcium infusion test	0.00	0.00	0.00	0.00	XXX	0
82340		X	Assay calcium in urine	0.00	0.00	0.00	0.00	XXX	0
82355		X	Calculus (stone) analysis	0.00	0.00	0.00	0.00	XXX	0
82360		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	XXX	0
82365		X	Calculus (stone) assay	0.00	0.00	0.00	0.00	XXX	0
82370		X	X-ray assay, calculus (stone)	0.00	0.00	0.00	0.00	XXX	0
82374		X	Assay blood carbon dioxide	0.00	0.00	0.00	0.00	XXX	0
82375		X	Assay blood carbon monoxide	0.00	0.00	0.00	0.00	XXX	0
82376		X	Test for carbon monoxide	0.00	0.00	0.00	0.00	XXX	0
82378		X	Carcinoembryonic antigen	0.00	0.00	0.00	0.00	XXX	0
82380		X	Assay carotene	0.00	0.00	0.00	0.00	XXX	0
82382		X	Assay urine catecholamines	0.00	0.00	0.00	0.00	XXX	0
82383		X	Assay blood catecholamines	0.00	0.00	0.00	0.00	XXX	0
82384		X	Assay three catecholamines	0.00	0.00	0.00	0.00	XXX	0
82387		X	Cathepsin-D	0.00	0.00	0.00	0.00	XXX	0
82390		X	Assay ceruloplasmin	0.00	0.00	0.00	0.00	XXX	0
82397		X	Chemiluminescent assay	0.00	0.00	0.00	0.00	XXX	0
82415		X	Assay chloramphenicol	0.00	0.00	0.00	0.00	XXX	0
82436		X	Assay blood chloride	0.00	0.00	0.00	0.00	XXX	0
82438		X	Assay urine chloride	0.00	0.00	0.00	0.00	XXX	0
82441		X	Assay other fluid chlorides	0.00	0.00	0.00	0.00	XXX	0
82465		X	Test for chlorohydrocarbons	0.00	0.00	0.00	0.00	XXX	0
82460		X	Assay serum cholesterol	0.00	0.00	0.00	0.00	XXX	0
82482		X	Assay serum cholinesterase	0.00	0.00	0.00	0.00	XXX	0
82485		X	Assay rbc cholinesterase	0.00	0.00	0.00	0.00	XXX	0
82486		X	Assay chondroitin sulfate	0.00	0.00	0.00	0.00	XXX	0
82486		X	Gas/liquid chromatography	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
82487		X	Paper chromatography	0.00	0.00	0.00	0.00	XXX	0
82488		X	Paper chromatography	0.00	0.00	0.00	0.00	XXX	0
82489		X	Thin layer chromatography	0.00	0.00	0.00	0.00	XXX	0
82491		X	Chromatography, quantitative	0.00	0.00	0.00	0.00	XXX	0
82495		X	Assay chromium	0.00	0.00	0.00	0.00	XXX	0
82507		X	Assay citrate	0.00	0.00	0.00	0.00	XXX	0
82520		X	Assay for cocaine	0.00	0.00	0.00	0.00	XXX	0
82523		X	Collagen crosslinks	0.00	0.00	0.00	0.00	XXX	0
82525		X	Assay copper	0.00	0.00	0.00	0.00	XXX	0
82538		X	Assay corticosterone	0.00	0.00	0.00	0.00	XXX	0
82530		X	Cortisol, free	0.00	0.00	0.00	0.00	XXX	0
82533		X	Total cortisol	0.00	0.00	0.00	0.00	XXX	0
82540		X	Assay creatine	0.00	0.00	0.00	0.00	XXX	0
82550		X	Assay CK (CPK)	0.00	0.00	0.00	0.00	XXX	0
82552		X	Assay CPK in blood	0.00	0.00	0.00	0.00	XXX	0
82553		X	Creatine, MB fraction	0.00	0.00	0.00	0.00	XXX	0
82554		X	Creatine, isoforms	0.00	0.00	0.00	0.00	XXX	0
82565		X	Assay creatinine	0.00	0.00	0.00	0.00	XXX	0
82570		X	Assay urine creatinine	0.00	0.00	0.00	0.00	XXX	0
82575		X	Creatinine clearance test	0.00	0.00	0.00	0.00	XXX	0
82585		X	Assay cryofibrinogen	0.00	0.00	0.00	0.00	XXX	0
82585		X	Assay cryoglobulin	0.00	0.00	0.00	0.00	XXX	0
82600		X	Assay cyanide	0.00	0.00	0.00	0.00	XXX	0
82607		X	Vitamin B-12	0.00	0.00	0.00	0.00	XXX	0
82608		X	B-12 binding capacity	0.00	0.00	0.00	0.00	XXX	0
82615		X	Test for urine cystines	0.00	0.00	0.00	0.00	XXX	0
82626		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	XXX	0
82627		X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	XXX	0
82633		X	Desoxycorticosterone	0.00	0.00	0.00	0.00	XXX	0
82634		X	Deoxycortisol	0.00	0.00	0.00	0.00	XXX	0
82638		X	Assay dibucaine number	0.00	0.00	0.00	0.00	XXX	0
82648		X	Assay of dihydrocodeinone	0.00	0.00	0.00	0.00	XXX	0
82649		X	Assay of dihydromorphine	0.00	0.00	0.00	0.00	XXX	0
82651		X	Dihydrotestosterone assay	0.00	0.00	0.00	0.00	XXX	0
82652		X	Assay, dihydroxyvitamin D	0.00	0.00	0.00	0.00	XXX	0
82654		X	Assay of dimethadione	0.00	0.00	0.00	0.00	XXX	0
82654		X	Electrophoretic test	0.00	0.00	0.00	0.00	XXX	0
82668		X	Epiandrosterone assay	0.00	0.00	0.00	0.00	XXX	0
82668		X	Erythropoietin	0.00	0.00	0.00	0.00	XXX	0
82670		X	Estradiol	0.00	0.00	0.00	0.00	XXX	0
82671		X	Estrogens assay	0.00	0.00	0.00	0.00	XXX	0
82672		X	Estrogen assay	0.00	0.00	0.00	0.00	XXX	0
82677		X	Estrone	0.00	0.00	0.00	0.00	XXX	0
82679		X	Ethchlorvynol	0.00	0.00	0.00	0.00	XXX	0
82690		X	Ethylene glycol	0.00	0.00	0.00	0.00	XXX	0
82693		X	Etioclanolone	0.00	0.00	0.00	0.00	XXX	0
82696		X	Fats/lipids, feces, qualitative	0.00	0.00	0.00	0.00	XXX	0
82705		X	Fats/lipids, feces, quantitative	0.00	0.00	0.00	0.00	XXX	0
82710		X	Fecal fat assay	0.00	0.00	0.00	0.00	XXX	0
82715		X	Assay blood fatty acids	0.00	0.00	0.00	0.00	XXX	0
82725		X	Assay ferritin	0.00	0.00	0.00	0.00	XXX	0
82728		X	Assay fluoride	0.00	0.00	0.00	0.00	XXX	0
82735		X	Assay of flurazepam	0.00	0.00	0.00	0.00	XXX	0
82742		X	Blood folic acid serum	0.00	0.00	0.00	0.00	XXX	0
82746		X	Folic acid, RBC	0.00	0.00	0.00	0.00	XXX	0
82747		X	Assay semen fructose	0.00	0.00	0.00	0.00	XXX	0
82757		X	RBC galactokinase assay	0.00	0.00	0.00	0.00	XXX	0
82759		X	Assay galactose	0.00	0.00	0.00	0.00	XXX	0
82760		X	Assay galactose transferase	0.00	0.00	0.00	0.00	XXX	0
82775		X	Galactose transferase test	0.00	0.00	0.00	0.00	XXX	0
82776		X	Assay gammaglobulin IgM	0.00	0.00	0.00	0.00	XXX	0
82784		X	Assay, gammaglobulin IgE	0.00	0.00	0.00	0.00	XXX	0
82785		X	IgG1, 2, 3 and 4	0.00	0.00	0.00	0.00	XXX	0
82787		X	Blood pH	0.00	0.00	0.00	0.00	XXX	0
82800		X	Blood gases: pH, pO ₂ & pCO ₂	0.00	0.00	0.00	0.00	XXX	0
82805		X	Blood gases WO ₂ saturation	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
82810		X	Blood gases, O ₂ sat only	0.00	0.00	0.00	0.00	XXX	0
82820		X	Hemoglobin-oxygen affinity	0.00	0.00	0.00	0.00	XXX	0
82825		X	Assay gastric acid	0.00	0.00	0.00	0.00	XXX	0
82828		X	Assay gastric acid	0.00	0.00	0.00	0.00	XXX	0
82938		X	Gastrin test	0.00	0.00	0.00	0.00	XXX	0
82941		X	Assay of gastrin	0.00	0.00	0.00	0.00	XXX	0
82943		X	Assay of glucagon	0.00	0.00	0.00	0.00	XXX	0
82946		X	Glucagon tolerance test	0.00	0.00	0.00	0.00	XXX	0
82947		X	Assay quantitative, glucose	0.00	0.00	0.00	0.00	XXX	0
82948		X	Reagent strip/blood glucose	0.00	0.00	0.00	0.00	XXX	0
82950		X	Glucose test	0.00	0.00	0.00	0.00	XXX	0
82951		X	Glucose tolerance test (GTT)	0.00	0.00	0.00	0.00	XXX	0
82952		X	GTT-added samples	0.00	0.00	0.00	0.00	XXX	0
82953		X	Glucose-tolbutamide test	0.00	0.00	0.00	0.00	XXX	0
82955		X	Assay G6PD enzyme	0.00	0.00	0.00	0.00	XXX	0
82960		X	Test for G6PD enzyme	0.00	0.00	0.00	0.00	XXX	0
82962		X	Glucose blood test	0.00	0.00	0.00	0.00	XXX	0
82963		X	Glucosidase assay	0.00	0.00	0.00	0.00	XXX	0
82965		X	Assay GDH enzyme	0.00	0.00	0.00	0.00	XXX	0
82975		X	Assay glutamine	0.00	0.00	0.00	0.00	XXX	0
82977		X	Assay of GGT	0.00	0.00	0.00	0.00	XXX	0
82978		X	Glutathione assay	0.00	0.00	0.00	0.00	XXX	0
82979		X	Assay RBC glutathione enzyme	0.00	0.00	0.00	0.00	XXX	0
82980		X	Assay of glutathione	0.00	0.00	0.00	0.00	XXX	0
82985		X	Glycated protein	0.00	0.00	0.00	0.00	XXX	0
83001		X	Gonadotropin (FSH)	0.00	0.00	0.00	0.00	XXX	0
83002		X	Gonadotropin (LH)	0.00	0.00	0.00	0.00	XXX	0
83003		X	Assay growth hormone (HGH)	0.00	0.00	0.00	0.00	XXX	0
83008		X	Assay guanosine	0.00	0.00	0.00	0.00	XXX	0
83010		X	Quant assay haptoglobin	0.00	0.00	0.00	0.00	XXX	0
83012		X	Assay haptoglobins	0.00	0.00	0.00	0.00	XXX	0
83015		X	Heavy metal screen	0.00	0.00	0.00	0.00	XXX	0
83018		X	Quantitative screen, metals	0.00	0.00	0.00	0.00	XXX	0
83020		X	Assay hemoglobin	0.00	0.00	0.00	0.00	XXX	0
83026	26	A	Assay hemoglobin	0.37	0.20	0.01	0.58	XXX	N
83026		X	Hemoglobin, copper sulfate	0.00	0.00	0.00	0.00	XXX	0
83030		X	Fetal hemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83033		X	Fetal fecal hemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83036		X	Glycated hemoglobin test	0.00	0.00	0.00	0.00	XXX	0
83045		X	Blood methemoglobin test	0.00	0.00	0.00	0.00	XXX	0
83050		X	Blood methemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83051		X	Assay plasma hemoglobin	0.00	0.00	0.00	0.00	XXX	0
83055		X	Blood sulfhemoglobin test	0.00	0.00	0.00	0.00	XXX	0
83060		X	Blood sulfhemoglobin assay	0.00	0.00	0.00	0.00	XXX	0
83065		X	Hemoglobin heat assay	0.00	0.00	0.00	0.00	XXX	0
83068		X	Hemoglobin stability screen	0.00	0.00	0.00	0.00	XXX	0
83069		X	Assay urine hemoglobin	0.00	0.00	0.00	0.00	XXX	0
83070		X	Quant assay hemosiderin	0.00	0.00	0.00	0.00	XXX	0
83071		X	Quant assay of hemosiderin	0.00	0.00	0.00	0.00	XXX	0
83088		X	Assay histamine	0.00	0.00	0.00	0.00	XXX	0
83150		X	Assay for HVA	0.00	0.00	0.00	0.00	XXX	0
83491		X	Assay of corticosteroids	0.00	0.00	0.00	0.00	XXX	0
83497		X	Assay 5-HIAA	0.00	0.00	0.00	0.00	XXX	0
83498		X	Assay of progesterone	0.00	0.00	0.00	0.00	XXX	0
83499		X	Assay of progesterone	0.00	0.00	0.00	0.00	XXX	0
83500		X	Assay free hydroxyproline	0.00	0.00	0.00	0.00	XXX	0
83505		X	Assay total hydroxyproline	0.00	0.00	0.00	0.00	XXX	0
83516		X	Immunoassay, non antibody	0.00	0.00	0.00	0.00	XXX	0
83518		X	Immunoassay, dipstick	0.00	0.00	0.00	0.00	XXX	0
83519		X	Immunoassay nonantibody	0.00	0.00	0.00	0.00	XXX	0
83520		X	Immunoassay, RIA	0.00	0.00	0.00	0.00	XXX	0
83525		X	Assay of insulin	0.00	0.00	0.00	0.00	XXX	0
83527		X	Assay of insulin	0.00	0.00	0.00	0.00	XXX	0
83528		X	Assay intrinsic factor	0.00	0.00	0.00	0.00	XXX	0
83540		X	Assay iron	0.00	0.00	0.00	0.00	XXX	0
83550		X	Iron binding test	0.00	0.00	0.00	0.00	XXX	0
83570		X	Assay IDH enzyme	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS-2	MOD	Status	Description	Physician work RVUs ¹	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
83582		X	Assay ketogenic steroids	0.00	0.00	0.00	0.00	XXX	0
83586		X	Assay 17-(17-KS) ketosteroids	0.00	0.00	0.00	0.00	XXX	0
83593		X	Fractionation ketosteroids	0.00	0.00	0.00	0.00	XXX	0
83605		X	Lactic acid assay	0.00	0.00	0.00	0.00	XXX	0
83615		X	Lactate (LD) (LDH) enzyme	0.00	0.00	0.00	0.00	XXX	0
83625		X	Assay LDH enzymes	0.00	0.00	0.00	0.00	XXX	0
83632		X	Placental lactogen	0.00	0.00	0.00	0.00	XXX	0
83633		X	Test urine for lactose	0.00	0.00	0.00	0.00	XXX	0
83634		X	Assay urine for lactose	0.00	0.00	0.00	0.00	XXX	0
83655		X	Assay for lead	0.00	0.00	0.00	0.00	XXX	0
83661		X	Assay L/S ratio	0.00	0.00	0.00	0.00	XXX	0
83662		X	L/S ratio, foam stability	0.00	0.00	0.00	0.00	XXX	0
83670		X	Assay LAP enzyme	0.00	0.00	0.00	0.00	XXX	0
83690		X	Assay lipase	0.00	0.00	0.00	0.00	XXX	0
83715		X	Assay blood lipoproteins	0.00	0.00	0.00	0.00	XXX	0
83717		X	Assay blood lipoproteins	0.00	0.00	0.00	0.00	XXX	0
83718		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	XXX	0
83719		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	XXX	0
83721		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	XXX	0
83727		X	LRH hormone assay	0.00	0.00	0.00	0.00	XXX	0
83735		X	Assay magnesium	0.00	0.00	0.00	0.00	XXX	0
83775		X	Assay of md enzyme	0.00	0.00	0.00	0.00	XXX	0
83785		X	Assay of manganese	0.00	0.00	0.00	0.00	XXX	0
83805		X	Assay of meprobamate	0.00	0.00	0.00	0.00	XXX	0
83825		X	Assay mercury	0.00	0.00	0.00	0.00	XXX	0
83835		X	Assay metanephries	0.00	0.00	0.00	0.00	XXX	0
83840		X	Assay methadone	0.00	0.00	0.00	0.00	XXX	0
83857		X	Assay mathemalbumin	0.00	0.00	0.00	0.00	XXX	0
83858		X	Assay methuamide	0.00	0.00	0.00	0.00	XXX	0
83864		X	Mucopolysaccharides	0.00	0.00	0.00	0.00	XXX	0
83866		X	Mucopolysaccharides screen	0.00	0.00	0.00	0.00	XXX	0
83872		X	Assay synovial fluid much	0.00	0.00	0.00	0.00	XXX	0
83873		X	Assay, CSF protein	0.00	0.00	0.00	0.00	XXX	0
83874		X	Myoglobin	0.00	0.00	0.00	0.00	XXX	0
83893		X	Nephelometry, not specified	0.00	0.00	0.00	0.00	XXX	0
83885		X	Assay for nickel	0.00	0.00	0.00	0.00	XXX	0
83887		X	Assay nicotine	0.00	0.00	0.00	0.00	XXX	0
83890		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83892		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83894		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83896		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83898		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83902		X	Molecular diagnostics	0.00	0.00	0.00	0.00	XXX	0
83912		X	Genetic examination	0.00	0.00	0.00	0.00	XXX	0
83912	28	A	Genetic examination	0.37	0.20	0.01	0.58	XXX	N
83915		X	Assay nucleotidase	0.00	0.00	0.00	0.00	XXX	0
83916		X	Oligoclonal bands	0.00	0.00	0.00	0.00	XXX	0
83918		X	Assay organic acids	0.00	0.00	0.00	0.00	XXX	0
83925		X	Opates	0.00	0.00	0.00	0.00	XXX	0
83930		X	Assay blood osmolality	0.00	0.00	0.00	0.00	XXX	0
83935		X	Assay urine osmolality	0.00	0.00	0.00	0.00	XXX	0
83937		X	Assay for osteocalcin	0.08	0.00	0.00	0.00	XXX	0
83945		X	Assay oxalate	0.00	0.00	0.00	0.00	XXX	0
83970		X	Assay of parathormone	0.00	0.00	0.00	0.00	XXX	0
83984		X	Assay body fluid acidity	0.00	0.00	0.00	0.00	XXX	0
83992		X	Assay for phenocyclidine	0.00	0.00	0.00	0.00	XXX	0
84022		X	Assay of phenothiazine	0.00	0.00	0.00	0.00	XXX	0
84030		X	Assay blood PKU	0.00	0.00	0.00	0.00	XXX	0
84035		X	Assay phenylketones	0.00	0.00	0.00	0.00	XXX	0
84050		X	Assay acid phosphatase	0.00	0.00	0.00	0.00	XXX	0
84051		X	Phosphatase, forensic exam	0.00	0.00	0.00	0.00	XXX	0
84066		X	Assay prostate phosphatase	0.00	0.00	0.00	0.00	XXX	0
84075		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	XXX	0
84078		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	XXX	0
84080		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	XXX	0
84081		X	Amniotic fluid enzyme test	0.00	0.00	0.00	0.00	XXX	0
84085		X	Assay RBC PGSD enzyme	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS-2	MOD	Status	Description	Physician work RVUs ¹	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
84087		X	Assay phosphatases enzymes	0.00	0.00	0.00	0.00	XXX	0
84100		X	Assay phosphorus	0.00	0.00	0.00	0.00	XXX	0
84105		X	Assay urine phosphorus	0.00	0.00	0.00	0.00	XXX	0
84108		X	Test for porphobilinogen	0.00	0.00	0.00	0.00	XXX	0
84110		X	Assay porphobilinogen	0.00	0.00	0.00	0.00	XXX	0
84119		X	Test urine for porphyrins	0.00	0.00	0.00	0.00	XXX	0
84120		X	Assay urine porphyrins	0.00	0.00	0.00	0.00	XXX	0
84126		X	Assay feces porphyrins	0.00	0.00	0.00	0.00	XXX	0
84127		X	Porphyrins, feces	0.00	0.00	0.00	0.00	XXX	0
84132		X	Assay serum potassium	0.00	0.00	0.00	0.00	XXX	0
84133		X	Assay urine potassium	0.00	0.00	0.00	0.00	XXX	0
84134		X	Proalbumin	0.00	0.00	0.00	0.00	XXX	0
84135		X	Assay progesterone	0.00	0.00	0.00	0.00	XXX	0
84136		X	Assay progesterone	0.00	0.00	0.00	0.00	XXX	0
84140		X	Assay for pregnenolone	0.00	0.00	0.00	0.00	XXX	0
84143		X	Assay/17-hydroxypregnenolone	0.00	0.00	0.00	0.00	XXX	0
84144		X	Assay progesterone	0.00	0.00	0.00	0.00	XXX	0
84146		X	Assay for prolactin	0.00	0.00	0.00	0.00	XXX	0
84150		X	Assay of prostaglandin	0.00	0.00	0.00	0.00	XXX	0
84153		X	Prostate specific antigen	0.00	0.00	0.00	0.00	XXX	0
84155		X	Assay protein	0.00	0.00	0.00	0.00	XXX	0
84160		X	Assay serum protein	0.00	0.00	0.00	0.00	XXX	0
84165		X	Assay serum proteins	0.00	0.00	0.00	0.00	XXX	0
84165	28	A	Assay serum proteins	0.37	0.20	0.01	0.58	XXX	N
84181		X	Western blot test	0.00	0.00	0.00	0.00	XXX	0
84181	28	A	Western blot test	0.37	0.20	0.01	0.58	XXX	N
84182		X	Protein, western blot test	0.00	0.00	0.00	0.00	XXX	0
84182	28	A	Protein, western blot test	0.37	0.20	0.01	0.58	XXX	N
84202		X	Assay RBC protoporphyrin	0.00	0.00	0.00	0.00	XXX	0
84203		X	Test RBC protoporphyrin	0.00	0.00	0.00	0.00	XXX	0
84206		X	Assay of prealbumin	0.00	0.00	0.00	0.00	XXX	0
84207		X	Assay vitamin B-6	0.00	0.00	0.00	0.00	XXX	0
84210		X	Assay pyruvate	0.00	0.00	0.00	0.00	XXX	0
84220		X	Assay pyruvate kinase	0.00	0.00	0.00	0.00	XXX	0
84228		X	Assay quinine	0.00	0.00	0.00	0.00	XXX	0
84233		X	Assay estrogen	0.00	0.00	0.00	0.00	XXX	0
84234		X	Assay progesterone	0.00	0.00	0.00	0.00	XXX	0
84235		X	Assay endocrine hormone	0.00	0.00	0.00	0.00	XXX	0
84238		X	Assay non-endocrine receptor	0.00	0.00	0.00	0.00	XXX	0
84244		X	Assay of renin	0.00	0.00	0.00	0.00	XXX	0
84252		X	Assay vitamin B-2	0.00	0.00	0.00	0.00	XXX	0
84255		X	Assay selenium	0.00	0.00	0.00	0.00	XXX	0
84260		X	Assay serotonin	0.00	0.00	0.00	0.00	XXX	0
84270		X	Sex hormone globulin (SHBG)	0.00	0.00	0.00	0.00	XXX	0
84275		X	Assay silicic acid	0.00	0.00	0.00	0.00	XXX	0
84285		X	Assay silica	0.00	0.00	0.00	0.00	XXX	0
84295		X	Assay serum sodium	0.00	0.00	0.00	0.00	XXX	0
84300		X	Assay urine sodium	0.00	0.00	0.00	0.00	XXX	0
84305		X	Somatostatin	0.00	0.00	0.00	0.00	XXX	0
84307		X	Somatostatin	0.00	0.00	0.00	0.00	XXX	0
84311		X	Spectrophotometry	0.00	0.00	0.00	0.00	XXX	0
84315		X	Body fluid specific gravity	0.00	0.00	0.00	0.00	XXX	0
84375		X	Chromatogram assay, sugars	0.00	0.00	0.00	0.00	XXX	0
84382		X	Assay urine sulfate	0.00	0.00	0.00	0.00	XXX	0
84402		X	Testosterone	0.00	0.00	0.00	0.00	XXX	0
84403		X	Assay total testosterone	0.00	0.00	0.00	0.00	XXX	0
84425		X	Assay vitamin B-1	0.00	0.00	0.00	0.00	XXX	0
84430		X	Assay thiocyanate	0.00	0.00	0.00	0.00	XXX	0
84432		X	Thyroglobulin	0.00	0.00	0.00	0.00	XXX	0
84436		X	Assay, total thyroxine	0.00	0.00	0.00	0.00	XXX	0
84437		X	Assay neonatal thyroxine	0.00	0.00	0.00	0.00	XXX	0
84438		X	Assay, free thyroxine	0.00	0.00	0.00	0.00	XXX	0
84442		X	Thyroid activity (TBG) assay	0.00	0.00	0.00	0.00	XXX	0
84443		X	Assay thyroid stim hormone	0.00	0.00	0.00	0.00	XXX	0
84445		X	Thyroid immunoglobulins TSI	0.00	0.00	0.00	0.00	XXX	0
84446		X	Assay vitamin E	0.00	0.00	0.00	0.00	XXX	0
84448		X	Assay for transcortin	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
84450		X	Transferrase (AST) (SGOT)	0.00	0.00	0.00	0.00	XXX	0
84460		X	Alanine amino (ALT) (SGPT)	0.00	0.00	0.00	0.00	XXX	0
84466		X	Transferrin	0.00	0.00	0.00	0.00	XXX	0
84478		X	Assay triglycerides	0.00	0.00	0.00	0.00	XXX	0
84479		X	Assay thyroid (t-3 or t-4)	0.00	0.00	0.00	0.00	XXX	0
84480		X	Assay triiodothyronine (t-3)	0.00	0.00	0.00	0.00	XXX	0
84481		X	Free assay (FT-3)	0.00	0.00	0.00	0.00	XXX	0
84482		X	T3 reverse	0.00	0.00	0.00	0.00	XXX	0
84484		X	Tropoin	0.00	0.00	0.00	0.00	XXX	0
84485		X	Assay duodenal fluid trypsin	0.00	0.00	0.00	0.00	XXX	0
84488		X	Test feces for trypsin	0.00	0.00	0.00	0.00	XXX	0
84490		X	Assay feces for trypsin	0.00	0.00	0.00	0.00	XXX	0
84510		X	Assay tyrosine	0.00	0.00	0.00	0.00	XXX	0
84520		X	Assay urea nitrogen	0.00	0.00	0.00	0.00	XXX	0
84525		X	Urea nitrogen semi-quant	0.00	0.00	0.00	0.00	XXX	0
84540		X	Assay urine urea-N	0.00	0.00	0.00	0.00	XXX	0
84545		X	Urea-N clearance test	0.00	0.00	0.00	0.00	XXX	0
84550		X	Assay blood uric acid	0.00	0.00	0.00	0.00	XXX	0
84560		X	Assay urine uric acid	0.00	0.00	0.00	0.00	XXX	0
84577		X	Assay feces urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84578		X	Test urine urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84580		X	Assay urine urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84583		X	Assay urine urobilinogen	0.00	0.00	0.00	0.00	XXX	0
84585		X	Assay urine VMA	0.00	0.00	0.00	0.00	XXX	0
84598		X	VIP assay	0.00	0.00	0.00	0.00	XXX	0
84599		X	Assay vasopressin	0.00	0.00	0.00	0.00	XXX	0
84599		X	Assay vitamin-A	0.00	0.00	0.00	0.00	XXX	0
84597		X	Assay vitamin-K	0.00	0.00	0.00	0.00	XXX	0
84600		X	Assay for volatiles	0.00	0.00	0.00	0.00	XXX	0
84620		X	Xylose tolerance test	0.00	0.00	0.00	0.00	XXX	0
84630		X	Assay zinc	0.00	0.00	0.00	0.00	XXX	0
84681		X	Assay C-peptide	0.00	0.00	0.00	0.00	XXX	0
84702		X	Chorionic gonadotropin test	0.00	0.00	0.00	0.00	XXX	0
84703		X	Chorionic gonadotropin assay	0.00	0.00	0.00	0.00	XXX	0
84830		X	Ovulation tests	0.00	0.00	0.00	0.00	XXX	0
84998		X	Clinical chemistry test	0.00	0.00	0.00	0.00	XXX	0
85002		X	Bleeding time test	0.00	0.00	0.00	0.00	XXX	0
85007		X	Differential WBC count	0.00	0.00	0.00	0.00	XXX	0
85008		X	Nondifferential WBC count	0.00	0.00	0.00	0.00	XXX	0
85009		X	Differential WBC count	0.00	0.00	0.00	0.00	XXX	0
85013		X	Hematocrit	0.00	0.00	0.00	0.00	XXX	0
85014		X	Hematocrit	0.00	0.00	0.00	0.00	XXX	0
85018		X	Hemoglobin	0.00	0.00	0.00	0.00	XXX	0
85021		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85022		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85023		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85024		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85025		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85027		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85029		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85030		X	Automated hemogram	0.00	0.00	0.00	0.00	XXX	0
85031		X	Manual hemogram, complete cbc	0.00	0.00	0.00	0.00	XXX	0
85041		X	Red blood cell (RBC) count	0.00	0.00	0.00	0.00	XXX	0
85044		X	Reticulocyte count	0.00	0.00	0.00	0.00	XXX	0
85045		X	Reticulocyte count	0.00	0.00	0.00	0.00	XXX	0
85048		X	White blood cell (WBC) count	0.00	0.00	0.00	0.00	XXX	0
85060		A	Blood smear interpretation	0.45	0.22	0.02	0.69	XXX	N
85095		A	Bone marrow aspiration	1.08	0.67	0.05	1.80	XXX	N
85097		A	Bone marrow interpretation	0.94	0.48	0.04	1.46	XXX	N
85102		A	Bone marrow biopsy	1.37	0.80	0.05	2.22	XXX	N
85130		X	Chromogenic substrate assay	0.00	0.00	0.00	0.00	XXX	0
85170		X	Blood clot retraction	0.00	0.00	0.00	0.00	XXX	0
85175		X	Blood clot lysis time	0.00	0.00	0.00	0.00	XXX	0
85210		X	Blood clot factor II test	0.00	0.00	0.00	0.00	XXX	0
85220		X	Blood clot factor V test	0.00	0.00	0.00	0.00	XXX	0
85230		X	Blood clot factor VII test	0.00	0.00	0.00	0.00	XXX	0
85240		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
85244		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85245		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85246		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85247		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	XXX	0
85250		X	Blood clot factor IX test	0.00	0.00	0.00	0.00	XXX	0
85260		X	Blood clot factor X test	0.00	0.00	0.00	0.00	XXX	0
85270		X	Blood clot factor XI test	0.00	0.00	0.00	0.00	XXX	0
85280		X	Blood clot factor XII test	0.00	0.00	0.00	0.00	XXX	0
85290		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	XXX	0
85291		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	XXX	0
85292		X	Blood clot factor assay	0.00	0.00	0.00	0.00	XXX	0
85293		X	Blood clot factor assay	0.00	0.00	0.00	0.00	XXX	0
85300		X	Antithrombin III test	0.00	0.00	0.00	0.00	XXX	0
85301		X	Antithrombin III test	0.00	0.00	0.00	0.00	XXX	0
85302		X	Blood clot inhibitor antigen	0.00	0.00	0.00	0.00	XXX	0
85303		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	XXX	0
85305		X	Blood clot inhibitor assay	0.00	0.00	0.00	0.00	XXX	0
85306		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	XXX	0
85335		X	Factor inhibitor test	0.00	0.00	0.00	0.00	XXX	0
85337		X	Thrombomodulin	0.00	0.00	0.00	0.00	XXX	0
85345		X	Coagulation time	0.00	0.00	0.00	0.00	XXX	0
85347		X	Coagulation time	0.00	0.00	0.00	0.00	XXX	0
85348		X	Coagulation time	0.00	0.00	0.00	0.00	XXX	0
85360		X	Euglobulin lysis	0.00	0.00	0.00	0.00	XXX	0
85362		X	Fibrin degradation products	0.00	0.00	0.00	0.00	XXX	0
85366		X	Fibrinogen test	0.00	0.00	0.00	0.00	XXX	0
85370		X	Fibrinogen test	0.00	0.00	0.00	0.00	XXX	0
85378		X	Fibrin degradation	0.00	0.00	0.00	0.00	XXX	0
85379		X	Fibrin degradation	0.00	0.00	0.00	0.00	XXX	0
85384		X	Fibrinogen	0.00	0.00	0.00	0.00	XXX	0
85385		X	Fibrinogen	0.00	0.00	0.00	0.00	XXX	0
85390		X	Fibrinolytic screen	0.00	0.00	0.00	0.00	XXX	0
85390	26	A	Fibrinolytic screen	0.37	0.20	0.01	0.58	XXX	N
85400		X	Fibrinolytic plasmin	0.00	0.00	0.00	0.00	XXX	0
85410		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	XXX	0
85415		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	XXX	0
85420		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	XXX	0
85421		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	XXX	0
85441		X	Heinz bodies; direct	0.00	0.00	0.00	0.00	XXX	0
85445		X	Heinz bodies; induced	0.00	0.00	0.00	0.00	XXX	0
85460		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	XXX	0
85461		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	XXX	0
85475		X	Hemolysis	0.00	0.00	0.00	0.00	XXX	0
85520		X	Heparin assay	0.00	0.00	0.00	0.00	XXX	0
85525		X	Heparin	0.00	0.00	0.00	0.00	XXX	0
85530		X	Heparin-protamine tolerance	0.00	0.00	0.00	0.00	XXX	0
85535		X	Iron stain, blood cells	0.00	0.00	0.00	0.00	XXX	0
85540		X	Wbc alkaline phosphatase	0.00	0.00	0.00	0.00	XXX	0
85547		X	RBC mechanical fragility	0.00	0.00	0.00	0.00	XXX	0
85549		X	Muramidase	0.00	0.00	0.00	0.00	XXX	0
85555		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	XXX	0
85557		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	XXX	0
85576		X	Blood platelet aggregation	0.00	0.00	0.00	0.00	XXX	0
85576	26	A	Blood platelet aggregation	0.37	0.20	0.01	0.58	XXX	N
85585		X	Blood platelet estimation	0.00	0.00	0.00	0.00	XXX	0
85590		X	Platelet manual count	0.00	0.00	0.00	0.00	XXX	0
85595		X	Platelet count, automated	0.00	0.00	0.00	0.00	XXX	0
85597		X	Platelet neutralization	0.00	0.00	0.00	0.00	XXX	0
85610		X	Prothrombin time	0.00	0.00	0.00	0.00	XXX	0
85611		X	Prothrombin test	0.00	0.00	0.00	0.00	XXX	0
85612		X	Viper venom prothrombin time	0.00	0.00	0.00	0.00	XXX	0
85613		X	Russell viper venom, diluted	0.00	0.00	0.00	0.00	XXX	0
85635		X	Reptilase test	0.00	0.00	0.00	0.00	XXX	0
85651		X	Rbc sed rate, nonauto	0.00	0.00	0.00	0.00	XXX	0
85652		X	Rbc sed rate, auto	0.00	0.00	0.00	0.00	XXX	0
85660		X	RBC sickle cell test	0.00	0.00	0.00	0.00	XXX	0
85670		X	Thrombin time, plasma	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
85675		X	Thrombin time, titer	0.00	0.00	0.00	0.00	XXX	0
85705		X	Thromboplastin inhibition	0.00	0.00	0.00	0.00	XXX	0
85730		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	XXX	0
85732		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	XXX	0
85810		X	Blood viscosity examination	0.00	0.00	0.00	0.00	XXX	0
85890		X	Hematology procedure	0.00	0.00	0.00	0.00	XXX	0
86000		X	Agglutinins; febrile	0.00	0.00	0.00	0.00	XXX	0
86003		X	Allergen specific IgE	0.00	0.00	0.00	0.00	XXX	0
86006		X	Allergen specific IgE	0.00	0.00	0.00	0.00	XXX	0
86021		X	WBC antibody identification	0.00	0.00	0.00	0.00	XXX	0
86022		X	Platelet antibodies	0.00	0.00	0.00	0.00	XXX	0
86023		X	Immunoglobulin assay	0.00	0.00	0.00	0.00	XXX	0
86038		X	Antinuclear antibodies	0.00	0.00	0.00	0.00	XXX	0
86039		X	Antinuclear antibodies (ANA)	0.00	0.00	0.00	0.00	XXX	0
86060		X	Antistreptolysin O titer	0.00	0.00	0.00	0.00	XXX	0
86063		X	Antistreptolysin O screen	0.00	0.00	0.00	0.00	XXX	0
86077		A	Physician blood bank service	0.94	0.30	0.02	1.26	XXX	N
86078		A	Physician blood bank service	0.94	0.34	0.02	1.30	XXX	N
86079		A	Physician blood bank service	0.94	0.33	0.02	1.29	XXX	N
86140		X	C-reactive protein	0.00	0.00	0.00	0.00	XXX	0
86147		X	Cardiolipin antibody	0.00	0.00	0.00	0.00	XXX	0
86155		X	Cheritox assay	0.00	0.00	0.00	0.00	XXX	0
86156		X	Cold agglutinin screen	0.00	0.00	0.00	0.00	XXX	0
86157		X	Cold agglutinin, titer	0.00	0.00	0.00	0.00	XXX	0
86160		X	Complement, antigen	0.00	0.00	0.00	0.00	XXX	0
86161		X	Complement/function activity	0.00	0.00	0.00	0.00	XXX	0
86162		X	Complement, total (CH50)	0.00	0.00	0.00	0.00	XXX	0
86171		X	Complement fixation, each	0.00	0.00	0.00	0.00	XXX	0
86185		X	Counterimmunoelectrophoresis	0.00	0.00	0.00	0.00	XXX	0
86215		X	Deoxyribonuclease, antibody	0.00	0.00	0.00	0.00	XXX	0
86225		X	DNA antibody	0.00	0.00	0.00	0.00	XXX	0
86226		X	DNA antibody, single strand	0.00	0.00	0.00	0.00	XXX	0
86235		X	Nuclear antigen antibody	0.00	0.00	0.00	0.00	XXX	0
86243		X	Fc receptor	0.00	0.00	0.00	0.00	XXX	0
86255		X	Fluorescent antibody; screen	0.00	0.00	0.00	0.00	XXX	0
86256	26	A	Fluorescent antibody; screen	0.37	0.20	0.01	0.58	XXX	N
86256		X	Fluorescent antibody; titer	0.00	0.00	0.00	0.00	XXX	0
86256	26	A	Fluorescent antibody; titer	0.37	0.20	0.01	0.58	XXX	N
86277		X	Growth hormone antibody	0.00	0.00	0.00	0.00	XXX	0
86280		X	Hemagglutination inhibition	0.00	0.00	0.00	0.00	XXX	0
86287		X	Hepatitis B (HBsAg)	0.00	0.00	0.00	0.00	XXX	0
86288		X	Hepatitis BC antibody test	0.00	0.00	0.00	0.00	XXX	0
86290		X	Hepatitis BC antibody test	0.00	0.00	0.00	0.00	XXX	0
86291		X	Hepatitis BS antibody test	0.00	0.00	0.00	0.00	XXX	0
86293		X	Hepatitis Be antibody test	0.00	0.00	0.00	0.00	XXX	0
86295		X	Hepatitis Be antibody test	0.00	0.00	0.00	0.00	XXX	0
86296		X	Hepatitis A antibody test	0.00	0.00	0.00	0.00	XXX	0
86299		X	Hepatitis A antibody test	0.00	0.00	0.00	0.00	XXX	0
86302		X	Hepatitis C antibody	0.00	0.00	0.00	0.00	XXX	0
86303		X	Hepatitis C antibody	0.00	0.00	0.00	0.00	XXX	0
86306		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	XXX	0
86308		X	Heterophile antibodies	0.00	0.00	0.00	0.00	XXX	0
86309		X	Heterophile antibodies	0.00	0.00	0.00	0.00	XXX	0
86310		X	Heterophile antibodies	0.00	0.00	0.00	0.00	XXX	0
86311		X	HIV antigen test	0.00	0.00	0.00	0.00	XXX	0
86313		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86315		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86316		X	Immunoassay, tumor antigen	0.00	0.00	0.00	0.00	XXX	0
86317		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86318		X	Immunoassay, infectious agent	0.00	0.00	0.00	0.00	XXX	0
86320		X	Serum immunoelectrophoresis	0.00	0.00	0.00	0.00	XXX	0
86320	26	A	Serum immunoelectrophoresis	0.37	0.20	0.01	0.58	XXX	N
86325		X	Other immunoelectrophoresis	0.00	0.00	0.00	0.00	XXX	0
86325	26	A	Other immunoelectrophoresis	0.37	0.20	0.01	0.58	XXX	N
86327		X	Immunoelectrophoresis assay	0.00	0.00	0.00	0.00	XXX	0
86327	26	A	Immunoelectrophoresis assay	0.42	0.20	0.01	0.63	XXX	N
86329		X	Immunodiffusion	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
86331		X	Immunodiffusion ouchterlony	0.00	0.00	0.00	0.00	XXX	0
86332		X	Immune complex assay	0.00	0.00	0.00	0.00	XXX	0
86334		X	Immunization procedure	0.00	0.00	0.00	0.00	XXX	0
86334	26	A	Immunization procedure	0.37	0.20	0.01	0.58	XXX	N
86337		X	Insulin antibodies	0.00	0.00	0.00	0.00	XXX	0
86340		X	Intrinsic factor antibody	0.00	0.00	0.00	0.00	XXX	0
86341		X	Ileal cell antibody	0.00	0.00	0.00	0.00	XXX	0
86343		X	Leukocyte histamine release	0.00	0.00	0.00	0.00	XXX	0
86344		X	Leukocyte phagocytosis	0.00	0.00	0.00	0.00	XXX	0
86353		X	Lymphocyte transformation	0.00	0.00	0.00	0.00	XXX	0
86359		X	T cells, total count	0.00	0.00	0.00	0.00	XXX	0
86360		X	T cell ratio	0.00	0.00	0.00	0.00	XXX	0
86376		X	Microsomal antibody	0.00	0.00	0.00	0.00	XXX	0
86378		X	Migration inhibitory factor	0.00	0.00	0.00	0.00	XXX	0
86382		X	Neutralization test, viral	0.00	0.00	0.00	0.00	XXX	0
86384		X	Nitroblue tetrazolium dye	0.00	0.00	0.00	0.00	XXX	0
86403		X	Particle agglutination test	0.00	0.00	0.00	0.00	XXX	0
86406		X	Particle agglutination test	0.00	0.00	0.00	0.00	XXX	0
86430		X	Rheumatoid factor test	0.00	0.00	0.00	0.00	XXX	0
86431		X	Rheumatoid factor, quant	0.00	0.00	0.00	0.00	XXX	0
86485		C	Skin test, candida	0.00	0.00	0.00	0.00	XXX	N
86490		A	Coccidioidomycosis skin test	0.00	0.28	0.02	0.30	XXX	N
86510		A	Histoplasmosis skin test	0.00	0.30	0.02	0.32	XXX	N
86580		A	TB intradermal test	0.00	0.24	0.02	0.26	XXX	N
86585		A	TB tine test	0.00	0.19	0.01	0.20	XXX	N
86586		C	Skin test, uninfected	0.00	0.00	0.00	0.00	XXX	N
86588		X	Streptococcus, direct screen	0.00	0.00	0.00	0.00	XXX	0
86590		X	Streptokinase, antibody	0.00	0.00	0.00	0.00	XXX	0
86592		X	Blood serology, qualitative	0.00	0.00	0.00	0.00	XXX	0
86593		X	Blood serology, quantitative	0.00	0.00	0.00	0.00	XXX	0
86602		X	Antinomyces antibody	0.00	0.00	0.00	0.00	XXX	0
86603		X	Adenovirus, antibody	0.00	0.00	0.00	0.00	XXX	0
86606		X	Aspergillus antibody	0.00	0.00	0.00	0.00	XXX	0
86609		X	Bacterium, antibody	0.00	0.00	0.00	0.00	XXX	0
86612		X	Blastomycosis, antibody	0.00	0.00	0.00	0.00	XXX	0
86615		X	Bordetella antibody	0.00	0.00	0.00	0.00	XXX	0
86617		X	Lyme disease antibody	0.00	0.00	0.00	0.00	XXX	0
86618		X	Lyme disease antibody	0.00	0.00	0.00	0.00	XXX	0
86619		X	Borrelia antibody	0.00	0.00	0.00	0.00	XXX	0
86622		X	Brucella, antibody	0.00	0.00	0.00	0.00	XXX	0
86625		X	Campylobacter, antibody	0.00	0.00	0.00	0.00	XXX	0
86628		X	Candida, antibody	0.00	0.00	0.00	0.00	XXX	0
86631		X	Chlamydia, antibody	0.00	0.00	0.00	0.00	XXX	0
86632		X	Chlamydia, IgM, antibody	0.00	0.00	0.00	0.00	XXX	0
86635		X	Coccidioides, antibody	0.00	0.00	0.00	0.00	XXX	0
86638		X	Q fever antibody	0.00	0.00	0.00	0.00	XXX	0
86641		X	Cryptococcus antibody	0.00	0.00	0.00	0.00	XXX	0
86644		X	CMV antibody	0.00	0.00	0.00	0.00	XXX	0
86645		X	CMV antibody, IgM	0.00	0.00	0.00	0.00	XXX	0
86648		X	Diphtheria antibody	0.00	0.00	0.00	0.00	XXX	0
86651		X	Encephalitis antibody	0.00	0.00	0.00	0.00	XXX	0
86652		X	Encephalitis antibody	0.00	0.00	0.00	0.00	XXX	0
86653		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	XXX	0
86654		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	XXX	0
86658		X	Enterovirus, antibody	0.00	0.00	0.00	0.00	XXX	0
86663		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	XXX	0
86664		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	XXX	0
86665		X	Epstein-barr, antibody	0.00	0.00	0.00	0.00	XXX	0
86668		X	Francisella tularensis	0.00	0.00	0.00	0.00	XXX	0
86671		X	Fungus, antibody	0.00	0.00	0.00	0.00	XXX	0
86674		X	Giardia lamblia	0.00	0.00	0.00	0.00	XXX	0
86677		X	Helicobacter pylori	0.00	0.00	0.00	0.00	XXX	0
86682		X	Helminth, antibody	0.00	0.00	0.00	0.00	XXX	0
86684		X	Hemophilus influenza	0.00	0.00	0.00	0.00	XXX	0
86687		X	HTLV I	0.00	0.00	0.00	0.00	XXX	0
86688		X	HTLV-II	0.00	0.00	0.00	0.00	XXX	0
86689		X	HTLV/HIV confirmatory test	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
86892		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	XXX	0
86894		X	Herpes simplex test	0.00	0.00	0.00	0.00	XXX	0
86896		X	Herpes simplex test	0.00	0.00	0.00	0.00	XXX	0
86898		X	Histoplasma	0.00	0.00	0.00	0.00	XXX	0
86701		X	HIV-1	0.00	0.00	0.00	0.00	XXX	0
86702		X	HIV-2	0.00	0.00	0.00	0.00	XXX	0
86703		X	HIV-1/HIV-2, single assay	0.00	0.00	0.00	0.00	XXX	0
86710		X	Influenza virus	0.00	0.00	0.00	0.00	XXX	0
86713		X	Legionella	0.00	0.00	0.00	0.00	XXX	0
86717		X	Leishmania	0.00	0.00	0.00	0.00	XXX	0
86720		X	Leptospira	0.00	0.00	0.00	0.00	XXX	0
86723		X	Listeria monocytogenes	0.00	0.00	0.00	0.00	XXX	0
86727		X	Lymph choriomeningitis	0.00	0.00	0.00	0.00	XXX	0
86729		X	Lympho venereum	0.00	0.00	0.00	0.00	XXX	0
86732		X	Mucormycosis	0.00	0.00	0.00	0.00	XXX	0
86735		X	Mumps	0.00	0.00	0.00	0.00	XXX	0
86738		X	Mycoplasma	0.00	0.00	0.00	0.00	XXX	0
86741		X	Neisseria meningitidis	0.00	0.00	0.00	0.00	XXX	0
86744		X	Nocardia	0.00	0.00	0.00	0.00	XXX	0
86747		X	Parvovirus	0.00	0.00	0.00	0.00	XXX	0
86750		X	Malaria	0.00	0.00	0.00	0.00	XXX	0
86753		X	Protozoa, not elsewhere	0.00	0.00	0.00	0.00	XXX	0
86756		X	Respiratory virus	0.00	0.00	0.00	0.00	XXX	0
86759		X	Rotavirus	0.00	0.00	0.00	0.00	XXX	0
86762		X	Rubella	0.00	0.00	0.00	0.00	XXX	0
86765		X	Rubeola	0.00	0.00	0.00	0.00	XXX	0
86768		X	Salmonella	0.00	0.00	0.00	0.00	XXX	0
86771		X	Shigella	0.00	0.00	0.00	0.00	XXX	0
86774		X	Tetanus	0.00	0.00	0.00	0.00	XXX	0
86777		X	Toxoplasma	0.00	0.00	0.00	0.00	XXX	0
86778		X	Toxoplasma, IgM	0.00	0.00	0.00	0.00	XXX	0
86781		X	Treponema pallidum confirm	0.00	0.00	0.00	0.00	XXX	0
86784		X	Trichinella	0.00	0.00	0.00	0.00	XXX	0
86787		X	Varicella-zoster	0.00	0.00	0.00	0.00	XXX	0
86790		X	Virus, not specified	0.00	0.00	0.00	0.00	XXX	0
86793		X	Yersinia	0.00	0.00	0.00	0.00	XXX	0
86800		X	Thyroglobulin antibody	0.00	0.00	0.00	0.00	XXX	0
86805		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	XXX	0
86808		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	XXX	0
86807		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	XXX	0
86808		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	XXX	0
86812		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	XXX	0
86813		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	XXX	0
86816		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	XXX	0
86817		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	XXX	0
86821		X	Lymphocyte culture, mixed	0.00	0.00	0.00	0.00	XXX	0
86822		X	Lymphocyte culture, primed	0.00	0.00	0.00	0.00	XXX	0
86849		X	Immunology procedure	0.00	0.00	0.00	0.00	XXX	0
86850		X	RBC antibody screen	0.00	0.00	0.00	0.00	XXX	0
86850		X	RBC antibody elution	0.00	0.00	0.00	0.00	XXX	0
86870		X	RBC antibody identification	0.00	0.00	0.00	0.00	XXX	0
86880		X	Coombs test	0.00	0.00	0.00	0.00	XXX	0
86885		X	Coombs test	0.00	0.00	0.00	0.00	XXX	0
86886		X	Coombs test	0.00	0.00	0.00	0.00	XXX	0
86890		X	Autologous blood process	0.00	0.00	0.00	0.00	XXX	0
86891		X	Autologous blood, op salvage	0.00	0.00	0.00	0.00	XXX	0
86900		X	Blood typing, ABO	0.00	0.00	0.00	0.00	XXX	0
86901		X	Blood typing, Rh (D)	0.00	0.00	0.00	0.00	XXX	0
86903		X	Blood typing, antigen screen	0.00	0.00	0.00	0.00	XXX	0
86904		X	Blood typing, patient serum	0.00	0.00	0.00	0.00	XXX	0
86905		X	Blood typing, RBC antigens	0.00	0.00	0.00	0.00	XXX	0
86906		X	Blood typing, Rh phenotype	0.00	0.00	0.00	0.00	XXX	0
86910		N	Blood typing, paternity test	0.00	0.00	0.00	0.00	XXX	0
86911		N	Blood typing, antigen system	0.00	0.00	0.00	0.00	XXX	0
86915		X	Bone marrow	0.00	0.00	0.00	0.00	XXX	0
86920		X	Compatibility test	0.00	0.00	0.00	0.00	XXX	0
86921		X	Compatibility test	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
86922		X	Compatibility test	0.00	0.00	0.00	0.00	XXX	0
86927		X	Plasma, fresh frozen	0.00	0.00	0.00	0.00	XXX	0
86930		X	Frozen blood prep	0.00	0.00	0.00	0.00	XXX	0
86931		X	Frozen blood thaw	0.00	0.00	0.00	0.00	XXX	0
86932		X	Frozen blood, freeze/thaw	0.00	0.00	0.00	0.00	XXX	0
86940		X	Hemolysis/agglutinine rule	0.00	0.00	0.00	0.00	XXX	0
86941		X	Hemolysis/agglutinine	0.00	0.00	0.00	0.00	XXX	0
86945		X	Blood product/radiation	0.00	0.00	0.00	0.00	XXX	0
86950		X	Leukocyte transfusion	0.00	0.00	0.00	0.00	XXX	0
86955		X	Pooling blood platelets	0.00	0.00	0.00	0.00	XXX	0
86970		X	RBC pretreatment	0.00	0.00	0.00	0.00	XXX	0
86971		X	RBC pretreatment	0.00	0.00	0.00	0.00	XXX	0
86972		X	RBC pretreatment	0.00	0.00	0.00	0.00	XXX	0
86975		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86976		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86977		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86978		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	XXX	0
86985		X	Split blood or products	0.00	0.00	0.00	0.00	XXX	0
86988		X	Transfusion procedure	0.00	0.00	0.00	0.00	XXX	0
87001		X	Small animal inoculation	0.00	0.00	0.00	0.00	XXX	0
87003		X	Small animal inoculation	0.00	0.00	0.00	0.00	XXX	0
87015		X	Specimen concentration	0.00	0.00	0.00	0.00	XXX	0
87040		X	Blood culture for bacteria	0.00	0.00	0.00	0.00	XXX	0
87045		X	Stool culture for bacteria	0.00	0.00	0.00	0.00	XXX	0
87066		X	Nose/throat culture, bacteria	0.00	0.00	0.00	0.00	XXX	0
87076		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	XXX	0
87072		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87075		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	XXX	0
87076		X	Bacteria identification	0.00	0.00	0.00	0.00	XXX	0
87081		X	Bacteria culture screen	0.00	0.00	0.00	0.00	XXX	0
87082		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87083		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87084		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87085		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	XXX	0
87086		X	Urine culture, colony count	0.00	0.00	0.00	0.00	XXX	0
87087		X	Urine bacteria culture	0.00	0.00	0.00	0.00	XXX	0
87088		X	Urine bacteria culture	0.00	0.00	0.00	0.00	XXX	0
87101		X	Skin fungus culture	0.00	0.00	0.00	0.00	XXX	0
87102		X	Fungus isolation culture	0.00	0.00	0.00	0.00	XXX	0
87103		X	Blood fungus culture	0.00	0.00	0.00	0.00	XXX	0
87108		X	Fungus identification	0.00	0.00	0.00	0.00	XXX	0
87109		X	Mycoplasma culture	0.00	0.00	0.00	0.00	XXX	0
87110		X	Culture, chlamydia	0.00	0.00	0.00	0.00	XXX	0
87115		X	Mycobacteria culture	0.00	0.00	0.00	0.00	XXX	0
87117		X	Mycobacteria culture	0.00	0.00	0.00	0.00	XXX	0
87118		X	Mycobacteria identification	0.00	0.00	0.00	0.00	XXX	0
87140		X	Culture typing, fluorescent	0.00	0.00	0.00	0.00	XXX	0
87145		X	Culture typing, GLC method	0.00	0.00	0.00	0.00	XXX	0
87147		X	Culture typing, phage method	0.00	0.00	0.00	0.00	XXX	0
87151		X	Culture typing, serologic	0.00	0.00	0.00	0.00	XXX	0
87155		X	Culture typing, serologic	0.00	0.00	0.00	0.00	XXX	0
87158		X	Culture typing, precipitin	0.00	0.00	0.00	0.00	XXX	0
87163		X	Culture typing, added method	0.00	0.00	0.00	0.00	XXX	0
87164		X	Special microbiology culture	0.00	0.00	0.00	0.00	XXX	0
87164	28	A	Dark field examination	0.00	0.00	0.00	0.00	XXX	0
87168		X	Dark field examination	0.37	0.20	0.01	0.58	XXX	N
87174		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	XXX	0
87175		X	Assay, endotoxin, bacterial	0.00	0.00	0.00	0.00	XXX	0
87176		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	XXX	0
87177		X	Ova and parasites smears	0.00	0.00	0.00	0.00	XXX	0
87178		X	Microbe identification	0.00	0.00	0.00	0.00	XXX	0
87179		X	Microbe identification	0.00	0.00	0.00	0.00	XXX	0
87181		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87184		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87186		X	Antibiotic sensitivity, MIC	0.00	0.00	0.00	0.00	XXX	0
87187		X	Antibiotic sensitivity, MIC	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
87188		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87190		X	TB antibiotic sensitivity	0.00	0.00	0.00	0.00	XXX	0
87192		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	XXX	0
87197		X	Bactericidal level, serum	0.00	0.00	0.00	0.00	XXX	0
87205		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87208		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87207		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87207	26	A	Smear, stain & interpret	0.37	0.20	0.01	0.58	XXX	N
87208		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87210		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87211		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	XXX	0
87220		X	Tissue exam for fungi	0.00	0.00	0.00	0.00	XXX	0
87230		X	Assay, toxin or antitoxin	0.00	0.00	0.00	0.00	XXX	0
87250		X	Virus inoculation for test	0.00	0.00	0.00	0.00	XXX	0
87252		X	Virus inoculation for test	0.00	0.00	0.00	0.00	XXX	0
87253		X	Virus inoculation for test	0.00	0.00	0.00	0.00	XXX	0
87999		X	Microbiology procedure	0.00	0.00	0.00	0.00	XXX	0
88000		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88005		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88007		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88012		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88014		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88018		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	XXX	0
88020		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88025		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88027		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88028		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88029		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	XXX	0
88036		N	Limited autopsy	0.00	0.00	0.00	0.00	XXX	0
88037		N	Limited autopsy	0.00	0.00	0.00	0.00	XXX	0
88040		N	Forensic autopsy (necropsy)	0.00	0.00	0.00	0.00	XXX	0
88045		N	Coroner's autopsy (necropsy)	0.00	0.00	0.00	0.00	XXX	0
88099		N	Necropsy (autopsy) procedure	0.00	0.00	0.00	0.00	XXX	0
88104		A	Microscopic exam of cells	0.58	0.44	0.04	1.04	XXX	N
88104	26	A	Microscopic exam of cells	0.58	0.23	0.02	0.81	XXX	N
88104	TC	A	Microscopic exam of cells	0.00	0.21	0.02	0.23	XXX	N
88106		A	Microscopic exam of cells	0.58	0.37	0.03	0.98	XXX	N
88106	26	A	Microscopic exam of cells	0.58	0.20	0.01	0.77	XXX	N
88106	TC	A	Microscopic exam of cells	0.00	0.17	0.02	0.19	XXX	N
88107		A	Microscopic exam of cells	0.76	0.47	0.04	1.27	XXX	N
88107	26	A	Microscopic exam of cells	0.76	0.24	0.02	1.02	XXX	N
88107	TC	A	Microscopic exam of cells	0.00	0.23	0.02	0.25	XXX	N
88108		A	Cytopathology	0.56	0.47	0.04	1.07	XXX	N
88108	26	A	Cytopathology	0.56	0.24	0.02	0.82	XXX	N
88108	TC	A	Cytopathology	0.00	0.23	0.02	0.25	XXX	N
88125		A	Forensic cytopathology	0.26	0.11	0.00	0.37	XXX	N
88125	26	A	Forensic cytopathology	0.26	0.07	0.00	0.33	XXX	N
88125	TC	A	Forensic cytopathology	0.00	0.04	0.00	0.04	XXX	N
88130		X	Sex chromatin identification	0.00	0.00	0.00	0.00	XXX	0
88140		X	Sex chromatin identification	0.00	0.00	0.00	0.00	XXX	0
88150		X	Cytopathology, pap smear	0.00	0.00	0.00	0.00	XXX	0
88151		X	Cytopathology interpretation	0.00	0.00	0.00	0.00	XXX	0
88151	26	A	Cytopathology interpretation	0.42	0.32	0.04	0.78	XXX	N
88155		X	Cytopathology, pap smear	0.00	0.00	0.00	0.00	XXX	0
88156		X	TBS smear (bethesda system)	0.00	0.00	0.00	0.00	XXX	0
88157		X	TBS smear (bethesda system)	0.00	0.00	0.00	0.00	XXX	0
88157	26	A	TBS smear (bethesda system)	0.42	0.32	0.04	0.78	XXX	N
88160		A	Cytopathology	0.50	0.33	0.03	0.86	XXX	N
88160	26	A	Cytopathology	0.50	0.17	0.01	0.68	XXX	N
88160	TC	A	Cytopathology	0.00	0.16	0.02	0.18	XXX	N
88161		A	Cytopathology	0.50	0.39	0.03	0.92	XXX	N
88161	26	A	Cytopathology	0.50	0.20	0.01	0.71	XXX	N
88161	TC	A	Cytopathology	0.00	0.19	0.02	0.21	XXX	N
88162		A	Cytopathology, extensive	0.76	0.79	0.05	1.60	XXX	N
88162	26	A	Cytopathology, extensive	0.76	0.41	0.03	1.20	XXX	N
88162	TC	A	Cytopathology, extensive	0.00	0.38	0.02	0.40	XXX	N
88170		A	Fine needle aspiration	1.27	0.99	0.09	2.35	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
88170	26	A	Fine needle aspiration	1.27	0.92	0.05	1.84	XXX	N
88170	TC	A	Fine needle aspiration	0.00	0.47	0.04	0.51	XXX	N
88171		A	Fine needle aspiration	1.27	1.36	0.09	2.71	XXX	N
88171	26	A	Fine needle aspiration	1.27	0.71	0.05	2.03	XXX	N
88171	TC	A	Fine needle aspiration	0.00	0.64	0.04	0.68	XXX	N
88172		A	Evaluation of smear	0.60	0.71	0.05	1.36	XXX	N
88172	26	A	Evaluation of smear	0.60	0.38	0.03	0.99	XXX	N
88172	TC	A	Evaluation of smear	0.00	0.35	0.02	0.37	XXX	N
88173		A	Interpretation of smear	1.39	0.87	0.05	2.31	XXX	N
88173	26	A	Interpretation of smear	1.39	0.45	0.03	1.87	XXX	N
88173	TC	A	Interpretation of smear	0.00	0.42	0.02	0.44	XXX	N
88180		A	Cell marker study	0.36	0.33	0.03	0.72	XXX	N
88180	26	A	Cell marker study	0.36	0.17	0.01	0.54	XXX	N
88180	TC	A	Cell marker study	0.00	0.16	0.02	0.18	XXX	N
88182		A	Cell marker study	0.77	0.89	0.07	1.73	XXX	N
88182	26	A	Cell marker study	0.77	0.45	0.03	1.25	XXX	N
88182	TC	A	Cell marker study	0.00	0.44	0.04	0.48	XXX	N
88199		C	Cytopathology procedure	0.00	0.00	0.00	0.00	XXX	N
88199	26	C	Cytopathology procedure	0.00	0.00	0.00	0.00	XXX	N
88199	TC	C	Cytopathology procedure	0.00	0.00	0.00	0.00	XXX	N
88230		X	Tissue culture, lymphocyte	0.00	0.00	0.00	0.00	XXX	0
88233		X	Tissue culture, skin biopsy	0.00	0.00	0.00	0.00	XXX	0
88236		X	Tissue culture, placenta	0.00	0.00	0.00	0.00	XXX	0
88237		X	Tissue culture, bone marrow	0.00	0.00	0.00	0.00	XXX	0
88239		X	Tissue culture, other	0.00	0.00	0.00	0.00	XXX	0
88245		X	Chromosome analysis	0.00	0.00	0.00	0.00	XXX	0
88248		X	Chromosome analysis	0.00	0.00	0.00	0.00	XXX	0
88250		X	Chromosome analysis	0.00	0.00	0.00	0.00	XXX	0
88260		X	Chromosome analysis: 5 cells	0.00	0.00	0.00	0.00	XXX	0
88261		X	Chromosome analysis: 5 cells	0.00	0.00	0.00	0.00	XXX	0
88262		X	Chromosome count: 15-20 cells	0.00	0.00	0.00	0.00	XXX	0
88263		X	Chromosome analysis: 45 cells	0.00	0.00	0.00	0.00	XXX	0
88267		X	Chromosome analysis: placenta	0.00	0.00	0.00	0.00	XXX	0
88269		X	Chromosome analysis: amniotic	0.00	0.00	0.00	0.00	XXX	0
88280		X	Chromosome karyotype study	0.00	0.00	0.00	0.00	XXX	0
88283		X	Chromosome banding study	0.00	0.00	0.00	0.00	XXX	0
88285		X	Chromosome count: additional	0.00	0.00	0.00	0.00	XXX	0
88289		X	Chromosome study: additional	0.00	0.00	0.00	0.00	XXX	0
88299		C	Cytogenetic study	0.00	0.00	0.00	0.00	XXX	N
88300		A	Surg path, gross	0.08	0.20	0.01	0.29	XXX	N
88300	26	A	Surg path, gross	0.08	0.10	0.01	0.19	XXX	N
88300	TC	A	Surg path, gross	0.00	0.10	0.00	0.10	XXX	N
88302		A	Tissue exam by pathologist	0.13	0.40	0.04	0.57	XXX	N
88302	26	A	Tissue exam by pathologist	0.13	0.17	0.02	0.32	XXX	N
88302	TC	A	Tissue exam by pathologist	0.00	0.23	0.02	0.25	XXX	N
88304		A	Tissue exam by pathologist	0.22	0.61	0.04	0.87	XXX	N
88304	26	A	Tissue exam by pathologist	0.22	0.28	0.02	0.52	XXX	N
88304	TC	A	Tissue exam by pathologist	0.00	0.33	0.02	0.35	XXX	N
88305		A	Tissue exam by pathologist	0.75	1.03	0.08	1.86	XXX	N
88305	26	A	Tissue exam by pathologist	0.75	0.53	0.04	1.32	XXX	N
88305	TC	A	Tissue exam by pathologist	0.00	0.60	0.04	0.64	XXX	N
88307		A	Tissue exam by pathologist	1.59	1.52	0.12	3.23	XXX	N
88307	26	A	Tissue exam by pathologist	1.59	0.78	0.06	2.43	XXX	N
88307	TC	A	Tissue exam by pathologist	0.00	0.74	0.06	0.80	XXX	N
88309		A	Tissue exam by pathologist	2.28	1.92	0.13	4.33	XXX	N
88309	26	A	Tissue exam by pathologist	2.28	0.99	0.07	3.34	XXX	N
88309	TC	A	Tissue exam by pathologist	0.00	0.93	0.06	0.99	XXX	N
88311		A	Decalcify tissue	0.24	0.21	0.01	0.46	XXX	N
88311	26	A	Decalcify tissue	0.24	0.11	0.01	0.36	XXX	N
88311	TC	A	Decalcify tissue	0.00	0.10	0.00	0.10	XXX	N
88312		A	Special stains	0.54	0.26	0.01	0.81	XXX	N
88312	26	A	Special stains	0.54	0.14	0.01	0.69	XXX	N
88312	TC	A	Special stains	0.00	0.12	0.00	0.12	XXX	N
88313		A	Special stains	0.24	0.21	0.01	0.46	XXX	N
88313	26	A	Special stains	0.24	0.11	0.01	0.36	XXX	N
88313	TC	A	Special stains	0.00	0.10	0.00	0.10	XXX	N
88314		A	Histochemical stain	0.45	0.62	0.04	1.11	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
88314	26	A	Histochemical stain	0.45	0.35	0.02	0.82	XXX	N
88314	TC	A	Histochemical stain	0.00	0.27	0.02	0.29	XXX	N
88318		A	Chemical histochemistry	0.42	0.24	0.01	0.67	XXX	N
88318	26	A	Chemical histochemistry	0.42	0.12	0.01	0.55	XXX	N
88318	TC	A	Chemical histochemistry	0.00	0.12	0.00	0.12	XXX	N
88319		A	Enzyme histochemistry	0.53	0.49	0.04	1.06	XXX	N
88319	26	A	Enzyme histochemistry	0.53	0.26	0.02	0.81	XXX	N
88319	TC	A	Enzyme histochemistry	0.00	0.23	0.02	0.25	XXX	N
88321		A	Microslide consultation	1.30	0.41	0.03	1.74	XXX	N
88323		A	Microslide consultation	1.35	0.72	0.05	2.12	XXX	N
88323	26	A	Microslide consultation	1.35	0.39	0.03	1.77	XXX	N
88323	TC	A	Microslide consultation	0.00	0.33	0.02	0.35	XXX	N
88325		A	Comprehensive review of data	2.22	0.47	0.04	2.73	XXX	N
88329		A	Pathology consult in surgery	0.67	0.37	0.03	1.07	XXX	N
88331		A	Pathology consult in surgery	1.19	1.10	0.06	2.37	XXX	N
88331	26	A	Pathology consult in surgery	1.19	0.56	0.04	1.79	XXX	N
88331	TC	A	Pathology consult in surgery	0.00	0.54	0.04	0.58	XXX	N
88332		A	Pathology consult in surgery	0.59	0.56	0.04	1.19	XXX	N
88332	26	A	Pathology consult in surgery	0.59	0.29	0.02	0.90	XXX	N
88332	TC	A	Pathology consult in surgery	0.00	0.27	0.02	0.29	XXX	N
88342		A	Immunocytochemistry	0.85	0.64	0.04	1.53	XXX	N
88342	26	A	Immunocytochemistry	0.85	0.33	0.02	1.20	XXX	N
88342	TC	A	Immunocytochemistry	0.00	0.31	0.02	0.33	XXX	N
88346		A	Immunofluorescent study	0.86	0.58	0.04	1.48	XXX	N
88346	26	A	Immunofluorescent study	0.86	0.31	0.02	1.19	XXX	N
88346	TC	A	Immunofluorescent study	0.00	0.27	0.02	0.29	XXX	N
88347		A	Immunofluorescent study	0.86	0.42	0.04	1.32	XXX	N
88347	26	A	Immunofluorescent study	0.86	0.15	0.02	1.03	XXX	N
88347	TC	A	Immunofluorescent study	0.00	0.27	0.02	0.29	XXX	N
88348		A	Electron microscopy	1.51	2.28	0.16	3.95	XXX	N
88348	26	A	Electron microscopy	1.51	1.19	0.06	2.76	XXX	N
88348	TC	A	Electron microscopy	0.00	1.09	0.06	1.17	XXX	N
88349		A	Scanning electron microscopy	0.76	1.55	0.12	2.43	XXX	N
88349	26	A	Scanning electron microscopy	0.76	0.79	0.06	1.61	XXX	N
88349	TC	A	Scanning electron microscopy	0.00	0.76	0.06	0.82	XXX	N
88355		A	Analysis, skeletal muscle	1.85	1.74	0.13	3.72	XXX	N
88355	26	A	Analysis, skeletal muscle	1.85	0.92	0.07	2.84	XXX	N
88355	TC	A	Analysis, skeletal muscle	0.00	0.82	0.06	0.88	XXX	N
88356		A	Analysis, nerve	3.02	2.66	0.18	5.86	XXX	N
88356	26	A	Analysis, nerve	3.02	1.39	0.10	4.51	XXX	N
88356	TC	A	Analysis, nerve	0.00	1.27	0.08	1.35	XXX	N
88358		A	Analysis, tumor	2.82	2.32	0.16	5.30	XXX	N
88358	26	A	Analysis, tumor	2.82	1.16	0.06	4.06	XXX	N
88358	TC	A	Analysis, tumor	0.00	1.16	0.06	1.24	XXX	N
88362		A	Nerve teasing preparations	2.17	1.97	0.13	4.27	XXX	N
88362	26	A	Nerve teasing preparations	2.17	1.00	0.07	3.24	XXX	N
88362	TC	A	Nerve teasing preparations	0.00	0.97	0.06	1.03	XXX	N
88365		A	Tissue hybridization	0.93	0.75	0.05	1.73	XXX	N
88365	26	A	Tissue hybridization	0.93	0.38	0.03	1.34	XXX	N
88365	TC	A	Tissue hybridization	0.00	0.37	0.02	0.39	XXX	N
88371		X	Protein, western blot tissue	0.00	0.00	0.00	0.00	XXX	0
88371	26	A	Protein, western blot tissue	0.37	0.20	0.01	0.58	XXX	N
88372		X	Protein analysis w/probe	0.00	0.00	0.00	0.00	XXX	0
88372	26	A	Protein analysis w/probe	0.37	0.20	0.01	0.58	XXX	N
88399		C	Surgical pathology procedure	0.00	0.00	0.00	0.00	XXX	N
88399	26	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	XXX	N
88399	TC	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	XXX	N
89050		X	Body fluid cell count	0.00	0.00	0.00	0.00	XXX	0
89051		X	Body fluid cell count	0.00	0.00	0.00	0.00	XXX	0
89060		X	Exam, synovial fluid crystals	0.00	0.00	0.00	0.00	XXX	0
89060	26	A	Exam, synovial fluid crystals	0.37	0.20	0.01	0.58	XXX	N
89100		A	Sample intestinal contents	0.60	0.42	0.03	1.05	XXX	N
89105		A	Sample intestinal contents	0.50	0.39	0.03	0.92	XXX	N
89125		X	Specimen fat stain	0.00	0.00	0.00	0.00	XXX	0
89130		A	Sample stomach contents	0.45	0.41	0.03	0.89	XXX	N
89132		A	Sample stomach contents	0.19	0.19	0.02	0.40	XXX	N
89135		A	Sample stomach contents	0.79	0.58	0.04	1.41	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
89136		A	Sample stomach contents	0.21	0.22	0.02	0.45	XXX	N
89140		A	Sample stomach contents	0.94	0.81	0.07	1.82	XXX	N
89141		A	Sample stomach contents	0.85	0.73	0.06	1.64	XXX	N
89160		X	Exam feces for meat fibers	0.00	0.00	0.00	0.00	XXX	0
89190		X	Nasal smear for eosinophils	0.00	0.00	0.00	0.00	XXX	0
89250		X	Fertilization of oocyte	0.00	0.00	0.00	0.00	XXX	0
89300		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
89310		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
89320		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
89325		X	Sperm antibody test	0.00	0.00	0.00	0.00	XXX	0
89329		X	Sperm evaluation test	0.00	0.00	0.00	0.00	XXX	0
89330		X	Evaluation, cervical mucus	0.00	0.00	0.00	0.00	XXX	0
89350		A	Sputum specimen collection	0.00	0.39	0.03	0.42	XXX	N
89355		X	Exam feces for starch	0.00	0.00	0.00	0.00	XXX	0
89360		X	Collect sweat for test	0.00	0.43	0.03	0.46	XXX	N
89365		X	Water load test	0.00	0.00	0.00	0.00	XXX	0
89399		C	Pathology lab procedure	0.00	0.00	0.00	0.00	XXX	N
89399	26	C	Pathology lab procedure	0.00	0.00	0.00	0.00	XXX	N
89399	TC	C	Pathology lab procedure	0.00	0.00	0.00	0.00	XXX	N
90700		E	DTaP immunization	0.00	0.00	0.00	0.00	XXX	0
90701		E	DTP immunization	0.00	0.00	0.00	0.00	XXX	0
90702		E	DT immunization	0.00	0.00	0.00	0.00	XXX	0
90703		E	Tetanus immunization	0.00	0.00	0.00	0.00	XXX	0
90704		E	Mumps immunization	0.00	0.00	0.00	0.00	XXX	0
90705		E	Measles immunization	0.00	0.00	0.00	0.00	XXX	0
90706		E	Rubella immunization	0.00	0.00	0.00	0.00	XXX	0
90707		E	MMR virus immunization	0.00	0.00	0.00	0.00	XXX	0
90708		E	Measles-rubella immunization	0.00	0.00	0.00	0.00	XXX	0
90709		E	Rubella & mumps immunization	0.00	0.00	0.00	0.00	XXX	0
90710		E	Combined vaccine	0.00	0.00	0.00	0.00	XXX	0
90711		E	Combined vaccine	0.00	0.00	0.00	0.00	XXX	0
90712		E	Oral poliovirus immunization	0.00	0.00	0.00	0.00	XXX	0
90713		E	Poliomyelitis immunization	0.00	0.00	0.00	0.00	XXX	0
90714		E	Typhoid immunization	0.00	0.00	0.00	0.00	XXX	0
90716		E	Chicken pox vaccine	0.00	0.00	0.00	0.00	XXX	0
90717		E	Yellow fever immunization	0.00	0.00	0.00	0.00	XXX	0
90718		E	Td immunization	0.00	0.00	0.00	0.00	XXX	0
90719		E	Diphtheria immunization	0.00	0.00	0.00	0.00	XXX	0
90720		E	DTP/HIB vaccine	0.00	0.00	0.00	0.00	XXX	0
90721		E	DtaP/Hib vaccine	0.00	0.00	0.00	0.00	XXX	0
90724		X	Influenza immunization	0.00	0.00	0.00	0.00	XXX	0
90725		E	Cholera immunization	0.00	0.00	0.00	0.00	XXX	0
90726		E	Rabies immunization	0.00	0.00	0.00	0.00	XXX	0
90727		E	Plague immunization	0.00	0.00	0.00	0.00	XXX	0
90728		E	BCG immunization	0.00	0.00	0.00	0.00	XXX	0
90730		E	Hepatitis A vaccine	0.00	0.00	0.00	0.00	XXX	0
90732		X	Pneumococcal immunization	0.00	0.00	0.00	0.00	XXX	0
90733		E	Meningococcal immunization	0.00	0.00	0.00	0.00	XXX	0
90736		E	Encephalitis virus vaccine	0.00	0.00	0.00	0.00	XXX	0
90737		E	Influenza B immunization	0.00	0.00	0.00	0.00	XXX	0
90741		E	Passive immunization, ISG	0.00	0.00	0.00	0.00	XXX	0
90742		E	Special passive immunization	0.00	0.00	0.00	0.00	XXX	0
90744		X	Hepatitis B vaccine, under 11	0.00	0.00	0.00	0.00	XXX	0
90745		X	Hepatitis B vaccine, 11-19	0.00	0.00	0.00	0.00	XXX	0
90746		X	Hepatitis B vaccine, over 20	0.00	0.00	0.00	0.00	XXX	0
90747		X	Hepatitis B vaccine, ill pat	0.00	0.00	0.00	0.00	XXX	0
90749		C	Immunization procedure	0.00	0.00	0.00	0.00	XXX	N
90780		A	IV infusion therapy, 1 hour	0.00	1.06	0.08	1.14	XXX	N
90781		A	IV infusion, additional hour	0.00	0.53	0.04	0.57	XXX	N
90782		T	Injection (SC/IM)	0.00	0.10	0.01	0.11	XXX	N
90783		T	Injection (IA)	0.00	0.39	0.03	0.42	XXX	N
90784		T	Injection (IV)	0.00	0.45	0.04	0.49	XXX	N
90788		T	Injection of antibiotic	0.00	0.11	0.01	0.12	XXX	N
90799		C	Therapeutic/diag injection	0.00	0.00	0.00	0.00	XXX	N
90801		A	Psychiatric interview	2.80	0.67	0.08	3.55	XXX	N
90820		A	Diagnostic interview	3.01	0.36	0.05	3.44	XXX	N
90825		B	Evaluation of tests/records	+0.97	0.31	0.04	1.32	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
90835		A	Special interview	2.84	0.50	0.07	3.41	XXX	N
90841		G	Psychotherapy	0.00	0.00	0.00	0.00	XXX	O
90842		G	Psychotherapy, 75-90 min.	+3.13	1.05	0.15	4.33	XXX	N
90843		G	Psychotherapy, 20-30 min.	+1.47	0.35	0.05	1.87	XXX	N
90844		G	Psychotherapy, 45-50 min.	+2.00	0.54	0.08	2.62	XXX	N
90845		A	Medical psychoanalysis	1.79	0.41	0.05	2.25	XXX	N
90846		R	Special family therapy	1.83	0.82	0.08	2.53	XXX	N
90847		R	Special family therapy	2.21	0.58	0.06	2.87	XXX	N
90849		R	Special family therapy	0.59	0.28	0.03	0.88	XXX	N
90853		A	Special group therapy	0.59	0.28	0.03	0.88	XXX	N
90855		G	Individual psychotherapy	+2.15	0.59	0.09	2.83	XXX	N
90857		A	Special group therapy	0.63	0.15	0.02	0.80	XXX	N
90862		A	Medication management	0.95	0.37	0.05	1.37	XXX	N
90870		A	Electroconvulsive therapy	1.88	0.55	0.08	2.51	000	N
90871		A	Electroconvulsive therapy	2.72	0.83	0.13	3.68	000	N
90875		A	Psychophysiological therapy	1.11	0.35	0.05	1.51	XXX	N
90878		A	Psychophysiological therapy	1.73	0.54	0.08	2.35	XXX	N
90890		A	Medical hypnotherapy	2.19	0.64	0.07	2.80	XXX	N
90882		N	Environmental manipulation	0.00	0.00	0.00	0.00	XXX	O
90887		B	Consultation with family	+1.48	0.33	0.04	1.85	XXX	O
90889		B	Preparation of report	0.00	0.00	0.00	0.00	XXX	O
90899		C	Psychiatric service/therapy	0.00	0.00	0.00	0.00	XXX	N
90900		D	Biorefeedback, electromyogram	0.00	0.00	0.00	0.00	000	N
90901		A	Biorefeedback, any method	0.41	0.29	0.02	0.72	000	N
90902		D	Biorefeedback, nerve impulse	0.00	0.00	0.00	0.00	000	N
90904		D	Biorefeedback, blood pressure	0.00	0.00	0.00	0.00	000	N
90906		D	Biorefeedback, blood flow	0.00	0.00	0.00	0.00	000	N
90908		D	Biorefeedback, brain waves	0.00	0.00	0.00	0.00	000	N
90910		D	Biorefeedback, oculogram	0.00	0.00	0.00	0.00	000	N
90911		A	Anorectal biofeedback	0.89	1.13	0.27	2.29	000	N
90915		D	Biorefeedback, unspecified	0.00	0.00	0.00	0.00	000	N
90918		A	ESRD related services, month	11.18	2.19	0.14	13.51	XXX	P
90919		A	ESRD related services, month	8.54	2.19	0.14	10.87	XXX	P
90920		A	ESRD related services, month	7.27	2.19	0.14	9.60	XXX	P
90921		A	ESRD related services, month	4.87	2.19	0.14	7.20	XXX	P
90922		A	ESRD related services, day	0.37	0.07	0.01	0.45	XXX	P
90923		A	Eard related services, day	0.28	0.07	0.01	0.36	XXX	P
90924		A	Eard related services, day	0.24	0.07	0.01	0.32	XXX	P
90925		A	Eard related services, day	0.15	0.07	0.01	0.23	XXX	P
90935		A	Hemodialysis, one evaluation	1.22	1.49	0.10	2.81	000	N
90937		A	Hemodialysis, repeated eval.	2.11	2.65	0.18	4.94	000	N
90945		A	Dialysis, one evaluation	1.29	1.27	0.08	2.63	000	N
90947		A	Dialysis, repeated eval.	2.16	2.09	0.14	4.39	000	N
90969		X	Dialysis training/complete	0.00	0.00	0.00	0.00	XXX	O
90993		X	Dialysis training/incomplete	0.00	0.00	0.00	0.00	XXX	O
90997		A	Hemoperfusion	1.84	2.35	0.16	4.35	000	N
90999		C	Dialysis procedure	0.00	0.00	0.00	0.00	XXX	N
91000		A	Esophageal intubation	0.73	0.88	0.06	1.67	000	N
91000	26	A	Esophageal intubation	0.73	0.59	0.05	1.37	000	N
91000	TC	A	Esophageal intubation	0.00	0.07	0.01	0.08	000	N
91010		A	Esophagus motility study	1.25	2.28	0.17	3.70	000	N
91010	26	A	Esophagus motility study	1.25	1.50	0.11	2.86	000	N
91010	TC	A	Esophagus motility study	0.00	0.78	0.06	0.84	000	N
91011		A	Esophagus motility study	1.50	2.66	0.18	4.34	000	N
91011	26	A	Esophagus motility study	1.50	1.68	0.11	3.29	000	N
91011	TC	A	Esophagus motility study	0.00	0.98	0.07	1.05	000	N
91012		A	Esophagus motility study	1.46	3.12	0.23	4.81	000	N
91012	26	A	Esophagus motility study	1.46	2.02	0.15	3.63	000	N
91012	TC	A	Esophagus motility study	0.00	1.10	0.08	1.18	000	N
91020		A	Esophagogastric study	1.44	2.50	0.18	4.12	000	N
91020	26	A	Esophagogastric study	1.44	1.77	0.12	3.33	000	N
91020	TC	A	Esophagogastric study	0.00	0.73	0.06	0.79	000	N
91030		A	Acid perfusion of esophagus	0.91	0.55	0.05	1.52	000	N
91030	26	A	Acid perfusion of esophagus	0.91	0.35	0.03	1.29	000	N
91030	TC	A	Acid perfusion of esophagus	0.00	0.21	0.02	0.23	000	N
91032		A	Esophagus, acid reflux test	1.21	1.85	0.18	3.23	000	N
91032	26	A	Esophagus, acid reflux test	1.21	1.25	0.10	2.56	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
91032	TC	A	Esophagus, acid reflux test	0.00	0.71	0.06	0.77	000	N
91033		A	Prolonged acid reflux test	1.30	2.97	0.25	4.52	000	N
91033	26	A	Prolonged acid reflux test	1.30	1.69	0.14	3.13	000	N
91033	TC	A	Prolonged acid reflux test	0.00	1.26	0.11	1.39	000	N
91052		A	Gastric analysis test	0.79	0.82	0.07	1.68	000	N
91052	26	A	Gastric analysis test	0.79	0.50	0.04	1.33	000	N
91052	TC	A	Gastric analysis test	0.00	0.32	0.03	0.35	000	N
91055		A	Gastric intubation for smear	0.94	0.80	0.06	1.80	000	N
91055	26	A	Gastric intubation for smear	0.94	0.51	0.04	1.49	000	N
91055	TC	A	Gastric intubation for smear	0.00	0.29	0.02	0.31	000	N
91060		A	Gastric saline load test	0.45	0.71	0.06	1.22	000	N
91060	26	A	Gastric saline load test	0.45	0.50	0.04	0.99	000	N
91060	TC	A	Gastric saline load test	0.00	0.21	0.02	0.23	000	N
91065		A	Breath hydrogen test	0.20	0.83	0.05	1.08	000	N
91065	26	A	Breath hydrogen test	0.20	0.49	0.03	0.72	000	N
91065	TC	A	Breath hydrogen test	0.00	0.34	0.02	0.36	000	N
91100		A	Pass intestine bleeding tube	1.08	0.56	0.05	1.69	000	N
91105		A	Gastric intubation treatment	0.37	0.46	0.04	0.87	000	N
91122		A	Anal pressure record	1.77	1.73	0.22	3.72	000	S
91122	26	A	Anal pressure record	1.77	1.06	0.13	2.96	000	S
91122	TC	A	Anal pressure record	0.00	0.67	0.06	0.76	000	S
91299		C	Gastroenterology procedure	0.00	0.00	0.00	0.00	XXX	N
91299	26	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	XXX	N
91299	TC	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	XXX	N
92002		A	Eye exam, new patient	0.88	0.49	0.02	1.39	XXX	P
92004		A	Eye exam, new patient	1.67	0.57	0.02	2.26	XXX	P
92012		A	Eye exam established pt	0.67	0.44	0.02	1.13	XXX	N
92014		A	Eye exam & treatment	1.10	0.54	0.02	1.66	XXX	N
92015		N	Refraction	+0.38	0.32	0.02	0.72	XXX	O
92018		A	New eye exam & treatment	1.51	0.47	0.03	2.01	XXX	N
92019		A	Eye exam & treatment	1.31	0.47	0.03	1.81	XXX	N
92020		A	Special eye evaluation	0.37	0.29	0.01	0.67	XXX	N
92060		A	Special eye evaluation	0.69	0.39	0.02	1.10	XXX	N
92060	26	A	Special eye evaluation	0.89	0.21	0.01	0.91	XXX	N
92060	TC	A	Special eye evaluation	0.00	0.18	0.01	0.19	XXX	N
92065		A	Orthoptic/pleoptic training	0.37	0.36	0.01	0.74	XXX	N
92065	26	A	Orthoptic/pleoptic training	0.37	0.20	0.01	0.58	XXX	N
92065	TC	A	Orthoptic/pleoptic training	0.00	0.16	0.00	0.16	XXX	N
92070		A	Fitting of contact lens	0.70	1.20	0.06	1.96	XXX	N
92081		A	Visual field examination(s)	0.36	0.32	0.01	0.69	XXX	N
92081	26	A	Visual field examination(s)	0.36	0.17	0.01	0.54	XXX	N
92081	TC	A	Visual field examination(s)	0.00	0.15	0.00	0.15	XXX	N
92082		A	Visual field examination(s)	0.44	0.49	0.02	0.95	XXX	N
92082	26	A	Visual field examination(s)	0.44	0.30	0.01	0.75	XXX	N
92082	TC	A	Visual field examination(s)	0.00	0.19	0.01	0.20	XXX	N
92083		A	Visual field examination(s)	0.50	0.83	0.04	1.37	XXX	N
92083	26	A	Visual field examination(s)	0.50	0.55	0.03	1.08	XXX	N
92083	TC	A	Visual field examination(s)	0.00	0.28	0.01	0.29	XXX	N
92100		A	Serial tonometry exam(s)	0.92	0.25	0.01	1.18	XXX	N
92120		A	Tonography & eye evaluation	0.61	0.31	0.02	1.14	XXX	N
92130		A	Water provocation tonography	0.81	0.49	0.02	1.32	XXX	N
92140		A	Glaucoma provocative tests	0.50	0.30	0.01	0.81	XXX	N
92225		A	Special eye exam, initial	0.38	0.45	0.02	0.85	XXX	N
92225	26	A	Special eye exam, subsequent	0.33	0.40	0.02	0.75	XXX	N
92230		A	Eye exam with photos	0.80	0.69	0.04	1.53	XXX	N
92235		A	Eye exam with photos	0.81	1.58	0.09	2.48	XXX	N
92235	26	A	Eye exam with photos	0.81	0.59	0.03	1.43	XXX	N
92235	TC	A	Eye exam with photos	0.00	0.99	0.06	1.05	XXX	N
92240		A	Icg angiography	1.10	1.58	0.09	2.77	XXX	N
92240	26	A	Icg angiography	1.10	0.59	0.03	1.72	XXX	N
92240	TC	A	Icg angiography	0.00	0.99	0.06	1.05	XXX	N
92250		A	Eye exam with photos	0.44	0.42	0.02	0.88	XXX	N
92250	26	A	Eye exam with photos	0.44	0.25	0.01	0.70	XXX	N
92250	TC	A	Eye exam with photos	0.00	0.17	0.01	0.18	XXX	N
92260		A	Ophthalmoscopy/dynamometry	0.20	0.54	0.03	0.77	XXX	N
92265		A	Eye muscle evaluation	0.81	0.29	0.02	1.12	XXX	N
92265	26	A	Eye muscle evaluation	0.81	0.07	0.00	0.88	XXX	N

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³ * Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
92265	TC	A	Eye muscle evaluation	0.00	0.22	0.02	0.24	XXX	N
92270	A	A	Electro-oculography	0.81	0.67	0.05	1.53	XXX	N
92270	26	A	Electro-oculography	0.81	0.37	0.08	1.21	XXX	N
92270	TC	A	Electro-oculography	0.00	0.30	0.02	0.32	XXX	N
92275	A	A	Electroretinography	1.01	0.90	0.05	1.96	XXX	N
92275	26	A	Electroretinography	1.01	0.51	0.08	1.56	XXX	N
92275	TC	A	Electroretinography	0.00	0.39	0.02	0.41	XXX	N
92283	A	A	Color vision examination	0.17	0.29	0.01	0.47	XXX	N
92283	26	A	Color vision examination	0.17	0.17	0.01	0.35	XXX	N
92283	TC	A	Color vision examination	0.00	0.12	0.00	0.12	XXX	N
92284	A	A	Dark adaptation eye exam	0.24	0.45	0.02	0.71	XXX	N
92284	26	A	Dark adaptation eye exam	0.24	0.28	0.01	0.53	XXX	N
92284	TC	A	Dark adaptation eye exam	0.00	0.17	0.01	0.18	XXX	N
92285	A	A	Eye photography	0.20	0.29	0.01	0.50	XXX	N
92285	26	A	Eye photography	0.20	0.18	0.01	0.39	XXX	N
92285	TC	A	Eye photography	0.00	0.11	0.00	0.11	XXX	N
92286	A	A	Internal eye photography	0.66	1.22	0.07	1.95	XXX	N
92286	26	A	Internal eye photography	0.66	0.83	0.05	1.54	XXX	N
92286	TC	A	Internal eye photography	0.00	0.39	0.02	0.41	XXX	N
92287	A	A	Internal eye photography	0.81	1.52	0.08	2.41	XXX	N
92310	N	N	Contact lens fitting	+1.17	1.32	0.00	2.49	XXX	0
92311	A	A	Contact lens fitting	1.08	0.90	0.03	2.01	XXX	N
92312	A	A	Contact lens fitting	1.26	1.16	0.03	2.45	XXX	N
92313	A	A	Contact lens fitting	0.92	0.88	0.03	1.83	XXX	N
92314	N	N	Prescription of contact lens	+0.69	0.78	0.00	1.47	XXX	0
92315	A	A	Prescription of contact lens	0.45	0.66	0.03	1.14	XXX	N
92316	A	A	Prescription of contact lens	0.68	0.95	0.04	1.67	XXX	N
92317	A	A	Prescription of contact lens	0.45	0.39	0.02	0.86	XXX	N
92325	A	A	Modification of contact lens	0.00	0.38	0.01	0.39	XXX	N
92326	A	A	Replacement of contact lens	0.00	1.56	0.08	1.62	XXX	N
92330	A	A	Fitting of artificial eye	1.06	1.13	0.09	2.30	XXX	N
92335	A	A	Fitting of artificial eye	0.45	1.97	0.11	2.53	XXX	N
92340	N	N	Fitting of spectacles	+0.37	0.42	0.00	0.79	XXX	0
92341	N	N	Fitting of spectacles	+0.47	0.53	0.00	1.00	XXX	0
92342	N	N	Fitting of spectacles	+0.53	0.60	0.00	1.13	XXX	0
92352	B	B	Special spectacles fitting	+0.37	0.30	0.01	0.68	XXX	0
92353	B	B	Special spectacles fitting	+0.50	0.40	0.01	0.91	XXX	0
92354	B	B	Special spectacles fitting	+0.00	8.44	0.10	8.54	XXX	0
92355	B	B	Special spectacles fitting	+0.00	4.13	0.01	4.14	XXX	0
92356	B	B	Eye prosthesis service	+0.00	0.92	0.05	0.97	XXX	0
92370	N	N	Repair & adjust spectacles	+0.32	0.36	0.00	0.68	XXX	0
92371	B	B	Repair & adjust spectacles	+0.00	0.59	0.02	0.61	XXX	0
92390	N	N	Supply of spectacles	0.00	0.00	0.00	0.00	XXX	0
92391	N	N	Supply of contact lenses	0.00	0.00	0.00	0.00	XXX	0
92392	G	G	Supply of low vision aids	+0.00	3.85	0.02	3.87	XXX	0
92393	G	G	Supply of artificial eye	+0.00	11.96	0.67	12.63	XXX	0
92395	G	G	Supply of spectacles	+0.00	1.31	0.10	1.41	XXX	0
92396	G	G	Supply of contact lenses	+0.00	2.19	0.08	2.27	XXX	0
92490	C	C	Eye service or procedure	0.00	0.00	0.00	0.00	XXX	N
92499	26	C	Eye service or procedure	0.00	0.00	0.00	0.00	XXX	N
92499	TC	C	Eye service or procedure	0.00	0.00	0.00	0.00	XXX	N
92502	A	A	Ear and throat examination	1.51	1.12	0.12	2.75	000	N
92504	A	A	Ear microscopy examination	0.18	0.26	0.02	0.46	XXX	N
92506	A	A	Speech & hearing evaluation	0.86	0.52	0.05	1.43	XXX	N
92507	A	A	Speech/hearing therapy	0.52	0.33	0.03	0.88	XXX	N
92508	A	A	Speech/hearing therapy	0.26	0.18	0.02	0.46	XXX	N
92510	A	A	Rehab for ear implant	1.50	1.36	0.15	3.01	XXX	N
92511	A	A	Nasopharyngoscopy	0.84	0.85	0.09	1.78	000	S
92512	A	A	Nasal function studies	0.55	0.47	0.05	1.07	XXX	N
92516	A	A	Facial nerve function test	0.43	0.39	0.04	0.86	XXX	N
92520	A	A	Laryngeal function studies	0.76	0.53	0.05	1.34	XXX	N
92525	A	A	Oral function evaluation	1.50	1.02	0.11	2.63	XXX	N
92526	A	A	Oral function therapy	0.55	0.47	0.05	1.07	XXX	N
92531	B	B	Spontaneous nystagmus study	0.00	0.00	0.00	0.00	XXX	0
92532	B	B	Positional nystagmus study	0.00	0.00	0.00	0.00	XXX	0
92533	B	B	Caloric vestibular test	0.00	0.00	0.00	0.00	XXX	0
92534	B	B	Optokinetic nystagmus	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
92541	A	A	Spontaneous nystagmus test	0.40	0.67	0.07	1.14	XXX	N
92541	26	A	Spontaneous nystagmus test	0.40	0.45	0.05	0.90	XXX	N
92541	TC	A	Spontaneous nystagmus test	0.00	0.22	0.02	0.24	XXX	N
92542	A	A	Positional nystagmus test	0.33	0.61	0.07	1.01	XXX	N
92542	26	A	Positional nystagmus test	0.33	0.36	0.04	0.73	XXX	N
92542	TC	A	Positional nystagmus test	0.00	0.25	0.03	0.28	XXX	N
92543	A	A	Caloric vestibular test	0.36	0.82	0.09	1.29	XXX	N
92543	26	A	Caloric vestibular test	0.36	0.42	0.05	0.85	XXX	N
92543	TC	A	Caloric vestibular test	0.00	0.40	0.04	0.44	XXX	N
92544	A	A	Optokinetic nystagmus test	0.26	0.47	0.05	0.78	XXX	N
92544	26	A	Optokinetic nystagmus test	0.26	0.27	0.03	0.56	XXX	N
92544	TC	A	Optokinetic nystagmus test	0.00	0.20	0.02	0.22	XXX	N
92545	A	A	Oscillating tracking test	0.23	0.40	0.04	0.67	XXX	N
92545	26	A	Oscillating tracking test	0.23	0.20	0.02	0.45	XXX	N
92545	TC	A	Oscillating tracking test	0.00	0.20	0.02	0.22	XXX	N
92546	A	A	Sinusoidal rotational test	0.29	0.53	0.05	0.87	XXX	N
92546	26	A	Sinusoidal rotational test	0.29	0.30	0.03	0.62	XXX	N
92546	TC	A	Sinusoidal rotational test	0.00	0.23	0.02	0.25	XXX	N
92547	A	A	Supplemental electrical test	0.00	0.53	0.06	0.59	XXX	N
92548	26	A	Posturography	0.50	1.85	0.19	2.54	XXX	N
92548	TC	A	Posturography	0.50	0.45	0.05	1.00	XXX	N
92551	N	N	Pure tone hearing test, air	0.00	1.40	0.14	1.54	XXX	N
92552	A	A	Pure tone audiometry, air	0.00	0.00	0.00	0.00	XXX	0
92553	A	A	Audiometry, air & bone	0.00	0.42	0.04	0.46	XXX	N
92555	A	A	Speech threshold audiometry	0.00	0.63	0.07	0.70	XXX	N
92556	A	A	Speech audiometry, complete	0.00	0.36	0.04	0.40	XXX	N
92557	A	A	Comprehensive hearing test	0.00	0.54	0.06	0.60	XXX	N
92559	N	N	Group audiometric testing	0.00	1.13	0.13	1.26	XXX	N
92560	N	N	Beckey audiometry, screen	0.00	0.00	0.00	0.00	XXX	0
92561	A	A	Beckey audiometry, diagnosis	0.00	0.00	0.00	0.00	XXX	0
92562	A	A	Loudness balance test	0.00	0.68	0.07	0.75	XXX	N
92563	A	A	Tone decay hearing test	0.00	0.39	0.04	0.43	XXX	N
92564	A	A	Sisi hearing test	0.00	0.36	0.04	0.40	XXX	N
92565	A	A	Stenger test, pure tone	0.00	0.45	0.05	0.50	XXX	N
92567	A	A	Tympanometry	0.00	0.38	0.04	0.42	XXX	N
92568	A	A	Acoustic reflex testing	0.00	0.50	0.06	0.56	XXX	N
92569	A	A	Acoustic reflex decay test	0.00	0.36	0.04	0.40	XXX	N
92571	A	A	Filtered speech hearing test	0.00	0.39	0.04	0.43	XXX	N
92572	A	A	Staggered spondaic word test	0.00	0.37	0.04	0.41	XXX	N
92573	A	A	Lombard test	0.00	0.08	0.01	0.09	XXX	N
92575	A	A	Sensorineural acuity test	0.00	0.33	0.04	0.37	XXX	N
92576	A	A	Synthetic sentence test	0.00	0.29	0.03	0.32	XXX	N
92577	A	A	Stenger test, speech	0.00	0.42	0.05	0.47	XXX	N
92579	A	A	Visual audiometry (vra)	0.00	0.68	0.08	0.76	XXX	N
92582	A	A	Conditioning play audiometry	0.00	0.69	0.07	0.76	XXX	N
92583	A	A	Select picture audiometry	0.00	0.85	0.09	0.94	XXX	N
92584	A	A	Electrocochleography	0.00	2.36	0.25	2.61	XXX	N
92585	A	A	Auditory evoked potential	0.50	3.25	0.31	4.06	XXX	N
92585	26	A	Auditory evoked potential	0.50	1.49	0.14	2.13	XXX	N
92585	TC	A	Auditory evoked potential	0.00	1.76	0.17	1.93	XXX	N
92587	A	A	Evoked auditory test	0.13	1.35	0.13	1.61	XXX	N
92587	26	A	Evoked auditory test	0.13	0.11	0.01	0.25	XXX	N
92587	TC	A	Evoked auditory test	0.00	1.24	0.12	1.36	XXX	N
92588	A	A	Evoked auditory test	0.36	1.70	0.16	2.22	XXX	N
92588	26	A	Evoked auditory test	0.36	0.30	0.02	0.68	XXX	N
92588	TC	A	Evoked auditory test	0.00	1.40	0.14	1.54	XXX	N
92589	A	A	Auditory function test(s)	0.00	0.51	0.08	0.57	XXX	N
92590	N	N	Hearing aid exam, one ear	0.00	0.00	0.00	0.00	XXX	0
92591	N	N	Hearing aid exam, both ears	0.00	0.00	0.00	0.00	XXX	0
92592	N	N	Hearing aid check, one ear	0.00	0.00	0.00	0.00	XXX	0
92593	N	N	Hearing aid check, both ears	0.00	0.00	0.00	0.00	XXX	0
92594	N	N	Electro hearing aid test, one	0.00	0.00	0.00	0.00	XXX	0
92595	N	N	Electro hearing aid test, both	0.00	0.00	0.00	0.00	XXX	0
92596	A	A	Ear protector evaluation	0.00	0.56	0.08	0.62	XXX	N
92597	A	A	Oral speech device eval	1.35	1.01	0.11	2.47	XXX	N
92598	A	A	Modify oral speech device	0.99	0.66	0.07	1.72	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued.

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
92599		C	ENT procedure/service	0.00	0.00	0.00	0.00	XXX	N
92599	26	C	ENT procedure/service	0.00	0.00	0.00	0.00	XXX	N
92599	TC	C	ENT procedure/service	0.00	0.00	0.00	0.00	XXX	N
92950		A	Heart/lung resuscitation (CPR)	3.80	2.27	0.17	6.24	000	N
92953		A	Temporary external pacing	0.23	0.66	0.15	1.04	000	N
92960		A	Heart electroconversion	2.25	1.88	0.16	4.29	000	N
92970		A	Cardioassist, internal	3.52	3.47	0.41	7.40	000	N
92971		A	Cardioassist, external	1.77	1.11	0.08	2.96	000	N
92975		A	Dissolve clot, heart vessel	7.25	5.71	0.42	13.38	000	N
92977		A	Dissolve clot, heart vessel	0.00	7.88	0.54	8.22	XXX	N
92978		A	Intravascular us, heart	1.80	5.41	0.36	7.57	ZZZ	N
92978	26	A	Intravascular us, heart	1.80	1.06	0.08	2.94	ZZZ	N
92978	TC	A	Intravascular us, heart	0.00	4.35	0.28	4.63	ZZZ	N
92979		A	Intravascular us, heart	1.44	3.03	0.20	4.67	ZZZ	N
92979	26	A	Intravascular us, heart	1.44	0.85	0.06	2.35	ZZZ	N
92979	TC	A	Intravascular us, heart	0.00	2.18	0.14	2.32	ZZZ	N
92980		A	Insert intracoronary stent	14.84	16.41	1.22	32.47	000	N
92981		A	Insert intracoronary stent	4.17	5.42	0.44	10.03	ZZZ	N
92982		A	Coronary artery dilation	10.98	14.05	1.22	26.25	000	N
92984		A	Coronary artery dilation	2.97	3.80	0.44	7.21	ZZZ	N
92986		A	Revision of aortic valve	20.34	12.04	0.90	33.28	090	N
92987		A	Revision of mitral valve	20.89	12.20	0.81	33.80	090	N
92990		A	Revision of pulmonary valve	16.22	9.59	0.71	26.52	090	N
92992		C	Revision of heart chamber	0.00	0.00	0.00	0.00	090	S
92993		C	Revision of heart chamber	0.00	0.00	0.00	0.00	090	S
92995		A	Coronary atherectomy	12.09	15.47	1.22	28.78	000	N
92996		A	Coronary atherectomy	3.26	4.17	0.44	7.87	ZZZ	N
93000		A	Electrocardiogram, complete	0.17	0.59	0.04	0.80	XXX	N
93005		A	Electrocardiogram, tracing	0.00	0.43	0.03	0.46	XXX	N
93010		A	Electrocardiogram report	0.17	0.16	0.01	0.34	XXX	N
93012		A	Transmission of ECG	0.00	2.25	0.22	2.47	XXX	N
93014		A	Report on transmitted ECG	0.52	0.40	0.05	0.97	XXX	N
93015		A	Cardiovascular stress test	0.75	2.37	0.18	3.30	XXX	N
93016		A	Cardiovascular stress test	0.45	0.39	0.03	0.87	XXX	N
93017		A	Cardiovascular stress test	0.00	1.60	0.12	1.72	XXX	N
93018		A	Cardiovascular stress test	0.30	0.38	0.03	0.71	XXX	N
93024		A	Cardiac drug stress test	1.17	2.55	0.23	3.96	XXX	N
93024	26	A	Cardiac drug stress test	1.17	1.49	0.14	2.80	XXX	N
93024	TC	A	Cardiac drug stress test	0.00	1.07	0.09	1.16	XXX	N
93040		A	Rhythm ECG with report	0.16	0.26	0.02	0.44	XXX	N
93041		A	Rhythm ECG, tracing	0.00	0.14	0.01	0.15	XXX	N
93042		A	Rhythm ECG, report	0.16	0.12	0.01	0.29	XXX	N
93201		D	Phonocardiogram & ECG lead	0.00	0.00	0.00	0.00	XXX	N
93202		D	Phonocardiogram & ECG lead	0.00	0.00	0.00	0.00	XXX	N
93204		D	Phonocardiogram & ECG lead	0.00	0.00	0.00	0.00	XXX	N
93205		D	Special phonocardiogram	0.00	0.00	0.00	0.00	XXX	N
93206		D	Special phonocardiogram	0.00	0.00	0.00	0.00	XXX	N
93209		D	Special phonocardiogram	0.00	0.00	0.00	0.00	XXX	N
93210		D	Intracardiac phonocardiogram	0.00	0.00	0.00	0.00	XXX	N
93210	26	D	Intracardiac phonocardiogram	0.00	0.00	0.00	0.00	XXX	N
93210	TC	D	Intracardiac phonocardiogram	0.00	0.00	0.00	0.00	XXX	N
93220		D	Vectorcardiogram	0.00	0.00	0.00	0.00	XXX	N
93221		D	Vectorcardiogram tracing	0.00	0.00	0.00	0.00	XXX	N
93222		D	Vectorcardiogram report	0.00	0.00	0.00	0.00	XXX	N
93224		A	ECG monitor/report, 24 hrs	0.52	3.93	0.31	4.76	XXX	N
93225		A	ECG monitor/report, 24 hrs	0.00	1.18	0.09	1.27	XXX	N
93226		A	ECG monitor/report, 24 hrs	0.00	2.08	0.16	2.24	XXX	N
93227		A	ECG monitor/review, 24 hrs	0.52	0.67	0.06	1.25	XXX	N
93230		A	ECG monitor/report, 24 hrs	0.52	4.19	0.34	5.05	XXX	N
93231		A	ECG monitor/report, 24 hrs	0.00	1.45	0.11	1.56	XXX	N
93232		A	ECG monitor/report, 24 hrs	0.00	2.07	0.15	2.22	XXX	N
93233		A	ECG monitor/review, 24 hrs	0.52	0.67	0.06	1.27	XXX	N
93235		A	ECG monitor/report, 24 hrs	0.45	3.07	0.23	3.75	XXX	N
93236		A	ECG monitor/report, 24 hrs	0.00	2.50	0.17	2.67	XXX	N
93237		A	ECG monitor/review, 24 hrs	0.45	0.57	0.06	1.08	XXX	N
93268		A	ECG record/review	0.52	3.63	0.36	4.71	XXX	N
93270		A	ECG recording	0.00	1.18	0.08	1.27	XXX	N

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³ * Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
93271		A	ECG/monitoring and analysis	0.00	2.25	0.22	2.47	XXX	N
93272		A	ECG/review, interpret only	0.52	0.40	0.05	0.97	XXX	N
93278		A	ECG/signal-averaged	0.25	1.55	0.18	1.98	XXX	N
93278	26	A	ECG/signal-averaged	0.25	0.46	0.06	0.76	XXX	N
93278	TC	A	ECG/signal-averaged	0.00	1.10	0.12	1.22	XXX	N
93303		A	Echo transthoracic	1.30	4.66	0.36	6.34	XXX	N
93303	26	A	Echo transthoracic	1.30	1.00	0.09	2.39	XXX	N
93303	TC	A	Echo transthoracic	0.00	3.68	0.27	3.95	XXX	N
93304		A	Echo transthoracic	0.75	2.53	0.19	3.47	XXX	N
93304	26	A	Echo transthoracic	0.75	0.68	0.05	1.48	XXX	N
93304	TC	A	Echo transthoracic	0.00	1.85	0.14	1.99	XXX	N
93307		A	Echo exam of heart	0.92	4.88	0.36	5.96	XXX	N
93307	26	A	Echo exam of heart	0.92	1.00	0.09	2.01	XXX	N
93307	TC	A	Echo exam of heart	0.00	3.68	0.27	3.95	XXX	N
93308		A	Echo exam of heart	0.53	2.53	0.19	3.25	XXX	N
93308	26	A	Echo exam of heart	0.53	0.68	0.05	1.26	XXX	N
93308	TC	A	Echo exam of heart	0.00	1.85	0.14	1.99	XXX	N
93312		A	Echo transeophageal	2.20	4.95	0.45	7.60	XXX	N
93312	26	A	Echo transeophageal	2.20	1.35	0.12	3.67	XXX	N
93312	TC	A	Echo transeophageal	0.00	3.60	0.33	3.93	XXX	N
93313		A	Echo transeophageal	0.95	0.67	0.06	1.68	XXX	N
93314		A	Echo transeophageal	1.25	4.27	0.39	5.91	XXX	N
93314	26	A	Echo transeophageal	1.25	0.67	0.06	1.98	XXX	N
93314	TC	A	Echo transeophageal	0.00	3.60	0.33	3.93	XXX	N
93315		A	Echo transeophageal	2.78	4.95	0.45	8.18	XXX	N
93315	26	A	Echo transeophageal	2.78	1.35	0.12	4.25	XXX	N
93315	TC	A	Echo transeophageal	0.00	3.60	0.33	3.93	XXX	N
93316		A	Echo transeophageal	0.95	0.67	0.06	1.68	XXX	N
93317		A	Echo transeophageal	1.83	4.27	0.39	6.49	XXX	N
93317	26	A	Echo transeophageal	1.83	0.67	0.06	2.56	XXX	N
93317	TC	A	Echo transeophageal	0.00	3.60	0.33	3.93	XXX	N
93320		A	Doppler echo exam, heart	0.38	2.11	0.18	2.67	ZZZ	N
93320	26	A	Doppler echo exam, heart	0.38	0.48	0.05	0.91	ZZZ	N
93320	TC	A	Doppler echo exam, heart	0.00	1.63	0.13	1.76	ZZZ	N
93321		A	Doppler echo exam, heart	0.15	1.25	0.11	1.51	ZZZ	N
93321	26	A	Doppler echo exam, heart	0.15	0.19	0.02	0.36	ZZZ	N
93321	TC	A	Doppler echo exam, heart	0.00	1.06	0.09	1.15	ZZZ	N
93325		A	Doppler color flow	0.07	2.80	0.25	3.12	ZZZ	N
93325	26	A	Doppler color flow	0.07	0.04	0.01	0.12	ZZZ	N
93325	TC	A	Doppler color flow	0.00	2.76	0.24	3.00	ZZZ	N
93350		A	Echo transthoracic	0.78	3.63	0.24	4.65	XXX	N
93350	26	A	Echo transthoracic	0.78	1.95	0.10	2.83	XXX	N
93350	TC	A	Echo transthoracic	0.00	1.68	0.14	1.82	XXX	N
93501		A	Right heart catheterization	3.02	19.72	1.54	24.28	000	N
93501	26	A	Right heart catheterization	3.02	3.61	0.34	6.97	000	N
93501	TC	A	Right heart catheterization	0.00	16.11	1.20	17.31	000	N
93503		A	Insert/place heart catheter	2.91	2.37	0.36	5.64	000	N
93505		A	Biopsy of heart lining	4.38	4.92	0.46	9.76	000	N
93505	26	A	Biopsy of heart lining	4.38	3.03	0.28	7.69	000	N
93505	TC	A	Biopsy of heart lining	0.00	1.89	0.18	2.07	000	N
93510		A	Left heart catheterization	4.33	38.28	2.86	45.47	000	N
93510	26	A	Left heart catheterization	4.33	3.06	0.23	7.62	000	N
93510	TC	A	Left heart catheterization	0.00	35.22	2.63	37.85	000	N
93511		A	Left heart catheterization	5.03	36.91	2.76	44.70	000	N
93511	26	A	Left heart catheterization	5.03	2.62	0.20	7.85	000	N
93511	TC	A	Left heart catheterization	0.00	34.29	2.66	36.85	000	N
93514		A	Left heart catheterization	7.05	38.84	2.94	48.83	000	S
93514	26	A	Left heart catheterization	7.05	4.55	0.38	11.98	000	S
93514	TC	A	Left heart catheterization	0.00	34.29	2.66	36.85	000	S
93524		A	Left heart catheterization	6.95	49.45	3.69	60.09	000	N
93524	26	A	Left heart catheterization	6.95	4.65	0.34	11.94	000	N
93524	TC	A	Left heart catheterization	0.00	44.80	3.35	48.15	000	N
93526		A	Rt & Lt heart catheters	5.99	51.48	3.83	61.30	000	N
93526	26	A	Rt & Lt heart catheters	5.99	5.45	0.39	11.83	000	N
93526	TC	A	Rt & Lt heart catheters	0.00	46.03	3.44	49.47	000	N
93527		A	Rt & Lt heart catheters	7.28	51.94	3.85	63.07	000	N
93527	26	A	Rt & Lt heart catheters	7.28	7.14	0.50	14.92	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT V HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
93527	TC	A	Rt & Lt heart catheters	0.00	44.80	3.35	48.15	000	N
93528		A	Rt & Lt heart catheters	0.00	49.23	3.68	51.91	000	N
93528	26	A	Rt & Lt heart catheters	0.00	4.43	0.38	13.76	000	N
93528	TC	A	Rt & Lt heart catheters	0.00	44.80	3.35	48.15	000	N
93529		A	Rt, Lt heart catheterization	4.80	47.73	3.57	56.10	000	N
93529	26	A	Rt, Lt heart catheterization	4.80	2.99	0.22	7.95	000	N
93529	TC	A	Rt, Lt heart catheterization	0.00	44.80	3.35	48.15	000	N
93530		A	Insert circulation cann	4.85	6.20	0.71	11.76	000	N
93530		A	Injection, cardiac cath	0.40	0.88	0.20	1.48	000	N
93540		A	Injection, cardiac cath	0.43	0.88	0.20	1.51	000	N
93541		A	Injection for lung angiogram	0.29	0.73	0.16	1.18	000	N
93542		A	Injection for heart x-rays	0.29	0.72	0.16	1.17	000	N
93543		A	Injection for heart x-rays	0.29	0.57	0.11	0.97	000	N
93544		A	Injection for aortography	0.25	0.57	0.11	0.93	000	N
93545		A	Injection for coronary x-rays	0.40	1.03	0.24	1.67	000	N
93555		A	Imaging, cardiac cath	0.81	6.25	0.42	7.48	XXX	N
93555	26	A	Imaging, cardiac cath	0.81	0.27	0.04	1.12	XXX	N
93555	TC	A	Imaging, cardiac cath	0.00	5.98	0.38	6.36	XXX	N
93558		A	Imaging, cardiac cath	0.83	9.88	0.85	11.36	XXX	N
93558	26	A	Imaging, cardiac cath	0.83	0.45	0.07	1.35	XXX	N
93558	TC	A	Imaging, cardiac cath	0.00	9.43	0.58	10.01	XXX	N
93561		A	Cardiac output measurement	0.50	1.25	0.16	1.91	000	N
93561	26	A	Cardiac output measurement	0.50	0.75	0.09	1.34	000	N
93561	TC	A	Cardiac output measurement	0.00	0.50	0.07	0.57	000	N
93562		A	Cardiac output measurement	0.16	0.76	0.10	1.02	000	N
93562	26	A	Cardiac output measurement	0.16	0.46	0.08	0.68	000	N
93562	TC	A	Cardiac output measurement	0.00	0.30	0.04	0.34	000	N
93600		A	Bundle of His recording	2.12	4.57	0.38	7.07	000	N
93600	26	A	Bundle of His recording	2.12	2.71	0.24	5.07	000	N
93600	TC	A	Bundle of His recording	0.00	1.86	0.14	2.00	000	N
93602		A	Intra-atrial recording	2.12	2.83	0.22	5.17	000	N
93602	26	A	Intra-atrial recording	2.12	1.77	0.14	4.03	000	N
93602	TC	A	Intra-atrial recording	0.00	1.08	0.08	1.14	000	N
93603		A	Right ventricular recording	2.12	3.79	0.28	6.19	000	N
93603	26	A	Right ventricular recording	2.12	2.19	0.16	4.47	000	N
93603	TC	A	Right ventricular recording	0.00	1.60	0.12	1.72	000	N
93607		A	Right ventricular recording	3.26	3.63	0.28	7.17	000	N
93607	26	A	Right ventricular recording	3.26	2.21	0.17	5.64	000	N
93607	TC	A	Right ventricular recording	0.00	1.42	0.11	1.53	000	N
93609		A	Mapping of tachycardia	10.07	5.43	0.47	16.97	000	N
93609	26	A	Mapping of tachycardia	10.07	3.84	0.28	14.19	000	N
93609	TC	A	Mapping of tachycardia	0.00	2.59	0.19	2.78	000	N
93610		A	Intra-atrial pacing	3.02	3.60	0.27	6.89	000	N
93610	26	A	Intra-atrial pacing	3.02	2.31	0.17	5.50	000	N
93610	TC	A	Intra-atrial pacing	0.00	1.29	0.10	1.39	000	N
93612		A	Intraventricular pacing	3.02	3.88	0.29	7.19	000	N
93612	26	A	Intraventricular pacing	3.02	2.34	0.17	5.53	000	N
93612	TC	A	Intraventricular pacing	0.00	1.54	0.12	1.66	000	N
93615		A	Esophageal recording	0.99	0.65	0.04	1.68	000	N
93615	26	A	Esophageal recording	0.99	0.35	0.02	1.36	000	N
93615	TC	A	Esophageal recording	0.00	0.30	0.02	0.32	000	N
93616		A	Esophageal recording	1.49	1.66	0.10	3.25	000	N
93616	26	A	Esophageal recording	1.49	1.36	0.08	2.93	000	N
93616	TC	A	Esophageal recording	0.00	0.30	0.02	0.32	000	N
93618		A	Heart rhythm pacing	4.26	9.24	0.72	14.22	000	N
93618	26	A	Heart rhythm pacing	4.26	5.46	0.44	10.16	000	N
93618	TC	A	Heart rhythm pacing	0.00	3.78	0.28	4.06	000	N
93619		A	Electrophysiology evaluation	7.32	16.71	1.40	25.43	000	N
93619	26	A	Electrophysiology evaluation	7.32	9.37	0.88	17.55	000	N
93619	TC	A	Electrophysiology evaluation	0.00	7.34	0.54	7.88	000	N
93620		A	Electrophysiology evaluation	11.59	22.07	1.55	35.21	000	N
93620	26	A	Electrophysiology evaluation	11.59	13.53	0.95	26.07	000	N
93620	TC	A	Electrophysiology evaluation	0.00	8.54	0.60	9.14	000	N
93621		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N
93621	26	A	Electrophysiology evaluation	12.66	14.94	1.11	28.71	000	N
93621	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N
93622		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT V HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
93622	26	A	Electrophysiology evaluation	12.74	14.74	1.07	28.55	000	N
93622	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	000	N
93623		C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	000	N
93623	26	A	Stimulation, pacing heart	2.85	2.78	0.20	5.83	000	N
93623	TC	C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	000	N
93624		A	Electrophysiologic study	4.81	4.88	0.35	10.04	000	N
93624	26	A	Electrophysiologic study	4.81	2.99	0.21	8.01	000	N
93624	TC	A	Electrophysiologic study	0.00	1.89	0.14	2.03	000	N
93631		A	Heart pacing, mapping	7.60	11.62	1.37	20.59	000	N
93631	26	A	Heart pacing, mapping	7.60	5.76	0.67	14.03	000	N
93631	TC	A	Heart pacing, mapping	0.00	5.86	0.70	6.56	000	N
93640		A	Evaluation heart device	3.52	11.51	1.09	16.12	000	N
93640	26	A	Evaluation heart device	3.52	4.67	0.61	8.80	000	N
93640	TC	A	Evaluation heart device	0.00	6.84	0.48	7.32	000	N
93641		A	Electrophysiology evaluation	5.93	13.85	1.09	20.87	000	N
93641	26	A	Electrophysiology evaluation	5.93	7.01	0.61	13.55	000	N
93641	TC	A	Electrophysiology evaluation	0.00	6.84	0.48	7.32	000	N
93642		A	Electrophysiology evaluation	4.89	13.09	1.09	19.07	000	N
93642	26	A	Electrophysiology evaluation	4.89	5.25	0.61	11.75	000	N
93642	TC	A	Electrophysiology evaluation	0.00	5.84	0.48	7.32	000	N
93650		A	Ablate heart dysrhythm focus	10.51	13.46	1.34	25.31	000	N
93652		A	Ablate heart dysrhythm focus	16.25	17.83	1.34	35.42	000	N
93660		C	Tilt table evaluation	17.68	17.83	1.34	36.85	000	N
93660	26	A	Tilt table evaluation	0.00	0.00	0.00	0.00	000	N
93660	TC	C	Tilt table evaluation	1.89	1.44	0.17	3.50	000	N
93720		A	Total body plethysmography	0.17	0.89	0.10	1.16	XXX	N
93721		A	Plethysmography tracing	0.00	0.67	0.07	0.74	XXX	N
93722		A	Plethysmography report	0.17	0.22	0.03	0.42	XXX	N
93724		A	Analyze pacemaker system	4.89	6.66	0.50	12.05	000	N
93724	26	A	Analyze pacemaker system	4.89	2.88	0.22	7.99	000	N
93724	TC	A	Analyze pacemaker system	0.00	3.78	0.28	4.06	000	N
93731		A	Analyze pacemaker system	0.45	0.79	0.07	1.31	XXX	N
93731	26	A	Analyze pacemaker system	0.45	0.32	0.03	0.80	XXX	N
93731	TC	A	Analyze pacemaker system	0.00	0.47	0.04	0.51	XXX	N
93732		A	Analyze pacemaker system	0.92	0.91	0.08	1.91	XXX	N
93732	26	A	Analyze pacemaker system	0.92	0.42	0.04	1.38	XXX	N
93732	TC	A	Analyze pacemaker system	0.00	0.49	0.04	0.53	XXX	N
93733		A	Telephone analysis, pacemaker	0.17	0.91	0.08	1.16	XXX	N
93733	26	A	Telephone analysis, pacemaker	0.17	0.22	0.02	0.41	XXX	N
93733	TC	A	Telephone analysis, pacemaker	0.00	0.69	0.06	0.75	XXX	N
93734		A	Analyze pacemaker system	0.38	0.64	0.06	1.08	XXX	N
93734	26	A	Analyze pacemaker system	0.38	0.31	0.03	0.72	XXX	N
93734	TC	A	Analyze pacemaker system	0.00	0.33	0.03	0.36	XXX	N
93735		A	Analyze pacemaker system	0.74	0.85	0.06	1.67	XXX	N
93735	26	A	Analyze pacemaker system	0.74	0.43	0.04	1.21	XXX	N
93735	TC	A	Analyze pacemaker system	0.00	0.42	0.04	0.46	XXX	N
93736		A	Telephone analysis, pacemaker	0.15	0.79	0.09	1.03	XXX	N
93736	26	A	Telephone analysis, pacemaker	0.15	0.19	0.03	0.37	XXX	N
93736	TC	A	Telephone analysis, pacemaker	0.00	0.60	0.06	0.66	XXX	N
93737		A	Analyze cardio/defibrillator	0.45	0.74	0.06	1.25	XXX	N
93737	26	A	Analyze cardio/defibrillator	0.45	0.27	0.02	0.74	XXX	N
93737	TC	A	Analyze cardio/defibrillator	0.00	0.47	0.04	0.51	XXX	N
93738		A	Analyze cardio/defibrillator	0.92	0.88	0.07	1.87	XXX	N
93738	26	A	Analyze cardio/defibrillator	0.92	0.39	0.03	1.34	XXX	N
93738	TC	A	Analyze cardio/defibrillator	0.00	0.49	0.04	0.53	XXX	N
93740		A	Temperature gradient studies	0.16	0.45	0.04	0.65	XXX	N
93740	26	A	Temperature gradient studies	0.16	0.30	0.03	0.49	XXX	N
93740	TC	A	Temperature gradient studies	0.00	0.15	0.01	0.16	XXX	N
93780		N	Cephalic thermogram	0.00	0.00	0.00	0.00	XXX	0
93782		N	Peripheral thermogram	0.00	0.00	0.00	0.00	XXX	0
93770		A	Measure venous pressure	0.16	0.20	0.02	0.38	XXX	N
93770	26	A	Measure venous pressure	0.16	0.17	0.02	0.35	XXX	N
93770	TC	A	Measure venous pressure	0.00	0.03	0.00	0.03	XXX	N
93784		N	Ambulatory BP monitoring	0.00	0.00	0.00	0.00	XXX	0
93786		N	Ambulatory BP recording	0.00	0.00	0.00	0.00	XXX	0
93788		N	Ambulatory BP analysis	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
93790		N	Review/report BP recording	0.00	0.00	0.00	0.00	XXX	0
93797		A	Cardiac rehab	0.18	0.30	0.02	0.50	000	N
93798		A	Cardiac rehab/monitor	0.28	0.47	0.04	0.79	009	N
93799		C	Cardiovascular procedure	0.00	0.00	0.00	0.00	XXX	N
93799	26	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	XXX	N
93799	TC	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	XXX	N
93875		A	Extracranial study	0.22	1.35	0.18	1.75	XXX	N
93875	26	A	Extracranial study	0.22	0.31	0.06	0.59	XXX	N
93875	TC	A	Extracranial study	0.00	1.05	0.12	1.17	XXX	N
93880		A	Extracranial study	0.60	3.94	0.44	4.98	XXX	N
93880	26	A	Extracranial study	0.60	0.39	0.04	1.03	XXX	N
93880	TC	A	Extracranial study	0.00	3.55	0.40	3.95	XXX	N
93882		A	Extracranial study	0.40	2.62	0.29	3.31	XXX	N
93882	26	A	Extracranial study	0.40	0.26	0.03	0.69	XXX	N
93882	TC	A	Extracranial study	0.00	2.36	0.26	2.62	XXX	N
93886		A	Intracranial study	0.94	4.44	0.50	5.88	XXX	N
93886	26	A	Intracranial study	0.94	0.42	0.05	1.41	XXX	N
93886	TC	A	Intracranial study	0.00	4.02	0.45	4.47	XXX	N
93888		A	Intracranial study	0.62	2.96	0.34	3.92	XXX	N
93888	26	A	Intracranial study	0.62	0.28	0.03	0.93	XXX	N
93888	TC	A	Intracranial study	0.00	2.68	0.31	2.99	XXX	N
93922		A	Extremity study	0.25	1.38	0.19	1.82	XXX	N
93922	26	A	Extremity study	0.25	0.28	0.05	0.58	XXX	N
93922	TC	A	Extremity study	0.00	1.10	0.14	1.24	XXX	N
93923		A	Extremity study	0.45	2.59	0.35	3.39	XXX	N
93923	26	A	Extremity study	0.45	0.51	0.09	1.05	XXX	N
93923	TC	A	Extremity study	0.00	2.08	0.28	2.34	XXX	N
93924		A	Extremity study	0.50	2.83	0.39	3.72	XXX	N
93924	26	A	Extremity study	0.50	0.57	0.10	1.17	XXX	N
93924	TC	A	Extremity study	0.00	2.26	0.29	2.55	XXX	N
93925		A	Lower extremity study	0.58	3.95	0.44	4.98	XXX	N
93925	26	A	Lower extremity study	0.58	0.39	0.04	1.01	XXX	N
93925	TC	A	Lower extremity study	0.00	3.57	0.40	3.97	XXX	N
93926		A	Lower extremity study	0.39	2.64	0.30	3.33	XXX	N
93926	26	A	Lower extremity study	0.39	0.26	0.03	0.68	XXX	N
93926	TC	A	Lower extremity study	0.00	2.36	0.27	2.65	XXX	N
93930		A	Upper extremity study	0.46	4.18	0.47	5.11	XXX	N
93930	26	A	Upper extremity study	0.46	0.39	0.05	0.90	XXX	N
93930	TC	A	Upper extremity study	0.00	3.79	0.42	4.21	XXX	N
93931		A	Upper extremity study	0.31	2.78	0.31	3.40	XXX	N
93931	26	A	Upper extremity study	0.31	0.26	0.03	0.60	XXX	N
93931	TC	A	Upper extremity study	0.00	2.52	0.28	2.80	XXX	N
93965		A	Extremity study	0.35	1.49	0.19	2.03	XXX	N
93965	26	A	Extremity study	0.35	0.45	0.05	0.85	XXX	N
93965	TC	A	Extremity study	0.00	1.04	0.13	1.17	XXX	N
93970		A	Extremity study	0.68	4.33	0.51	5.52	XXX	N
93970	26	A	Extremity study	0.68	0.40	0.05	1.13	XXX	N
93970	TC	A	Extremity study	0.00	3.93	0.46	4.39	XXX	N
93971		A	Extremity study	0.45	2.89	0.34	3.68	XXX	N
93971	26	A	Extremity study	0.45	0.27	0.03	0.75	XXX	N
93971	TC	A	Extremity study	0.00	2.62	0.31	2.93	XXX	N
93975		A	Vascular study	1.80	4.90	0.55	7.25	XXX	N
93975	26	A	Vascular study	1.80	0.42	0.05	2.27	XXX	N
93975	TC	A	Vascular study	0.00	4.48	0.50	4.98	XXX	N
93976		A	Vascular study	1.21	3.27	0.37	4.85	XXX	N
93976	26	A	Vascular study	1.21	0.28	0.03	1.52	XXX	N
93976	TC	A	Vascular study	0.00	2.99	0.34	3.33	XXX	N
93978		A	Vascular study	0.65	4.06	0.47	5.18	XXX	N
93978	26	A	Vascular study	0.65	0.39	0.05	1.09	XXX	N
93978	TC	A	Vascular study	0.00	3.67	0.42	4.09	XXX	N
93979		A	Vascular study	0.44	2.70	0.31	3.45	XXX	N
93979	26	A	Vascular study	0.44	0.26	0.03	0.73	XXX	N
93979	TC	A	Vascular study	0.00	2.44	0.28	2.72	XXX	N
93980		A	Penile vascular study	1.25	4.15	0.45	5.85	XXX	N
93980	26	A	Penile vascular study	1.25	0.82	0.07	2.14	XXX	N
93980	TC	A	Penile vascular study	0.00	3.33	0.38	3.71	XXX	N
93981		A	Penile vascular study	0.44	3.47	0.39	4.30	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
93981	26	A	Penile vascular study	0.44	0.40	0.03	0.87	XXX	N
93981	TC	A	Penile vascular study	0.00	3.07	0.36	3.43	XXX	N
93990		A	Doppler flow testing	0.25	2.57	0.29	3.11	XXX	N
93990	26	A	Doppler flow testing	0.25	0.19	0.02	0.46	XXX	N
93990	TC	A	Doppler flow testing	0.00	2.38	0.27	2.65	XXX	N
94010		A	Breathing capacity test	0.17	0.68	0.05	0.90	XXX	N
94010	26	A	Breathing capacity test	0.17	0.28	0.02	0.47	XXX	N
94010	TC	A	Breathing capacity test	0.00	0.40	0.03	0.43	XXX	N
94060		A	Evaluation of wheezing	0.31	1.27	0.09	1.67	XXX	N
94060	26	A	Evaluation of wheezing	0.31	0.38	0.03	0.72	XXX	N
94060	TC	A	Evaluation of wheezing	0.00	0.89	0.08	0.95	XXX	N
94070		A	Evaluation of wheezing	0.60	1.77	0.13	2.50	XXX	N
94070	26	A	Evaluation of wheezing	0.60	0.36	0.03	1.01	XXX	N
94070	TC	A	Evaluation of wheezing	0.00	1.39	0.10	1.49	XXX	N
94150		B	Vital capacity test	+0.07	0.20	0.02	0.29	XXX	0
94150	26	B	Vital capacity test	+0.07	0.12	0.01	0.20	XXX	0
94150	TC	B	Vital capacity test	+0.00	0.08	0.01	0.09	XXX	0
94160		D	Vital capacity screening	0.00	0.00	0.00	0.00	XXX	N
94160	26	D	Vital capacity screening	0.00	0.00	0.00	0.00	XXX	N
94160	TC	D	Vital capacity screening	0.00	0.00	0.00	0.00	XXX	N
94200		A	Lung function test (MBC/MVV)	0.11	0.38	0.03	0.52	XXX	N
94200	26	A	Lung function test (MBC/MVV)	0.11	0.14	0.01	0.26	XXX	N
94200	TC	A	Lung function test (MBC/MVV)	0.00	0.24	0.02	0.26	XXX	N
94240		A	Residual lung capacity	0.26	0.88	0.07	1.21	XXX	N
94240	26	A	Residual lung capacity	0.26	0.23	0.02	0.51	XXX	N
94240	TC	A	Residual lung capacity	0.00	0.65	0.05	0.70	XXX	N
94250		A	Expired gas collection	0.11	0.27	0.02	0.40	XXX	N
94250	26	A	Expired gas collection	0.11	0.14	0.01	0.26	XXX	N
94250	TC	A	Expired gas collection	0.00	0.13	0.01	0.14	XXX	N
94260		A	Thoracic gas volume	0.13	0.69	0.05	0.88	XXX	N
94260	26	A	Thoracic gas volume	0.13	0.17	0.02	0.32	XXX	N
94260	TC	A	Thoracic gas volume	0.00	0.52	0.04	0.56	XXX	N
94350		A	Lung nitrogen washout curve	0.26	0.73	0.05	1.04	XXX	N
94350	26	A	Lung nitrogen washout curve	0.26	0.21	0.01	0.48	XXX	N
94350	TC	A	Lung nitrogen washout curve	0.00	0.52	0.04	0.56	XXX	N
94360		A	Measure airflow resistance	0.26	1.11	0.07	1.44	XXX	N
94360	26	A	Measure airflow resistance	0.26	0.19	0.01	0.46	XXX	N
94360	TC	A	Measure airflow resistance	0.00	0.92	0.06	0.98	XXX	N
94370		A	Breath airway closing volume	0.26	0.40	0.03	0.69	XXX	N
94370	26	A	Breath airway closing volume	0.26	0.14	0.01	0.41	XXX	N
94370	TC	A	Breath airway closing volume	0.00	0.26	0.02	0.28	XXX	N
94375		A	Respiratory flow volume loop	0.31	0.67	0.04	1.02	XXX	N
94375	26	A	Respiratory flow volume loop	0.31	0.21	0.01	0.53	XXX	N
94375	TC	A	Respiratory flow volume loop	0.00	0.46	0.03	0.49	XXX	N
94400		A	CO ₂ breathing response curve	0.40	0.77	0.19	1.36	XXX	N
94400	26	A	CO ₂ breathing response curve	0.40	0.47	0.13	1.00	XXX	N
94400	TC	A	CO ₂ breathing response curve	0.00	0.30	0.08	0.38	XXX	N
94450		A	Hypoxia response curve	0.40	0.61	0.05	1.06	XXX	N
94450	26	A	Hypoxia response curve	0.40	0.24	0.02	0.66	XXX	N
94450	TC	A	Hypoxia response curve	0.00	0.37	0.03	0.40	XXX	N
94620		A	Pulmonary stress testing	0.88	2.05	0.15	3.08	XXX	N
94620	26	A	Pulmonary stress testing	0.88	0.70	0.05	1.63	XXX	N
94620	TC	A	Pulmonary stress testing	0.00	1.35	0.10	1.45	XXX	N
94640		A	Airway inhalation treatment	0.00	0.39	0.03	0.42	XXX	N
94642		C	Aerosol inhalation treatment	0.00	0.00	0.00	0.00	XXX	N
94650		A	Pressure breathing (IPPB)	0.00	0.37	0.03	0.40	XXX	N
94651		A	Pressure breathing (IPPB)	0.00	0.36	0.03	0.39	XXX	N
94652		A	Pressure breathing (IPPB)	0.00	0.41	0.06	0.49	XXX	N
94656		A	Initial ventilator mgmt	1.22	1.13	0.12	2.47	XXX	N
94657		A	Cont. ventilator	0.83	0.62	0.05	1.50	XXX	N
94660		A	Pos airway pressure, CPAP	0.76	0.71	0.06	1.53	XXX	N
94662		A	Neg pressure ventilation, cnp	0.76	0.30	0.02	1.08	XXX	N
94664		A	Aerosol or vapor inhalations	0.00	0.50	0.04	0.54	XXX	N
94665		A	Aerosol or vapor inhalations	0.00	0.46	0.05	0.51	XXX	N
94667		A	Chest wall manipulation	0.00	0.55	0.05	0.60	XXX	N
94668		A	Chest wall manipulation	0.00	0.34	0.03	0.37	XXX	N
94680		A	Exhaled air analysis: O ₂	0.26	0.82	0.10	1.18	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
94680	26	A	Exhaled air analysis: O ₂	0.26	0.33	0.03	0.62	XXX	N
94680	TC	A	Exhaled air analysis: O ₂	0.00	0.49	0.07	0.56	XXX	N
94681		A	Exhaled air analysis: O ₂ , CO ₂	0.20	1.58	0.17	1.95	XXX	N
94681	26	A	Exhaled air analysis: O ₂ , CO ₂	0.20	0.26	0.04	0.50	XXX	N
94681	TC	A	Exhaled air analysis: O ₂ , CO ₂	0.00	1.32	0.13	1.45	XXX	N
94690		A	Exhaled air analysis	0.07	0.56	0.04	0.67	XXX	N
94690	26	A	Exhaled air analysis	0.07	0.05	0.00	0.12	XXX	N
94690	TC	A	Exhaled air analysis	0.00	0.51	0.04	0.55	XXX	N
94720		A	Monoxide diffusing capacity	0.26	1.03	0.08	1.37	XXX	N
94720	26	A	Monoxide diffusing capacity	0.26	0.23	0.02	0.51	XXX	N
94720	TC	A	Monoxide diffusing capacity	0.00	0.80	0.05	0.85	XXX	N
94725		A	Membrane diffusion capacity	0.26	1.84	0.14	2.24	XXX	N
94725	26	A	Membrane diffusion capacity	0.26	0.18	0.01	0.45	XXX	N
94725	TC	A	Membrane diffusion capacity	0.00	1.66	0.13	1.79	XXX	N
94750		A	Pulmonary compliance study	0.23	0.83	0.06	1.12	XXX	N
94750	26	A	Pulmonary compliance study	0.23	0.28	0.02	0.53	XXX	N
94750	TC	A	Pulmonary compliance study	0.00	0.55	0.04	0.59	XXX	N
94760		A	Measure blood oxygen level	0.00	0.25	0.02	0.27	XXX	N
94761		A	Measure blood oxygen level	0.00	0.64	0.05	0.70	XXX	N
94762		A	Measure blood oxygen level	0.00	1.08	0.10	1.18	XXX	N
94770	26	A	Exhaled carbon dioxide test	0.15	0.40	0.11	0.66	XXX	N
94770	TC	A	Exhaled carbon dioxide test	0.00	0.29	0.08	0.37	XXX	N
94772		C	Breath recording, infant	0.00	0.00	0.00	0.00	XXX	N
94772	26	C	Breath recording, infant	0.00	0.00	0.00	0.00	XXX	N
94772	TC	C	Breath recording, infant	0.00	0.00	0.00	0.00	XXX	N
94799		C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	XXX	N
94799	26	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	XXX	N
94799	TC	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	XXX	N
95004		A	Allergy skin tests	0.00	0.09	0.01	0.10	XXX	N
95010		A	Sensitivity skin tests	0.15	0.11	0.01	0.27	XXX	N
95015		A	Sensitivity skin tests	0.15	0.11	0.01	0.27	XXX	N
95024		A	Allergy skin tests	0.00	0.14	0.01	0.15	XXX	N
95027		A	Skin end point titration	0.00	0.14	0.01	0.15	XXX	N
95028		A	Allergy skin tests	0.00	0.22	0.01	0.23	XXX	N
95044		A	Allergy patch tests	0.00	0.19	0.01	0.20	XXX	N
95052		A	Photo patch test	0.00	0.24	0.01	0.25	XXX	N
95056		A	Photosensitivity tests	0.00	0.17	0.01	0.18	XXX	N
95060		A	Eye allergy tests	0.00	0.33	0.02	0.35	XXX	N
95065		A	Nose allergy test	0.00	0.19	0.01	0.20	XXX	N
95070		A	Bronchial allergy tests	0.00	2.17	0.02	2.19	XXX	N
95071		A	Bronchial allergy tests	0.00	2.78	0.02	2.80	XXX	N
95075		A	Ingestion challenge test	0.95	1.97	0.02	2.94	XXX	N
95078		A	Provocative testing	0.00	0.24	0.02	0.26	XXX	N
95115		A	Immunotherapy, one injection	0.00	0.37	0.02	0.39	000	N
95117		A	Immunotherapy injections	0.00	0.48	0.02	0.50	000	N
95120		G	Immunotherapy, one injection	0.00	0.00	0.00	0.00	XXX	0
95125		G	Immunotherapy, many antigens	0.00	0.00	0.00	0.00	XXX	0
95130		G	Immunotherapy, insect venom	0.00	0.00	0.00	0.00	XXX	0
95131		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95132		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95133		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95134		G	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	XXX	0
95144		A	Antigen therapy services	0.06	0.13	0.01	0.20	000	N
95145		A	Antigen therapy services	0.06	0.34	0.03	0.43	000	N
95146		A	Antigen therapy services	0.06	0.61	0.03	0.70	000	N
95147		A	Antigen therapy services	0.06	0.91	0.03	1.00	000	N
95148		A	Antigen therapy services	0.06	0.91	0.03	1.00	000	N
95149		A	Antigen therapy services	0.06	1.14	0.03	1.23	000	N
95165		A	Antigen therapy services	0.06	0.10	0.01	0.17	000	N
95170		A	Antigen therapy services	0.06	0.35	0.03	0.44	000	N
95180		A	Rapid desensitization	2.01	0.14	0.01	2.16	000	N
95199		C	Allergy immunology services	0.00	0.00	0.00	0.00	000	N
95805		A	Multiple sleep latency test	1.88	5.51	0.45	7.84	XXX	N
95805	26	A	Multiple sleep latency test	1.88	0.56	0.07	2.51	XXX	N
95805	TC	A	Multiple sleep latency test	0.00	4.95	0.38	5.33	XXX	N
95807		A	Sleep study	1.66	8.75	0.67	11.08	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
95807	26	A	Sleep study	1.66	2.45	0.19	4.30	XXX	N
95807	TC	A	Sleep study	0.00	6.30	0.48	6.78	XXX	N
95808		A	Polysomnography, 1-3	2.65	8.75	0.67	12.07	XXX	N
95808	26	A	Polysomnography, 1-3	2.65	2.45	0.19	5.29	XXX	N
95808	TC	A	Polysomnography, 1-3	0.00	6.30	0.48	6.78	XXX	N
95810		A	Polysomnography, 4 or more	3.53	8.75	0.67	12.95	XXX	N
95810	26	A	Polysomnography, 4 or more	3.53	2.45	0.19	6.17	XXX	N
95810	TC	A	Polysomnography, 4 or more	0.00	6.30	0.48	6.78	XXX	N
95812		A	Electroencephalogram (EEG)	1.08	1.85	0.15	3.08	XXX	N
95812	26	A	Electroencephalogram (EEG)	1.08	0.50	0.04	1.62	XXX	N
95812	TC	A	Electroencephalogram (EEG)	0.00	1.35	0.11	1.46	XXX	N
95813		A	Electroencephalogram (EEG)	1.73	1.85	0.15	3.73	XXX	N
95813	26	A	Electroencephalogram (EEG)	1.73	0.50	0.04	2.27	XXX	N
95813	TC	A	Electroencephalogram (EEG)	0.00	1.35	0.11	1.46	XXX	N
95816		A	Electroencephalogram (EEG)	1.08	1.54	0.13	2.75	XXX	N
95816	26	A	Electroencephalogram (EEG)	1.08	0.28	0.03	1.39	XXX	N
95816	TC	A	Electroencephalogram (EEG)	0.00	1.26	0.10	1.36	XXX	N
95819		A	Electroencephalogram (EEG)	1.08	1.80	0.14	3.02	XXX	N
95819	26	A	Electroencephalogram (EEG)	1.08	0.50	0.04	1.62	XXX	N
95819	TC	A	Electroencephalogram (EEG)	0.00	1.30	0.10	1.40	XXX	N
95822		A	Sleep electroencephalogram	1.08	2.26	0.18	3.54	XXX	N
95822	26	A	Sleep electroencephalogram	1.08	0.56	0.04	1.68	XXX	N
95822	TC	A	Sleep electroencephalogram	0.00	1.72	0.14	1.86	XXX	N
95824		A	Electroencephalography	0.74	0.96	0.07	1.77	XXX	N
95824	26	A	Electroencephalography	0.74	0.58	0.04	1.36	XXX	N
95824	TC	A	Electroencephalography	0.00	0.40	0.03	0.43	XXX	N
95827		A	Night electroencephalogram	1.08	3.06	0.24	4.38	XXX	N
95827	26	A	Night electroencephalogram	1.08	0.88	0.07	2.03	XXX	N
95827	TC	A	Night electroencephalogram	0.00	2.18	0.17	2.35	XXX	N
95829		A	Surgery electrocorticogram	6.21	0.59	0.05	6.85	XXX	N
95829	26	A	Surgery electrocorticogram	6.21	0.45	0.03	6.69	XXX	N
95829	TC	A	Surgery electrocorticogram	0.00	0.14	0.02	0.16	XXX	N
95830		A	Insert electrodes for EEG	1.70	0.78	0.07	2.55	XXX	N
95831		A	Limb muscle testing, manual	0.28	0.29	0.03	0.60	XXX	N
95832		A	Hand muscle testing, manual	0.29	0.25	0.02	0.56	XXX	N
95833		A	Body muscle testing, manual	0.47	0.38	0.05	0.90	XXX	N
95834		A	Body muscle testing, manual	0.60	0.61	0.06	1.27	XXX	N
95851		A	Range of motion measurements	0.16	0.24	0.02	0.42	XXX	N
95852		A	Range of motion measurements	0.11	0.15	0.02	0.28	XXX	N
95857		A	Tension test	0.53	0.50	0.04	1.07	XXX	N
95858		A	Tension test & myogram	1.56	1.02	0.09	2.67	XXX	N
95858	26	A	Tension test & myogram	1.56	0.64	0.05	2.25	XXX	N
95858	TC	A	Tension test & myogram	0.00	0.38	0.04	0.42	XXX	N
95860		A	Muscle test, one limb	0.96	1.09	0.09	2.14	XXX	N
95860	26	A	Muscle test, one limb	0.96	0.73	0.06	1.75	XXX	N
95860	TC	A	Muscle test, one limb	0.00	0.36	0.03	0.39	XXX	N
95861		A	Muscle test, two limbs	1.54	1.97	0.16	3.67	XXX	N
95861	26	A	Muscle test, two limbs	1.54	1.27	0.10	2.91	XXX	N
95861	TC	A	Muscle test, two limbs	0.00	0.70	0.06	0.76	XXX	N
95863		A	Muscle test, 3 limbs	1.87	2.30	0.18	4.35	XXX	N
95863	26	A	Muscle test, 3 limbs	1.87	1.41	0.11	3.39	XXX	N
95863	TC	A	Muscle test, 3 limbs	0.00	0.69	0.07	0.76	XXX	N
95864		A	Muscle test, 4 limbs	1.99	3.45	0.27	5.71	XXX	N
95864	26	A	Muscle test, 4 limbs	1.99	1.75	0.14	3.88	XXX	N
95864	TC	A	Muscle test, 4 limbs	0.00	1.70	0.13	1.83	XXX	N
95867		A	Muscle test, head or neck	0.79	1.13	0.09	2.01	XXX	N
95867	26	A	Muscle test, head or neck	0.79	0.58	0.05	1.42	XXX	N
95867	TC	A	Muscle test, head or neck	0.00	0.55	0.04	0.59	XXX	N
95868		A	Muscle test, head or neck	1.18	1.92	0.15	3.25	XXX	N
95868	26	A	Muscle test, head or neck	1.18	1.26	0.10	2.54	XXX	N
95868	TC	A	Muscle test, head or neck	0.00	0.66	0.05	0.71	XXX	N
95869		A	Muscle test, limited	0.37	0.53	0.05	0.95	XXX	N
95869	26	A	Muscle test, limited	0.37	0.33	0.03	0.73	XXX	N
95869	TC	A	Muscle test, limited	0.00	0.20	0.02	0.22	XXX	N
95872		A	Muscle test, one fiber	1.50	1.25	0.11	2.86	XXX	N
95872	26	A	Muscle test, one fiber	1.50	0.68	0.06	2.24	XXX	N
95872	TC	A	Muscle test, one fiber	0.00	0.57	0.05	0.62	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
95875		A	Limb exercise test	1.34	0.60	0.10	2.04	XXX	N
95875	26	A	Limb exercise test	1.34	0.22	0.04	1.60	XXX	N
95875	TC	A	Limb exercise test	0.00	0.38	0.06	0.44	XXX	N
95900		A	Motor nerve conduction test	0.42	0.62	0.05	1.09	XXX	N
95900	26	A	Motor nerve conduction test	0.42	0.35	0.03	0.80	XXX	N
95900	TC	A	Motor nerve conduction test	0.00	0.27	0.02	0.29	XXX	N
95903		A	Motor nerve conduction test	0.60	0.59	0.05	1.24	XXX	N
95903	26	A	Motor nerve conduction test	0.60	0.35	0.03	0.98	XXX	N
95903	TC	A	Motor nerve conduction test	0.00	0.24	0.02	0.26	XXX	N
95904		A	Sense nerve conduction test	0.34	0.55	0.05	0.94	XXX	N
95904	26	A	Sense nerve conduction test	0.34	0.34	0.03	0.71	XXX	N
95904	TC	A	Sense nerve conduction test	0.00	0.21	0.02	0.23	XXX	N
95920		A	Intraoperative nerve testing	2.11	2.67	0.20	4.98	XXX	N
95920	26	A	Intraoperative nerve testing	2.11	1.43	0.12	3.66	XXX	N
95920	TC	A	Intraoperative nerve testing	0.00	1.24	0.08	1.32	XXX	N
95921		A	Autonomic nerve func test	0.45	0.68	0.05	1.18	XXX	N
95921	26	A	Autonomic nerve func test	0.45	0.32	0.02	0.79	XXX	N
95921	TC	A	Autonomic nerve func test	0.00	0.36	0.03	0.39	XXX	N
95922		A	Autonomic nerve func test	0.48	0.70	0.06	1.24	XXX	N
95922	26	A	Autonomic nerve func test	0.48	0.34	0.03	0.85	XXX	N
95922	TC	A	Autonomic nerve func test	0.00	0.36	0.03	0.39	XXX	N
95923		A	Autonomic nerve func test	0.45	0.68	0.05	1.18	XXX	N
95923	26	A	Autonomic nerve func test	0.45	0.32	0.02	0.79	XXX	N
95923	TC	A	Autonomic nerve func test	0.00	0.36	0.03	0.39	XXX	N
95925		A	Somatosensory testing	0.54	1.51	0.12	2.17	XXX	N
95925	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95925	TC	A	Somatosensory testing	0.00	0.87	0.07	0.94	XXX	N
95926		A	Somatosensory testing	0.54	1.51	0.12	2.17	XXX	N
95926	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95926	TC	A	Somatosensory testing	0.00	0.87	0.07	0.94	XXX	N
95927		A	Somatosensory testing	0.54	1.51	0.12	2.17	XXX	N
95927	26	A	Somatosensory testing	0.54	0.64	0.05	1.23	XXX	N
95927	TC	A	Somatosensory testing	0.00	0.87	0.07	0.94	XXX	N
95930		A	Visual evoked potential test	0.35	0.83	0.05	1.23	XXX	N
95930	26	A	Visual evoked potential test	0.35	0.58	0.04	0.97	XXX	N
95930	TC	A	Visual evoked potential test	0.00	0.25	0.01	0.26	XXX	N
95933		A	Blink reflex test	0.59	1.25	0.10	1.94	XXX	N
95933	26	A	Blink reflex test	0.59	0.50	0.04	1.13	XXX	N
95933	TC	A	Blink reflex test	0.00	0.75	0.06	0.81	XXX	N
95934		A	H reflex test	0.51	0.54	0.05	1.10	XXX	N
95934	26	A	H reflex test	0.51	0.34	0.03	0.88	XXX	N
95934	TC	A	H reflex test	0.00	0.20	0.02	0.22	XXX	N
95936		A	H reflex test	0.55	0.54	0.05	1.14	XXX	N
95936	26	A	H reflex test	0.55	0.34	0.03	0.92	XXX	N
95936	TC	A	H reflex test	0.00	0.20	0.02	0.22	XXX	N
95937		A	Neuromuscular junction test	0.65	0.77	0.07	1.49	XXX	N
95937	26	A	Neuromuscular junction test	0.65	0.45	0.04	1.14	XXX	N
95937	TC	A	Neuromuscular junction test	0.00	0.32	0.03	0.35	XXX	N
95950		A	Ambulatory EEG monitoring	1.51	7.25	0.80	9.56	XXX	N
95950	26	A	Ambulatory EEG monitoring	1.51	1.21	0.10	2.82	XXX	N
95950	TC	A	Ambulatory EEG monitoring	0.00	6.04	0.50	6.54	XXX	N
95951		A	EEG monitoring/videorecord	6.00	8.83	0.64	15.47	XXX	N
95951	26	A	EEG monitoring/videorecord	6.00	1.50	0.11	7.61	XXX	N
95951	TC	A	EEG monitoring/videorecord	0.00	7.33	0.53	7.86	XXX	N
95953		A	EEG monitoring/computer	3.08	7.25	0.60	10.93	XXX	N
95953	26	A	EEG monitoring/computer	3.08	1.21	0.10	4.39	XXX	N
95953	TC	A	EEG monitoring/computer	0.00	6.04	0.50	6.54	XXX	N
95954		A	EEG monitoring/giving drugs	2.45	2.32	0.28	5.05	XXX	N
95954	26	A	EEG monitoring/giving drugs	2.45	1.67	0.22	4.34	XXX	N
95954	TC	A	EEG monitoring/giving drugs	0.00	0.45	0.06	0.51	XXX	N
95955		A	EEG during surgery	1.01	2.90	0.30	4.21	XXX	N
95955	26	A	EEG during surgery	1.01	1.03	0.11	2.15	XXX	N
95955	TC	A	EEG during surgery	0.00	1.87	0.19	2.06	XXX	N
95956		A	EEG monitoring/cable/radio	3.08	7.54	0.61	11.23	XXX	N
95956	26	A	EEG monitoring/cable/radio	3.08	1.50	0.11	4.69	XXX	N
95956	TC	A	EEG monitoring/cable/radio	0.00	6.04	0.50	6.54	XXX	N
95957		A	EEG digital analysis	1.98	2.25	0.18	4.41	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
95957	26	A	EEG digital analysis	1.98	0.63	0.05	2.66	XXX	N
95957	TC	A	EEG digital analysis	0.00	1.62	0.13	1.75	XXX	N
95958		A	EEG monitoring/function test	4.25	4.69	0.52	9.46	XXX	N
95958	26	A	EEG monitoring/function test	4.25	3.23	0.38	7.86	XXX	N
95958	TC	A	EEG monitoring/function test	0.00	1.66	0.14	1.80	XXX	N
95961		A	Electrode stimulation, brain	2.97	2.67	0.20	5.84	XXX	N
95961	26	A	Electrode stimulation, brain	2.97	1.43	0.12	4.52	XXX	N
95961	TC	A	Electrode stimulation, brain	0.00	1.24	0.08	1.32	XXX	N
95962		A	Electrode stimulation, brain	3.21	2.67	0.20	6.08	XXX	N
95962	26	A	Electrode stimulation, brain	3.21	1.43	0.12	4.76	XXX	N
95962	TC	A	Electrode stimulation, brain	0.00	1.24	0.08	1.32	XXX	N
95969		C	Neurological procedure	0.00	0.00	0.00	0.00	XXX	N
96100		A	Psychological testing	0.00	1.68	0.20	1.88	XXX	N
96105		A	Assessment of aphasia	0.00	1.68	0.20	1.88	XXX	N
96110		C	Developmental test, lim	0.00	0.00	0.00	0.00	XXX	N
96111		A	Developmental test, extend	0.00	1.68	0.20	1.88	XXX	N
96115		A	Neurobehavior status exam	0.00	1.68	0.20	1.88	XXX	N
96117		A	Neuropsych test battery	0.00	1.68	0.20	1.88	XXX	N
96400		A	Chemotherapy, (SC)/(IM)	0.00	0.13	0.01	0.14	XXX	N
96405		A	Intralesional chemo admin	0.52	0.38	0.03	0.93	000	S
96406		A	Intralesional chemo admin	0.80	0.56	0.04	1.40	000	S
96408		A	Chemotherapy, push technique	0.00	0.92	0.06	0.98	XXX	N
96410		A	Chemotherapy, infusion method	0.00	1.47	0.09	1.56	XXX	N
96412		A	Chemotherapy, infusion method	0.00	1.10	0.08	1.18	XXX	N
96414		A	Chemotherapy, infusion method	0.00	1.27	0.09	1.36	XXX	N
96420		A	Chemotherapy, push technique	0.00	1.19	0.09	1.28	XXX	N
96422		A	Chemotherapy, infusion method	0.00	1.17	0.09	1.26	XXX	N
96423		A	Chemotherapy, infusion method	0.00	0.46	0.03	0.49	XXX	N
96425		A	Chemotherapy, infusion method	0.00	1.36	0.09	1.45	XXX	N
96440		A	Chemotherapy, intracavitary	2.37	0.81	0.06	3.24	000	N
96445		A	Chemotherapy, intracavitary	2.20	0.98	0.09	3.27	000	N
96450		A	Chemotherapy, into CNS	1.89	0.87	0.06	2.82	000	N
96520		A	Pump refilling, maintenance	0.00	0.65	0.06	0.91	XXX	N
96530		A	Pump refilling, maintenance	0.00	1.01	0.07	1.08	XXX	N
96542		A	Chemotherapy injection	1.42	1.09	0.13	2.64	XXX	N
96545		B	Provide chemotherapy agent	0.00	0.00	0.00	0.00	XXX	0
96549		C	Chemotherapy, unspecified	0.00	0.00	0.00	0.00	XXX	N
96900		A	Ultraviolet light therapy	0.00	0.38	0.03	0.41	XXX	N
96910		A	Photochemotherapy with UV-B	0.00	0.55	0.04	0.59	XXX	N
96912		A	Photochemotherapy with UV-A	0.00	0.63	0.05	0.68	XXX	N
96913		A	Photochemotherapy, UV-A or B	0.00	1.29	0.10	1.39	XXX	N
96999		C	Dermatological procedure	0.00	0.00	0.00	0.00	XXX	N
97010		B	Hot or cold packs therapy	+0.06	0.21	0.02	0.29	XXX	0
97012		A	Mechanical traction therapy	0.25	0.19	0.02	0.46	XXX	N
97014		A	Electric stimulation therapy	0.18	0.20	0.02	0.40	XXX	N
97016		A	Vasopneumatic device therapy	0.18	0.25	0.02	0.45	XXX	N
97018		A	Paraffin bath therapy	0.06	0.24	0.03	0.33	XXX	N
97020		A	Microwave therapy	0.06	0.20	0.02	0.28	XXX	N
97022		A	Whirlpool therapy	0.17	0.19	0.02	0.38	XXX	N
97024		A	Diathermy treatment	0.06	0.21	0.02	0.29	XXX	N
97026		A	Infrared therapy	0.06	0.19	0.02	0.27	XXX	N
97028		A	Ultraviolet therapy	0.08	0.19	0.01	0.28	XXX	N
97032		A	Electrical stimulation	0.25	0.14	0.01	0.40	XXX	N
97033		A	Electric current therapy	0.26	0.14	0.02	0.42	XXX	N
97034		A	Contrast bath therapy	0.21	0.10	0.01	0.32	XXX	N
97035		A	Ultrasound therapy	0.21	0.11	0.01	0.33	XXX	N
97036		A	Hydrotherapy	0.28	0.21	0.02	0.51	XXX	N
97039		A	Physical therapy treatment	0.20	0.24	0.03	0.47	XXX	N
97110		A	Therapeutic exercises	0.45	0.13	0.02	0.60	XXX	N
97112		A	Neuromuscular reeducation	0.45	0.13	0.01	0.59	XXX	N
97113		A	Aquatic therapy/exercises	0.44	0.20	0.02	0.66	XXX	N
97116		A	Gait training therapy	0.40	0.11	0.01	0.52	XXX	N
97122		A	Manual traction therapy	0.42	0.11	0.01	0.54	XXX	N
97124		A	Massage therapy	0.35	0.11	0.01	0.47	XXX	N
97139		A	Physical medicine procedure	0.21	0.16	0.02	0.39	XXX	N
97150		A	Group therapeutic procedures	0.27	0.20	0.02	0.49	XXX	N
97250		A	Myofascial release	0.45	0.35	0.04	0.84	000	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
97260		A	Regional manipulation	0.19	0.20	0.02	0.41	000	N
97261		A	Supplemental manipulations	0.12	0.11	0.01	0.24	000	N
97265		A	Joint mobilization	0.45	0.35	0.04	0.84	XXX	N
97500		D	Orthotic training	0.00	0.00	0.00	0.00	XXX	N
97501		D	Supplemental training	0.00	0.00	0.00	0.00	XXX	N
97504		A	Orthotic training	0.45	0.14	0.02	0.61	XXX	N
97520		A	Prosthetic training	0.45	0.15	0.02	0.62	XXX	N
97521		D	Supplemental training	0.00	0.00	0.00	0.00	XXX	N
97530		A	Therapeutic activities	0.44	0.17	0.02	0.63	XXX	N
97535		A	Self care mgmt training	0.45	0.17	0.02	0.64	XXX	N
97537		A	Community/work reintegration	0.45	0.17	0.02	0.64	XXX	N
97542		A	Wheelchair mgmt training	0.25	0.17	0.02	0.44	XXX	N
97545		R	Work hardening	0.00	0.00	0.00	0.00	XXX	N
97546		R	Work hardening	0.00	0.00	0.00	0.00	XXX	N
97703		A	Prosthetic checkout	0.25	0.18	0.03	0.46	XXX	N
97750		A	Physical performance test	0.45	0.24	0.03	0.72	XXX	N
97770		A	Cognitive skills development	0.44	0.28	0.03	0.75	XXX	N
97799		C	Physical medicine procedure	0.00	0.00	0.00	0.00	XXX	N
98925		A	Osteopathic manipulation	0.45	0.25	0.02	0.72	000	N
98926		A	Osteopathic manipulation	0.65	0.40	0.03	1.08	000	N
98927		A	Osteopathic manipulation	0.87	0.38	0.03	1.28	000	N
98928		A	Osteopathic manipulation	1.03	0.42	0.04	1.49	000	N
98929		A	Osteopathic manipulation	1.19	0.39	0.03	1.61	000	N
98940		A	Chiropractic manipulation	0.45	0.29	0.01	0.75	000	N
98941		A	Chiropractic manipulation	0.65	0.29	0.01	0.95	000	N
98942		A	Chiropractic manipulation	0.87	0.29	0.01	1.17	000	N
98943		N	Chiropractic manipulation	0.40	0.29	0.01	0.70	XXX	0
99000		B	Specimen handling	0.00	0.00	0.00	0.00	XXX	0
99001		B	Specimen handling	0.00	0.00	0.00	0.00	XXX	0
99002		B	Device handling	0.00	0.00	0.00	0.00	XXX	0
99024		B	Post-op follow-up visit	0.00	0.00	0.00	0.00	XXX	0
99025		B	Initial surgical evaluation	0.00	0.00	0.00	0.00	XXX	0
99050		B	Medical services after hrs	0.00	0.00	0.00	0.00	XXX	0
99052		B	Medical services at night	0.00	0.00	0.00	0.00	XXX	0
99054		B	Medical services, unusual hrs	0.00	0.00	0.00	0.00	XXX	0
99056		B	Non-office medical services	0.00	0.00	0.00	0.00	XXX	0
99058		B	Office emergency care	0.00	0.00	0.00	0.00	XXX	0
99070		B	Special supplies	0.00	0.00	0.00	0.00	XXX	0
99071		B	Patient education materials	0.00	0.00	0.00	0.00	XXX	0
99075		N	Medical testimony	0.00	0.00	0.00	0.00	XXX	0
99078		B	Group health education	0.00	0.00	0.00	0.00	XXX	0
99080		B	Special reports or forms	0.00	0.00	0.00	0.00	XXX	0
99082		C	Unusual physician travel	0.00	0.00	0.00	0.00	XXX	N
99090		B	Computer data analysis	0.00	0.00	0.00	0.00	XXX	0
99100		B	Special anesthesia service	0.00	0.00	0.00	0.00	XXX	0
99116		B	Anesthesia with hypothermia	0.00	0.00	0.00	0.00	XXX	0
99135		B	Special anesthesia procedure	0.00	0.00	0.00	0.00	XXX	0
99140		B	Emergency anesthesia	0.00	0.00	0.00	0.00	XXX	0
99175		A	Induction of vomiting	0.00	1.33	0.10	1.43	XXX	N
99183		A	Hyperbaric oxygen therapy	2.34	1.67	0.11	4.12	XXX	N
99185		A	Regional hypothermia	0.00	0.61	0.04	0.65	XXX	N
99186		A	Total body hypothermia	0.00	1.70	0.52	2.22	XXX	N
99190		X	Special pump services	0.00	0.00	0.00	0.00	XXX	0
99191		X	Special pump services	0.00	0.00	0.00	0.00	XXX	0
99192		X	Special pump services	0.00	0.00	0.00	0.00	XXX	0
99195		A	Phlebotomy	0.00	0.42	0.03	0.45	XXX	N
99199		C	Special service or report	0.00	0.00	0.00	0.00	XXX	N
99201		A	Office/outpatient visit, new	0.45	0.37	0.04	0.86	XXX	P
99202		A	Office/outpatient visit, new	0.88	0.45	0.05	1.38	XXX	P
99203		A	Office/outpatient visit, new	1.34	0.52	0.06	1.92	XXX	P
99204		A	Office/outpatient visit, new	2.00	0.78	0.08	2.86	XXX	P
99205		A	Office/outpatient visit, new	2.67	0.85	0.09	3.61	XXX	P
99211		A	Office/outpatient visit, est	0.17	0.19	0.02	0.38	XXX	P
99212		A	Office/outpatient visit, est	0.45	0.28	0.02	0.75	XXX	P
99213		A	Office/outpatient visit, est	0.67	0.35	0.03	1.05	XXX	P
99214		A	Office/outpatient visit, est	1.10	0.50	0.04	1.64	XXX	P
99215		A	Office/outpatient visit, est	1.77	0.76	0.07	2.60	XXX	P

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ¹	MOD	Status	Description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
99217		A	Observation care discharge	1.28	0.52	0.04	1.84	XXX	N
99218		A	Observation care	1.28	0.68	0.06	2.02	XXX	N
99219		A	Observation care	2.14	1.05	0.09	3.28	XXX	N
99220		A	Observation care	2.99	1.14	0.09	4.22	XXX	N
99221		A	Initial hospital care	1.28	0.67	0.06	2.01	XXX	N
99222		A	Initial hospital care	2.14	1.04	0.09	3.27	XXX	N
99223		A	Initial hospital care	2.99	1.13	0.08	4.20	XXX	N
99231		A	Subsequent hospital care	0.64	0.38	0.03	1.05	XXX	N
99232		A	Subsequent hospital care	1.06	0.45	0.04	1.55	XXX	N
99233		A	Subsequent hospital care	1.51	0.60	0.05	2.16	XXX	N
99238		A	Hospital discharge day	1.28	0.51	0.04	1.83	XXX	N
99241		A	Office consultation	1.75	0.51	0.04	2.30	XXX	N
99242		A	Office consultation	0.64	0.38	0.03	1.05	XXX	N
99243		A	Office consultation	1.29	0.77	0.09	2.15	XXX	N
99244		A	Office consultation	1.72	0.97	0.10	2.79	XXX	N
99245		A	Office consultation	2.58	1.23	0.11	3.92	XXX	N
99251		A	Office consultation	3.43	1.69	0.16	5.28	XXX	N
99252		A	Initial inpatient consult	0.66	0.67	0.06	1.41	XXX	N
99253		A	Initial inpatient consult	1.32	0.76	0.09	2.17	XXX	N
99254		A	Initial inpatient consult	1.82	0.95	0.10	2.87	XXX	N
99255		A	Initial inpatient consult	2.84	1.20	0.11	3.95	XXX	N
99261		A	Follow-up inpatient consult	3.65	1.57	0.14	5.36	XXX	N
99262		A	Follow-up inpatient consult	0.42	0.33	0.03	0.78	XXX	N
99263		A	Follow-up inpatient consult	0.85	0.46	0.04	1.35	XXX	N
99271		A	Confirmatory consultation	1.27	0.67	0.04	1.98	XXX	N
99272		A	Confirmatory consultation	0.45	0.58	0.07	1.10	XXX	N
99273		A	Confirmatory consultation	0.64	0.71	0.09	1.44	XXX	N
99274		A	Confirmatory consultation	1.19	1.02	0.11	2.32	XXX	N
99275		A	Confirmatory consultation	1.73	1.22	0.11	3.06	XXX	N
99281		A	Emergency dept visit	2.31	1.74	0.17	4.22	XXX	N
99282		A	Emergency dept visit	0.33	0.28	0.01	0.62	XXX	P
99283		A	Emergency dept visit	0.55	0.38	0.03	0.96	XXX	P
99284		A	Emergency dept visit	1.24	0.49	0.04	1.77	XXX	P
99285		A	Emergency dept visit	1.95	0.70	0.06	2.71	XXX	P
99288		B	Direct advanced life support	3.06	1.13	0.08	4.27	XXX	P
99291		A	Critical care, first hour	0.00	0.00	0.00	0.00	XXX	0
99292		A	Critical care, add 30 min	4.00	1.43	0.11	5.54	XXX	N
99295		A	Neonatal critical care	2.00	0.83	0.04	2.87	XXX	N
99296		A	Neonatal critical care	16.00	5.08	1.55	22.63	XXX	N
99297		A	Neonatal critical care	8.00	2.46	0.77	11.23	XXX	N
99301		A	Nursing facility care	4.00	1.23	0.38	5.61	XXX	N
99302		A	Nursing facility care	1.28	0.45	0.03	1.76	XXX	P
99303		A	Nursing facility care	1.71	0.50	0.04	2.25	XXX	P
99311		A	Nursing facility care, subseq	2.14	0.95	0.07	3.16	XXX	P
99312		A	Nursing facility care, subseq	0.64	0.34	0.03	1.01	XXX	P
99313		A	Nursing facility care, subseq	1.06	0.41	0.03	1.50	XXX	P
99321		A	Rest home visit, new patient	1.51	0.46	0.04	2.01	XXX	P
99322		A	Rest home visit, new patient	0.71	0.37	0.03	1.11	XXX	P
99323		A	Rest home visit, new patient	1.01	0.51	0.05	1.57	XXX	P
99331		A	Rest home visit, estab pat	1.28	0.73	0.06	2.07	XXX	P
99332		A	Rest home visit, estab pat	0.60	0.28	0.02	0.90	XXX	P
99333		A	Rest home visit, estab pat	0.80	0.36	0.03	1.19	XXX	P
99341		A	Home visit, new patient	1.00	0.44	0.02	1.46	XXX	P
99342		A	Home visit, new patient	1.12	0.53	0.05	1.70	XXX	P
99343		A	Home visit, new patient	1.58	0.60	0.05	2.23	XXX	P
99351		A	Home visit, estab patient	2.09	0.77	0.06	2.92	XXX	P
99352		A	Home visit, estab patient	0.83	0.45	0.04	1.32	XXX	P
99353		A	Home visit, estab patient	1.12	0.53	0.04	1.69	XXX	P
99354		A	Prolonged service, office	1.48	0.61	0.05	2.14	XXX	P
99355		A	Prolonged service, office	1.77	0.76	0.07	2.60	XXX	P
99356		A	Prolonged service, inpatient	1.77	0.76	0.07	2.60	XXX	P
99357		A	Prolonged serv, w/o contact	1.71	0.85	0.08	2.64	XXX	N
99358		B	Prolonged serv, w/o contact	1.71	0.85	0.08	2.64	XXX	N
99359		B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	XXX	0
99360		X	Physician standby services	0.00	0.00	0.00	0.00	XXX	0
99361		B	Physician/team conference	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
99362		B	Physician/team conference	0.00	0.00	0.00	0.00	XXX	0
99371		B	Physician phone consultation	0.00	0.00	0.00	0.00	XXX	0
99372		B	Physician phone consultation	0.00	0.00	0.00	0.00	XXX	0
99373		B	Physician phone consultation	0.00	0.00	0.00	0.00	XXX	0
99375		G	Care plan oversight/30-60	+1.73	0.51	0.04	2.28	XXX	P
99376		G	Care plan oversight/over 60	0.00	0.00	0.00	0.00	XXX	0
99381		N	Preventive visit, new, infant	+1.19	1.23	0.08	2.50	XXX	0
99382		N	Preventive visit, new, age 1-4	+1.36	1.41	0.09	2.86	XXX	0
99383		N	Preventive visit, new, age 5-11	+1.36	1.41	0.09	2.86	XXX	0
99384		N	Preventive visit, new, 12-17	+1.53	1.59	0.10	3.22	XXX	0
99385		N	Preventive visit, new, 18-39	+1.53	1.40	0.09	3.02	XXX	0
99386		N	Preventive visit, new, 40-64	+1.88	1.72	0.10	3.70	XXX	0
99387		N	Preventive visit, new, 65 & over	+2.05	1.88	0.11	4.05	XXX	0
99391		N	Preventive visit, est, infant	+1.02	1.06	0.07	2.15	XXX	0
99392		N	Preventive visit, est, age 1-4	+1.19	1.23	0.08	2.50	XXX	0
99393		N	Preventive visit, est, age 5-11	+1.19	1.23	0.08	2.50	XXX	0
99394		N	Preventive visit, est, 12-17	+1.36	1.41	0.09	2.86	XXX	0
99395		N	Preventive visit, est, 18-39	+1.36	1.25	0.08	2.69	XXX	0
99396		N	Preventive visit, est, 40-64	+1.53	1.40	0.09	3.02	XXX	0
99397		N	Preventive visit, est, 65 & over	+1.71	1.58	0.10	3.37	XXX	0
99401		N	Preventive counseling, indiv	+0.48	0.45	0.03	0.96	XXX	0
99402		N	Preventive counseling, indiv	+0.98	0.89	0.05	1.92	XXX	0
99403		N	Preventive counseling, indiv	+1.46	1.34	0.08	2.88	XXX	0
99404		N	Preventive counseling, indiv	+1.95	1.78	0.11	3.84	XXX	0
99411		N	Preventive counseling, group	+0.15	0.14	0.01	0.30	XXX	0
99412		N	Preventive counseling, group	+0.25	0.23	0.01	0.49	XXX	0
99420		N	Health risk assessment test	0.00	0.00	0.00	0.00	XXX	0
99429		N	Unlisted preventive service	0.00	0.00	0.00	0.00	XXX	0
99431		A	Initial care, normal newborn	1.17	1.21	0.08	2.46	XXX	N
99432		A	Newborn care not in hospital	1.25	1.31	0.08	2.65	XXX	N
99433		A	Normal newborn care, hospital	0.62	0.64	0.04	1.30	XXX	N
99435		A	Hospital NB discharge day	1.50	1.55	0.10	3.15	XXX	P
99440		A	Newborn resuscitation	2.93	3.04	0.19	6.15	XXX	N
99450		N	Life/disability evaluation	0.00	0.00	0.00	0.00	XXX	0
99455		R	Disability examination	0.00	0.00	0.00	0.00	XXX	N
99456		R	Disability examination	0.00	0.00	0.00	0.00	XXX	N
99499		C	Unlisted E/M service	0.00	0.00	0.00	0.00	XXX	N
A0021		G	Outside state ambulance serv	0.00	0.00	0.00	0.00	XXX	0
A0030		X	Air ambulance service	0.00	0.00	0.00	0.00	XXX	0
A0040		X	Helicopter ambulance service	0.00	0.00	0.00	0.00	XXX	0
A0050		X	Water amb service emergency	0.00	0.00	0.00	0.00	XXX	0
A0080		G	Noninterest escort in non er	0.00	0.00	0.00	0.00	XXX	0
A0090		G	Interest escort in non er	0.00	0.00	0.00	0.00	XXX	0
A0100		G	Nonemergency transport taxi	0.00	0.00	0.00	0.00	XXX	0
A0110		G	Nonemergency transport bus	0.00	0.00	0.00	0.00	XXX	0
A0120		G	Noner transport mini-bus	0.00	0.00	0.00	0.00	XXX	0
A0130		G	Noner transport wheelch van	0.00	0.00	0.00	0.00	XXX	0
A0140		G	Nonemergency transport air	0.00	0.00	0.00	0.00	XXX	0
A0160		G	Noner transport case worker	0.00	0.00	0.00	0.00	XXX	0
A0170		G	Noner transport parking fees	0.00	0.00	0.00	0.00	XXX	0
A0180		G	Noner transport lodging resp	0.00	0.00	0.00	0.00	XXX	0
A0190		G	Noner transport meals resp	0.00	0.00	0.00	0.00	XXX	0
A0200		G	Noner transport lodging esprt	0.00	0.00	0.00	0.00	XXX	0
A0210		G	Noner transport meals esprt	0.00	0.00	0.00	0.00	XXX	0
A0225		X	Neonatal emergency transport	0.00	0.00	0.00	0.00	XXX	0
A0300		X	Ambulance basic non-emer all	0.00	0.00	0.00	0.00	XXX	0
A0302		X	Ambulance basic emergency all	0.00	0.00	0.00	0.00	XXX	0
A0304		X	Amb adv non-er no serv all	0.00	0.00	0.00	0.00	XXX	0
A0306		X	Amb adv non-er spec serv all	0.00	0.00	0.00	0.00	XXX	0
A0308		X	Amb adv er no spec serv all	0.00	0.00	0.00	0.00	XXX	0
A0310		X	Amb adv er spec serv all	0.00	0.00	0.00	0.00	XXX	0
A0320		X	Amb basic non-er + supplies	0.00	0.00	0.00	0.00	XXX	0
A0322		X	Amb basic emerg + supplies	0.00	0.00	0.00	0.00	XXX	0
A0324		X	Adv non-er serv sep mileage	0.00	0.00	0.00	0.00	XXX	0
A0326		X	Adv non-er no serv sep mile	0.00	0.00	0.00	0.00	XXX	0
A0328		X	Adv er no serv sep mileage	0.00	0.00	0.00	0.00	XXX	0
A0330		X	Adv er spec serv sep mile	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
A0340		X	Amb basic non-er + mileage	0.00	0.00	0.00	0.00	XXX	0
A0342		X	Ambul basic emer + mileage	0.00	0.00	0.00	0.00	XXX	0
A0344		X	Amb adv non-er no serv + mile	0.00	0.00	0.00	0.00	XXX	0
A0346		X	Amb adv non-er serv + mile	0.00	0.00	0.00	0.00	XXX	0
A0348		X	Adv emer no spec serv + mile	0.00	0.00	0.00	0.00	XXX	0
A0350		X	Adv emer spec serv + mileage	0.00	0.00	0.00	0.00	XXX	0
A0360		X	Basic non-er sep mile & supp	0.00	0.00	0.00	0.00	XXX	0
A0362		X	Basic emer sep mile & supply	0.00	0.00	0.00	0.00	XXX	0
A0364		X	Adv non-er no serv sep mile su	0.00	0.00	0.00	0.00	XXX	0
A0366		X	Adv non-er serv sep mile supp	0.00	0.00	0.00	0.00	XXX	0
A0368		X	Adv er no serv sep mile supp	0.00	0.00	0.00	0.00	XXX	0
A0370		X	Adv er spec serv sep mile supp	0.00	0.00	0.00	0.00	XXX	0
A0380		X	Basic life support mileage	0.00	0.00	0.00	0.00	XXX	0
A0382		X	Basic support routine supplies	0.00	0.00	0.00	0.00	XXX	0
A0384		X	Bls defibrillation supplies	0.00	0.00	0.00	0.00	XXX	0
A0390		X	Advanced life support mileage	0.00	0.00	0.00	0.00	XXX	0
A0392		X	Als defibrillation supplies	0.00	0.00	0.00	0.00	XXX	0
A0394		X	Als IV drug therapy supplies	0.00	0.00	0.00	0.00	XXX	0
A0396		X	Als esophageal intub supplies	0.00	0.00	0.00	0.00	XXX	0
A0398		X	Als routine disposable suppl	0.00	0.00	0.00	0.00	XXX	0
A0420		X	Ambulance waiting 1/2 hr	0.00	0.00	0.00	0.00	XXX	0
A0422		X	Ambulance 02 life sustaining	0.00	0.00	0.00	0.00	XXX	0
A0424		X	Extra ambulance attendant	0.00	0.00	0.00	0.00	XXX	0
A0888		N	Noncovered ambulance mileage	0.00	0.00	0.00	0.00	XXX	0
A0999		X	Unlisted ambulance service	0.00	0.00	0.00	0.00	XXX	0
A2000		G	Chiropractor manip of spine	+0.45	0.29	0.01	0.75	XXX	N
A4190		D	Transparent film each	0.00	0.00	0.00	0.00	XXX	0
A4200		D	Gauze pad medicated/non-med	0.00	0.00	0.00	0.00	XXX	0
A4202		D	Elastic gauze roll	0.00	0.00	0.00	0.00	XXX	0
A4203		D	Non-elastic gauze roll	0.00	0.00	0.00	0.00	XXX	0
A4204		D	Absorptive dressing	0.00	0.00	0.00	0.00	XXX	0
A4205		D	Nonabsorptive dressing	0.00	0.00	0.00	0.00	XXX	0
A4206		P	1 CC sterile syringe&needle	0.00	0.00	0.00	0.00	XXX	0
A4207		P	2 CC sterile syringe&needle	0.00	0.00	0.00	0.00	XXX	0
A4208		P	3 CC sterile syringe&needle	0.00	0.00	0.00	0.00	XXX	0
A4209		P	5+ CC sterile syringe&needle	0.00	0.00	0.00	0.00	XXX	0
A4210		N	Nonneedle injection device	0.00	0.00	0.00	0.00	XXX	0
A4211		P	Supp for self-adm injections	0.00	0.00	0.00	0.00	XXX	0
A4212		P	Non coring needle or stylet	0.00	0.00	0.00	0.00	XXX	0
A4213		P	20+ CC syringe only	0.00	0.00	0.00	0.00	XXX	0
A4214		P	30 CC sterile water/saline	0.00	0.00	0.00	0.00	XXX	0
A4215		P	Sterile needle	0.00	0.00	0.00	0.00	XXX	0
A4220		P	Infusion pump refill kit	0.00	0.00	0.00	0.00	XXX	0
A4221		X	Maint drug infus cath per wk	0.00	0.00	0.00	0.00	XXX	0
A4222		X	Drug infusion pump supplies	0.00	0.00	0.00	0.00	XXX	0
A4230		N	Infus insulin pump non needle	0.00	0.00	0.00	0.00	XXX	0
A4231		N	Infusion insulin pump needle	0.00	0.00	0.00	0.00	XXX	0
A4232		N	Syringe w/needle insulin 3cc	0.00	0.00	0.00	0.00	XXX	0
A4244		P	Alcohol or peroxide per pint	0.00	0.00	0.00	0.00	XXX	0
A4245		P	Alcohol wipes per box	0.00	0.00	0.00	0.00	XXX	0
A4246		P	Betadine/phisohex solution	0.00	0.00	0.00	0.00	XXX	0
A4247		P	Betadine/iodine swabs/wipes	0.00	0.00	0.00	0.00	XXX	0
A4250		N	Urine reagent strips/tablets	0.00	0.00	0.00	0.00	XXX	0
A4253		P	Blood glucose/reagent strips	0.00	0.00	0.00	0.00	XXX	0
A4254		X	Battery for glucose monitor	0.00	0.00	0.00	0.00	XXX	0
A4255		X	Glucose monitor platforms	0.00	0.00	0.00	0.00	XXX	0
A4256		P	Calibrator solution/chips	0.00	0.00	0.00	0.00	XXX	0
A4258		P	Lancet device each	0.00	0.00	0.00	0.00	XXX	0
A4259		P	Lancets per box	0.00	0.00	0.00	0.00	XXX	0
A4260		N	Levonorgestrel implant	0.00	0.00	0.00	0.00	XXX	0
A4262		B	Temporary tear duct plug	0.00	0.00	0.00	0.00	XXX	0
A4263		A	Permanent tear duct plug	0.00	0.95	0.00	0.95	XXX	N
A4265		P	Paraffin	0.00	0.00	0.00	0.00	XXX	0
A4270		B	Disposable endoscope sheath	0.00	0.00	0.00	0.00	XXX	0
A4300		A	Cath impl vasc access portal	0.00	0.95	0.00	0.95	XXX	N
A4301		P	Implantable access syst perc	0.00	0.00	0.00	0.00	XXX	0
A4305		P	Drug delivery system >=50 ML	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOO	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
A4306	P	P	Drug delivery system <5 ML	0.00	0.00	0.00	0.00	XXX	0
A4310	P	P	Insert tray w/o bag/cath	0.00	0.00	0.00	0.00	XXX	0
A4311	P	P	Catheter w/o bag 2-way latex	0.00	0.00	0.00	0.00	XXX	0
A4312	P	P	Cath w/o bag 2-way silicone	0.00	0.00	0.00	0.00	XXX	0
A4313	P	P	Catheter w/bag 3-way	0.00	0.00	0.00	0.00	XXX	0
A4314	P	P	Cath w/drainage 2-way latex	0.00	0.00	0.00	0.00	XXX	0
A4315	P	P	Cath w/drainage 2-way silicone	0.00	0.00	0.00	0.00	XXX	0
A4316	P	P	Cath w/drainage 3-way	0.00	0.00	0.00	0.00	XXX	0
A4320	P	P	Irrigation tray	0.00	0.00	0.00	0.00	XXX	0
A4321	X	P	Cath therapeutic irrig agent	0.00	0.00	0.00	0.00	XXX	0
A4322	P	P	Irrigation syringe	0.00	0.00	0.00	0.00	XXX	0
A4323	P	P	Saline irrigation solution	0.00	0.00	0.00	0.00	XXX	0
A4326	P	P	Male external catheter	0.00	0.00	0.00	0.00	XXX	0
A4327	P	P	Fem urinary collect dev cup	0.00	0.00	0.00	0.00	XXX	0
A4328	P	P	Fem urinary collect pouch	0.00	0.00	0.00	0.00	XXX	0
A4329	P	P	External catheter start set	0.00	0.00	0.00	0.00	XXX	0
A4330	P	P	Stool collection pouch	0.00	0.00	0.00	0.00	XXX	0
A4335	P	P	Incontinence supply	0.00	0.00	0.00	0.00	XXX	0
A4336	P	P	Indwelling catheter latex	0.00	0.00	0.00	0.00	XXX	0
A4340	P	P	Indwelling catheter special	0.00	0.00	0.00	0.00	XXX	0
A4344	P	P	Cath indw Foley 2 way silcn	0.00	0.00	0.00	0.00	XXX	0
A4346	P	P	Cath indw Foley 3 way	0.00	0.00	0.00	0.00	XXX	0
A4347	P	P	Male external catheter	0.00	0.00	0.00	0.00	XXX	0
A4351	P	P	Straight tip urine catheter	0.00	0.00	0.00	0.00	XXX	0
A4352	P	P	Coude tip urinary catheter	0.00	0.00	0.00	0.00	XXX	0
A4353	X	P	Intermittent urinary cath	0.00	0.00	0.00	0.00	XXX	0
A4354	P	P	Cath insertion tray w/bag	0.00	0.00	0.00	0.00	XXX	0
A4355	P	P	Bladder irrigation tubing	0.00	0.00	0.00	0.00	XXX	0
A4356	P	P	Ext ureth clamp or compr dev	0.00	0.00	0.00	0.00	XXX	0
A4357	P	P	Bedside drainage bag	0.00	0.00	0.00	0.00	XXX	0
A4358	P	P	Urinary leg bag	0.00	0.00	0.00	0.00	XXX	0
A4359	P	P	Urinary suspensory w/o leg b	0.00	0.00	0.00	0.00	XXX	0
A4361	P	P	Ostomy face plate	0.00	0.00	0.00	0.00	XXX	0
A4362	P	P	Solid skin barrier	0.00	0.00	0.00	0.00	XXX	0
A4363	P	P	Liquid skin barrier	0.00	0.00	0.00	0.00	XXX	0
A4364	P	P	Ostomy/cath adhesive	0.00	0.00	0.00	0.00	XXX	0
A4365	X	P	Ostomy adhesive remover wipe	0.00	0.00	0.00	0.00	XXX	0
A4367	P	P	Ostomy belt	0.00	0.00	0.00	0.00	XXX	0
A4368	X	P	Ostomy filter	0.00	0.00	0.00	0.00	XXX	0
A4397	P	P	Irrigation supply sleeve	0.00	0.00	0.00	0.00	XXX	0
A4398	P	P	Ostomy irrigation bag	0.00	0.00	0.00	0.00	XXX	0
A4399	P	P	Ostomy irrig cone/cath w brs	0.00	0.00	0.00	0.00	XXX	0
A4400	P	P	Ostomy irrigation set	0.00	0.00	0.00	0.00	XXX	0
A4402	P	P	Lubricant per ounce	0.00	0.00	0.00	0.00	XXX	0
A4404	P	P	Ostomy ring each	0.00	0.00	0.00	0.00	XXX	0
A4421	P	P	Ostomy supply misc	0.00	0.00	0.00	0.00	XXX	0
A4454	P	P	Tape all types all sizes	0.00	0.00	0.00	0.00	XXX	0
A4455	P	P	Adhesive remover per ounce	0.00	0.00	0.00	0.00	XXX	0
A4460	P	P	Elastic compression bandage	0.00	0.00	0.00	0.00	XXX	0
A4465	P	P	Non-elastic extremity binder	0.00	0.00	0.00	0.00	XXX	0
A4470	P	P	Gravlee jet washer	0.00	0.00	0.00	0.00	XXX	0
A4480	P	P	Vabra aspirator	0.00	0.00	0.00	0.00	XXX	0
A4481	X	P	Tracheostoma filter	0.00	0.00	0.00	0.00	XXX	0
A4490	N	P	Above knee surgical stocking	0.00	0.00	0.00	0.00	XXX	0
A4495	N	P	Thigh length surg stocking	0.00	0.00	0.00	0.00	XXX	0
A4500	N	P	Below knee surgical stocking	0.00	0.00	0.00	0.00	XXX	0
A4510	N	P	Full length surg stocking	0.00	0.00	0.00	0.00	XXX	0
A4550	A	P	Surgical trays	0.00	0.95	0.00	0.95	XXX	N
A4554	N	P	Disposable underpads	0.00	0.00	0.00	0.00	XXX	0
A4556	P	P	Electrodes	0.00	0.00	0.00	0.00	XXX	0
A4557	P	P	Lead wires	0.00	0.00	0.00	0.00	XXX	0
A4558	P	P	Conductive paste or gel	0.00	0.00	0.00	0.00	XXX	0
A4560	X	P	Pessary	0.00	0.00	0.00	0.00	XXX	0
A4565	X	P	Slings	0.00	0.00	0.00	0.00	XXX	0
A4570	X	P	Splint	0.00	0.00	0.00	0.00	XXX	0
A4572	X	P	Rib belt	0.00	0.00	0.00	0.00	XXX	0
A4575	N	P	Hyperbaric o2 chamber discs	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
A4580	X	P	Cast supplies (plaster)	0.00	0.00	0.00	0.00	XXX	0
A4581	D	P	Risser jacket supplies	0.00	0.00	0.00	0.00	XXX	0
A4590	X	P	Special casting material	0.00	0.00	0.00	0.00	XXX	0
A4595	X	P	TENS suppl 2 lead per month	0.00	0.00	0.00	0.00	XXX	0
A4610	D	P	Med supplies for use in DME	0.00	0.00	0.00	0.00	XXX	0
A4611	X	P	Heavy duty battery	0.00	0.00	0.00	0.00	XXX	0
A4612	X	P	Battery cables	0.00	0.00	0.00	0.00	XXX	0
A4613	X	P	Battery charger	0.00	0.00	0.00	0.00	XXX	0
A4615	X	P	Cannula nasal	0.00	0.00	0.00	0.00	XXX	0
A4616	X	P	Tubing (oxygen) per foot	0.00	0.00	0.00	0.00	XXX	0
A4617	X	P	Mouth piece	0.00	0.00	0.00	0.00	XXX	0
A4618	X	P	Breathing circuits	0.00	0.00	0.00	0.00	XXX	0
A4619	X	P	Face tent	0.00	0.00	0.00	0.00	XXX	0
A4620	X	P	Variable concentration mask	0.00	0.00	0.00	0.00	XXX	0
A4621	X	P	Tracheotomy mask or collar	0.00	0.00	0.00	0.00	XXX	0
A4622	X	P	Tracheostomy or laryngectomy	0.00	0.00	0.00	0.00	XXX	0
A4623	X	P	Tracheostomy inner cannula	0.00	0.00	0.00	0.00	XXX	0
A4624	X	P	Tracheal suction tube	0.00	0.00	0.00	0.00	XXX	0
A4625	X	P	Trach care kit for new trach	0.00	0.00	0.00	0.00	XXX	0
A4626	X	P	Tracheostomy cleaning brush	0.00	0.00	0.00	0.00	XXX	0
A4627	N	P	Specer bag/reservoir	0.00	0.00	0.00	0.00	XXX	0
A4628	X	P	Oropharyngeal suction cath	0.00	0.00	0.00	0.00	XXX	0
A4629	X	P	Tracheostomy care kit	0.00	0.00	0.00	0.00	XXX	0
A4630	X	P	Repl bat t.o.n.s. own by pt	0.00	0.00	0.00	0.00	XXX	0
A4631	X	P	Wheelchair battery	0.00	0.00	0.00	0.00	XXX	0
A4635	X	P	Underarm crutch pad	0.00	0.00	0.00	0.00	XXX	0
A4636	X	P	Handgrip for cane etc	0.00	0.00	0.00	0.00	XXX	0
A4637	X	P	Repl tip cane/crutch/walker	0.00	0.00	0.00	0.00	XXX	0
A4640	X	P	Alternating pressure pad	0.00	0.00	0.00	0.00	XXX	0
A4641	E	P	Diagnostic imaging agent	0.00	0.00	0.00	0.00	XXX	0
A4642	E	P	Satunomab pentetate per dose	0.00	0.00	0.00	0.00	XXX	0
A4643	E	P	High dose contrast MRI	0.00	0.00	0.00	0.00	XXX	0
A4644	E	P	Contrast 100-199 MGs iodine	0.00	0.00	0.00	0.00	XXX	0
A4645	E	P	Contrast 200-299 MGs iodine	0.00	0.00	0.00	0.00	XXX	0
A4646	E	P	Contrast 300-399 MGs iodine	0.00	0.00	0.00	0.00	XXX	0
A4647	B	P	Supp- paramagnetic confr mat	0.00	0.00	0.00	0.00	XXX	0
A4649	P	P	Surgical supplies	0.00	0.00	0.00	0.00	XXX	0
A4650	X	P	Supp eard centrifuge	0.00	0.00	0.00	0.00	XXX	0
A4655	X	P	Eard syringe/needle	0.00	0.00	0.00	0.00	XXX	0
A4660	X	P	Eard blood pressure device	0.00	0.00	0.00	0.00	XXX	0
A4663	X	P	Eard blood pressure cuff	0.00	0.00	0.00	0.00	XXX	0
A4670	N	P	Auto blood pressure monitor	0.00	0.00	0.00	0.00	XXX	0
A4690	X	P	Activated carbon filters	0.00	0.00	0.00	0.00	XXX	0
A4690	X	P	Dialyzers	0.00	0.00	0.00	0.00	XXX	0
A4700	X	P	Standard dialysate solution	0.00	0.00	0.00	0.00	XXX	0
A4705	X	P	Bicarb dialysate solution	0.00	0.00	0.00	0.00	XXX	0
A4712	X	P	Sterile water	0.00	0.00	0.00	0.00	XXX	0
A4714	X	P	Treated water for dialysis	0.00	0.00	0.00	0.00	XXX	0
A4730	X	P	Fistula cannulation set dial	0.00	0.00	0.00	0.00	XXX	0
A4735	X	P	Local/topical anesthetics	0.00	0.00	0.00	0.00	XXX	0
A4740	X	P	Eard shunt accessory	0.00	0.00	0.00	0.00	XXX	0
A4750	X	P	Arterial or venous tubing	0.00	0.00	0.00	0.00	XXX	0
A4755	X	P	Arterial and venous tubing	0.00	0.00	0.00	0.00	XXX	0
A4760	X	P	Standard testing solution	0.00	0.00	0.00	0.00	XXX	0
A4765	X	P	Dialysate concentrate	0.00	0.00	0.00	0.00	XXX	0
A4770	X	P	Blood testing supplies	0.00	0.00	0.00	0.00	XXX	0
A4771	X	P	Blood clotting time tube	0.00	0.00	0.00	0.00	XXX	0
A4772	X	P	Dextrostick/glucose strips	0.00	0.00	0.00	0.00	XXX	0
A4773	X	P	Hemostix	0.00	0.00	0.00	0.00	XXX	0
A4774	X	P	Ammonia test paper	0.00	0.00	0.00	0.00	XXX	0
A4780	X	P	Eard sterilizing agent	0.00	0.00	0.00	0.00	XXX	0
A4790	X	P	Eard cleansing agents	0.00	0.00	0.00	0.00	XXX	0
A4800	X	P	Heparin/antidote dialysis	0.00	0.00	0.00	0.00	XXX	0
A4820	X	P	Supplies hemodialysis kit	0.00	0.00	0.00	0.00	XXX	0
A4850	X	P	Rubber tipped hemostats	0.00	0.00	0.00	0.00	XXX	0
A4860	X	P	Disposable catheter caps	0.00	0.00	0.00	0.00	XXX	0
A4870	X	P	Plumbing/electrical work	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
A4880		X	Water storage tanks	0.00	0.00	0.00	0.00	XXX	0
A4890		R	Contracts/repair/maintenance	0.00	0.00	0.00	0.00	XXX	N
A4900		X	Capd supply kit	0.00	0.00	0.00	0.00	XXX	0
A4901		X	Capd supply kit	0.00	0.00	0.00	0.00	XXX	0
A4905		X	Capd supply kit	0.00	0.00	0.00	0.00	XXX	0
A4910		X	Eard nonmedical supplies	0.00	0.00	0.00	0.00	XXX	0
A4912		X	Gonoco drain bottle	0.00	0.00	0.00	0.00	XXX	0
A4913		X	Eard supply	0.00	0.00	0.00	0.00	XXX	0
A4914		X	Preparation kit	0.00	0.00	0.00	0.00	XXX	0
A4918		X	Venous pressure clamp	0.00	0.00	0.00	0.00	XXX	0
A4919		X	Supp dialysis dialyzer holds	0.00	0.00	0.00	0.00	XXX	0
A4920		X	Harvard pressure clamp	0.00	0.00	0.00	0.00	XXX	0
A4921		X	Measuring cylinder	0.00	0.00	0.00	0.00	XXX	0
A4927		X	Gloves	0.00	0.00	0.00	0.00	XXX	0
A5051		P	Pouch clad w barr attached	0.00	0.00	0.00	0.00	XXX	0
A5052		P	Clad ostomy pouch w/o barr	0.00	0.00	0.00	0.00	XXX	0
A5053		P	Clad ostomy pouch faceplate	0.00	0.00	0.00	0.00	XXX	0
A5054		P	Clad ostomy pouch w/flange	0.00	0.00	0.00	0.00	XXX	0
A5055		P	Stoma cap	0.00	0.00	0.00	0.00	XXX	0
A5061		P	Pouch drainable w barrier at	0.00	0.00	0.00	0.00	XXX	0
A5062		P	Drinble ostomy pouch w/o barr	0.00	0.00	0.00	0.00	XXX	0
A5063		P	Drain ostomy pouch w/flange	0.00	0.00	0.00	0.00	XXX	0
A5064		G	Drain ostomy pouch w/faceplate	0.00	0.00	0.00	0.00	XXX	0
A5065		G	Drain ostomy pouch on fcplate	0.00	0.00	0.00	0.00	XXX	0
A5071		P	Urinary pouch w/barrier	0.00	0.00	0.00	0.00	XXX	0
A5072		P	Urinary pouch w/o barrier	0.00	0.00	0.00	0.00	XXX	0
A5073		P	Urinary pouch on barr w/ling	0.00	0.00	0.00	0.00	XXX	0
A5074		G	Urinary pouch w/faceplate	0.00	0.00	0.00	0.00	XXX	0
A5075		G	Urinary pouch on faceplate	0.00	0.00	0.00	0.00	XXX	0
A5081		P	Continent stoma plug	0.00	0.00	0.00	0.00	XXX	0
A5082		P	Continent stoma catheter	0.00	0.00	0.00	0.00	XXX	0
A5083		P	Ostomy accessory convex inse	0.00	0.00	0.00	0.00	XXX	0
A5102		P	Bedside drain btl w/o tube	0.00	0.00	0.00	0.00	XXX	0
A5105		P	Urinary suspensory	0.00	0.00	0.00	0.00	XXX	0
A5112		P	Urinary leg bag	0.00	0.00	0.00	0.00	XXX	0
A5113		P	Latex leg strap	0.00	0.00	0.00	0.00	XXX	0
A5114		P	Foam/fabric leg strap	0.00	0.00	0.00	0.00	XXX	0
A5119		P	Skin barrier wipes box pr 50	0.00	0.00	0.00	0.00	XXX	0
A5121		P	Solid skin barrier 8x6	0.00	0.00	0.00	0.00	XXX	0
A5122		P	Solid skin barrier 8x8	0.00	0.00	0.00	0.00	XXX	0
A5123		P	Skin barrier with flange	0.00	0.00	0.00	0.00	XXX	0
A5126		P	Adhesive disc/foam pad	0.00	0.00	0.00	0.00	XXX	0
A5131		P	Appliance cleaner	0.00	0.00	0.00	0.00	XXX	0
A5146		P	Incontinence/ostomy supply	0.00	0.00	0.00	0.00	XXX	0
A5500		X	Diab shoe for density insert	0.00	0.00	0.00	0.00	XXX	0
A5501		X	Diabetic custom molded shoe	0.00	0.00	0.00	0.00	XXX	0
A5502		X	Diabetic shoe density insert	0.00	0.00	0.00	0.00	XXX	0
A5503		X	Diabetic shoe w/roller/rocker	0.00	0.00	0.00	0.00	XXX	0
A5504		X	Diabetic shoe with wedge	0.00	0.00	0.00	0.00	XXX	0
A5505		X	Diab shoe w/metatarsal bar	0.00	0.00	0.00	0.00	XXX	0
A5506		X	Diabetic shoe w/off set heel	0.00	0.00	0.00	0.00	XXX	0
A5507		X	Modification diabetic shoe	0.00	0.00	0.00	0.00	XXX	0
A6020		P	Collagen dressing cover ea	0.00	0.00	0.00	0.00	XXX	0
A6025		G	Silicone gel sheet, each	0.00	0.00	0.00	0.00	XXX	0
A6154		X	Wound pouch each	0.00	0.00	0.00	0.00	XXX	0
A6196		X	Alginate dressing <= 16 sq in	0.00	0.00	0.00	0.00	XXX	0
A6197		X	Alginate drsg >16 <=48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6198		X	alginate dressing > 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6199		X	Alginate drsg wound filler	0.00	0.00	0.00	0.00	XXX	0
A6203		X	Composite drsg <= 16 sq in	0.00	0.00	0.00	0.00	XXX	0
A6204		X	Composite drsg >16 <=48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6205		X	Composite drsg > 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6206		X	Contact layer <= 16 sq in	0.00	0.00	0.00	0.00	XXX	0
A6207		X	Contact layer >16 <= 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6208		X	Contact layer > 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6209		X	Foam drsg <=16 sq in w/o bdr	0.00	0.00	0.00	0.00	XXX	0
A6210		X	Foam drsg >16 <=48 sq in w/o b	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
A6211		X	Foam drsg > 48 sq in w/o bdr	0.00	0.00	0.00	0.00	XXX	0
A6212		X	Foam drsg <= 16 sq in w/border	0.00	0.00	0.00	0.00	XXX	0
A6213		X	Foam drsg >16 <=48 sq in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6214		X	Foam drsg > 48 sq in w/border	0.00	0.00	0.00	0.00	XXX	0
A6215		X	Foam dressing wound filler	0.00	0.00	0.00	0.00	XXX	0
A6216		X	Non-sterile gauze <= 16 sq in	0.00	0.00	0.00	0.00	XXX	0
A6217		X	Non-sterile gauze >16 <=48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6218		X	Non-sterile gauze > 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6219		X	Gauze <= 16 sq in w/border	0.00	0.00	0.00	0.00	XXX	0
A6220		X	Gauze >16 <=48 sq in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6221		X	Gauze > 48 sq in w/border	0.00	0.00	0.00	0.00	XXX	0
A6222		X	Gauze <= 16 in no w/sal w/o b	0.00	0.00	0.00	0.00	XXX	0
A6223		X	Gauze >16 <=48 no w/sal w/o b	0.00	0.00	0.00	0.00	XXX	0
A6224		X	Gauze > 48 in no w/sal w/o b	0.00	0.00	0.00	0.00	XXX	0
A6228		X	Gauze <= 16 sq in water/sal	0.00	0.00	0.00	0.00	XXX	0
A6229		X	Gauze >16 <=48 sq in watr/sal	0.00	0.00	0.00	0.00	XXX	0
A6230		X	Gauze > 48 sq in water/saline	0.00	0.00	0.00	0.00	XXX	0
A6234		X	Hydrocolloid drsg <= 16 w/o bdr	0.00	0.00	0.00	0.00	XXX	0
A6235		X	Hydrocolloid drsg >16 <=48 w/o b	0.00	0.00	0.00	0.00	XXX	0
A6236		X	Hydrocolloid drsg > 48 in w/o b	0.00	0.00	0.00	0.00	XXX	0
A6237		X	Hydrocolloid drsg <= 16 in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6238		X	Hydrocolloid drsg >16 <=48 w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6239		X	Hydrocolloid drsg > 48 in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6240		X	Hydrocolloid drsg filler paste	0.00	0.00	0.00	0.00	XXX	0
A6241		X	Hydrocolloid drsg filler dry	0.00	0.00	0.00	0.00	XXX	0
A6242		X	Hydrogel drsg <= 16 in w/o bdr	0.00	0.00	0.00	0.00	XXX	0
A6243		X	Hydrogel drsg <= 16 <=48 w/o bdr	0.00	0.00	0.00	0.00	XXX	0
A6244		X	Hydrogel drsg >16 <=48 in w/o bdr	0.00	0.00	0.00	0.00	XXX	0
A6245		X	Hydrogel drsg <= 16 in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6246		X	Hydrogel drsg >16 <=48 in w/b	0.00	0.00	0.00	0.00	XXX	0
A6247		X	Hydrogel drsg > 48 sq in w/b	0.00	0.00	0.00	0.00	XXX	0
A6248		X	Hydrogel drsg gel filler	0.00	0.00	0.00	0.00	XXX	0
A6250		X	Skin seal protect moisturiz	0.00	0.00	0.00	0.00	XXX	0
A6251		X	Absorpt drg <= 16 sq in w/o b	0.00	0.00	0.00	0.00	XXX	0
A6252		X	Absorpt drg >16 <=48 w/o bdr	0.00	0.00	0.00	0.00	XXX	0
A6253		X	Absorpt drg > 48 sq in w/o b	0.00	0.00	0.00	0.00	XXX	0
A6254		X	Absorpt drg <= 16 sq in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6255		X	Absorpt drg >16 <=48 in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6256		X	Absorpt drg > 48 sq in w/bdr	0.00	0.00	0.00	0.00	XXX	0
A6257		X	Transparent film <= 16 sq in	0.00	0.00	0.00	0.00	XXX	0
A6258		X	Transparent film >16 <=48 in	0.00	0.00	0.00	0.00	XXX	0
A6259		X	Transparent film > 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6260		X	Wound cleanser any type/size	0.00	0.00	0.00	0.00	XXX	0
A6261		X	Wound filler gel/paste /oz	0.00	0.00	0.00	0.00	XXX	0
A6262		X	Wound filler dry form / gram	0.00	0.00	0.00	0.00	XXX	0
A6263		X	Non-sterile elastic gauze/yd	0.00	0.00	0.00	0.00	XXX	0
A6264		X	Non-sterile no elastic gauze	0.00	0.00	0.00	0.00	XXX	0
A6265		X	Tape per 18 sq inches	0.00	0.00	0.00	0.00	XXX	0
A6266		X	Impreg gauze no h20/sal/yard	0.00	0.00	0.00	0.00	XXX	0
A6402		X	Sterile gauze <= 16 sq in	0.00	0.00	0.00	0.00	XXX	0
A6403		X	Sterile gauze >16 <= 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6404		X	Sterile gauze > 48 sq in	0.00	0.00	0.00	0.00	XXX	0
A6405		X	Sterile elastic gauze /yd	0.00	0.00	0.00	0.00	XXX	0
A6406		X	Sterile non-elastic gauze/yd	0.00	0.00	0.00	0.00	XXX	0
A9150		E	Misc/expe-non-prescript dru	0.00	0.00	0.00	0.00	XXX	0
A9160		N	Podiatrist non-covered servi	0.00	0.00	0.00	0.00	XXX	0
A9170		N	Chiropractor non-covered ser	0.00	0.00	0.00	0.00	XXX	0
A9190		N	Misc/expe personal comfort i	0.00	0.00	0.00	0.00	XXX	0
A9270		N	Non-covered item or service	0.00	0.00	0.00	0.00	XXX	0
A9300		N	Exercise equipment	0.00	0.00	0.00	0.00	XXX	0
A9500		E	Technetium TC 99m sestamibi	0.00	0.00	0.00	0.00	XXX	0
A9503		X	Technetium TC 99m medronate	0.00	0.00	0.00	0.00	XXX	0
A9505		E	Thallous chloride TL 201/mci	0.00	0.00	0.00	0.00	XXX	0
D0120		N	Periodic oral evaluation	0.00	0.00	0.00	0.00	XXX	0
D0140		N	Limit oral eval probm focus	0.00	0.00	0.00	0.00	XXX	0
D0150		R	Comprehensive oral evaluation	0.00	0.00	0.00	0.00	YYY	N
D0160		N	Extensv oral eval prob focus	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
D0210		G	Intraoral complete film series	0.00	0.00	0.00	0.00	XXX	0
D0220		G	Intraoral periapical first 1	0.00	0.00	0.00	0.00	XXX	0
D0230		G	Intraoral periapical ea add	0.00	0.00	0.00	0.00	XXX	0
D0240		R	Intraoral occlusal film	0.00	0.80	0.00	0.00	YYY	N
D0250		R	Extraoral first film	0.00	0.00	0.00	0.00	YYY	N
D0260		R	Extraoral ea additional film	0.00	0.00	0.00	0.00	YYY	N
D0270		R	Dental bitewing single film	0.00	0.00	0.00	0.00	YYY	N
D0272		R	Dental bitewings two films	0.00	0.00	0.00	0.00	YYY	N
D0274		R	Dental bitewings four films	0.00	0.00	0.00	0.00	YYY	N
D0290		G	Dental film skull/facial bon	0.00	0.00	0.00	0.00	XXX	0
D0310		G	Dental salivography	0.00	0.00	0.00	0.00	XXX	0
D0320		G	Dental tmj arthrograph incl 1	0.00	0.00	0.00	0.00	XXX	0
D0321		G	Dental other tmj films	0.00	0.00	0.00	0.00	XXX	0
D0322		G	Dental tomographic survey	0.00	0.00	0.00	0.00	XXX	0
D0330		G	Dental panoramic film	0.00	0.00	0.00	0.00	XXX	0
D0340		G	Dental cephalometric film	0.00	0.00	0.00	0.00	XXX	0
D0415		N	Bacteriologic study	0.09	0.00	0.00	0.00	XXX	0
D0425		N	Caries susceptibility test	0.00	0.00	0.00	0.00	XXX	0
D0460		R	Pulp vitality test	0.00	0.00	0.00	0.00	YYY	N
D0470		N	Diagnostic casts	0.00	0.00	0.00	0.00	XXX	0
D0471		R	Diagnostic photographs	0.00	0.00	0.00	0.00	YYY	N
D0501		R	Histopathologic examinations	0.00	0.00	0.00	0.00	YYY	N
D0502		R	Other oral pathology procedu	0.00	0.00	0.00	0.00	YYY	N
D0999		R	Unspecified diagnostic proce	0.00	0.00	0.00	0.00	YYY	N
D1110		N	Dental prophylaxis adult	0.00	0.00	0.00	0.00	XXX	0
D1120		N	Dental prophylaxis child	0.00	0.00	0.00	0.00	XXX	0
D1201		N	Topical fluor w/ prophy chi	0.00	0.00	0.00	0.00	XXX	0
D1203		N	Topical fluor w/o prophy chi	0.00	0.00	0.00	0.00	XXX	0
D1204		N	Topical fluor w/o prophy adu	0.00	0.00	0.00	0.00	XXX	0
D1205		N	Topical fluoride w/ prophy a	0.00	0.00	0.00	0.00	XXX	0
D1310		N	Nutri counsel-control caries	0.00	0.00	0.00	0.00	XXX	0
D1320		N	Tobacco counseling	0.00	0.00	0.00	0.00	XXX	0
D1330		N	Oral hygiene instruction	0.00	0.00	0.00	0.00	XXX	0
D1351		N	Dental sealant per tooth	0.00	0.00	0.00	0.00	XXX	0
D1510		R	Space maintainer fixed unilat	0.00	0.00	0.00	0.00	YYY	N
D1515		R	Fixed bilat space maintainer	0.00	0.00	0.00	0.00	YYY	N
D1520		R	Remove unilat space maintai	0.00	0.00	0.00	0.00	YYY	N
D1525		R	Remove bilat space maintai	0.00	0.00	0.00	0.00	YYY	N
D1550		R	Recement space maintainer	0.00	0.00	0.00	0.00	YYY	N
D2110		N	Amalgam one surface primary	0.00	0.00	0.00	0.00	XXX	0
D2120		N	Amalgam two surfaces primary	0.00	0.00	0.00	0.00	XXX	0
D2130		N	Amalgam three surfaces prima	0.00	0.00	0.00	0.00	XXX	0
D2131		N	Amalgam four/more surf prima	0.00	0.00	0.00	0.00	XXX	0
D2140		N	Amalgam one surface permanen	0.00	0.00	0.00	0.00	XXX	0
D2150		N	Amalgam two surfaces permane	0.00	0.00	0.00	0.00	XXX	0
D2160		N	Amalgam three surfaces perma	0.00	0.00	0.00	0.00	XXX	0
D2161		N	Amalgam 4 or > surfaces perm	0.00	0.00	0.00	0.00	XXX	0
D2210		N	Silicate cement per restorat	0.00	0.00	0.00	0.00	XXX	0
D2330		N	Resin one surface-anterior	0.00	0.00	0.00	0.00	XXX	0
D2331		N	Resin two surfaces-anterior	0.00	0.00	0.00	0.00	XXX	0
D2332		N	Resin three surfaces-anterio	0.00	0.00	0.00	0.00	XXX	0
D2335		N	Resin 4/> surf or w/ incle an	0.00	0.00	0.00	0.00	XXX	0
D2336		N	Composite resin crown	0.00	0.00	0.00	0.00	XXX	0
D2380		N	Resin one surf poster primar	0.00	0.00	0.00	0.00	XXX	0
D2381		N	Resin two surf poster primar	0.00	0.00	0.00	0.00	XXX	0
D2382		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	XXX	0
D2385		N	Resin one surf poster perman	0.00	0.00	0.00	0.00	XXX	0
D2386		N	Resin two surf poster perman	0.00	0.00	0.00	0.00	XXX	0
D2387		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	XXX	0
D2410		N	Dental gold foil one surface	0.00	0.00	0.00	0.00	XXX	0
D2420		N	Dental gold foil two surfaces	0.00	0.00	0.00	0.00	XXX	0
D2430		N	Dental gold foil three surfa	0.00	0.00	0.00	0.00	XXX	0
D2510		N	Dental inlay metallic 1 surf	0.00	0.00	0.00	0.00	XXX	0
D2520		N	Dental inlay metallic 2 surf	0.00	0.00	0.00	0.00	XXX	0
D2530		N	Dental inlay metl 3/more sur	0.00	0.00	0.00	0.00	XXX	0
D2543		N	Dental onlay metallic 3 surf	0.00	0.00	0.00	0.00	XXX	0
D2544		N	Dental onlay metl 4/more sur	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
D2610		N	Inlay porcelain/ceramic 1 su	0.00	0.00	0.00	0.00	XXX	0
D2620		N	Inlay porcelain/ceramic 2 su	0.00	0.00	0.00	0.00	XXX	0
D2630		N	Dental onlay porc 3/more sur	0.00	0.00	0.00	0.00	XXX	0
D2642		N	Dental onlay porcelain 2 surf	0.00	0.00	0.00	0.00	XXX	0
D2643		N	Dental onlay porcelain 3 surf	0.00	0.00	0.00	0.00	XXX	0
D2644		N	Dental onlay porc 4/more sur	0.00	0.00	0.00	0.00	XXX	0
D2650		N	Inlay composite/resin one su	0.00	0.00	0.00	0.00	XXX	0
D2651		N	Inlay composite/resin two su	0.00	0.00	0.00	0.00	XXX	0
D2652		N	Dental inlay resin 3/mre sur	0.00	0.00	0.00	0.00	XXX	0
D2662		N	Dental onlay resin 2 surface	0.00	0.00	0.00	0.00	XXX	0
D2663		N	Dental onlay resin 3 surface	0.00	0.00	0.00	0.00	XXX	0
D2664		N	Dental onlay resin 4/mre sur	0.00	0.00	0.00	0.00	XXX	0
D2710		N	Crown resin laboratory	0.00	0.00	0.00	0.00	XXX	0
D2720		N	Crown resin w/high noble me	0.00	0.00	0.00	0.00	XXX	0
D2721		N	Crown resin w/ base metal	0.00	0.00	0.00	0.00	XXX	0
D2722		N	Crown resin w/ noble metal	0.00	0.00	0.00	0.00	XXX	0
D2740		N	Crown porcelain/ceramic sube	0.00	0.00	0.00	0.00	XXX	0
D2750		N	Crown porcelain w/ h noble m	0.00	0.00	0.00	0.00	XXX	0
D2751		N	Crown porcelain fused base m	0.00	0.00	0.00	0.00	XXX	0
D2752		N	Crown porcelain w/ noble met	0.00	0.00	0.00	0.00	XXX	0
D2760		N	Crown full cast high noble m	0.00	0.00	0.00	0.00	XXX	0
D2761		N	Crown full cast base metal	0.00	0.00	0.00	0.00	XXX	0
D2762		N	Crown full cast noble metal	0.00	0.00	0.00	0.00	XXX	0
D2810		N	Crown 3/4 cast metallic	0.00	0.00	0.00	0.00	XXX	0
D2910		N	Dental recement inlay	0.00	0.00	0.00	0.00	XXX	0
D2920		N	Dental recement crown	0.00	0.00	0.00	0.00	XXX	0
D2930		N	Prefab striss steel crown pri	0.00	0.00	0.00	0.00	XXX	0
D2931		N	Prefab striss steel crown pe	0.00	0.00	0.00	0.00	XXX	0
D2932		N	Prefabricated resin crown	0.00	0.00	0.00	0.00	XXX	0
D2933		N	Prefab stainless steel crown	0.00	0.00	0.00	0.00	XXX	0
D2940		N	Dental sedative filling	0.00	0.00	0.00	0.00	XXX	0
D2950		N	Core build-up incl any pins	0.00	0.00	0.00	0.00	XXX	0
D2951		N	Tooth pin retention	0.00	0.00	0.00	0.00	XXX	0
D2962		N	Post and core cast + crown	0.00	0.00	0.00	0.00	XXX	0
D2964		N	Prefab post/core + crown	0.00	0.00	0.00	0.00	XXX	0
D2965		N	Post removal	0.00	0.00	0.00	0.00	XXX	0
D2966		N	Laminate labial veneer	0.00	0.00	0.00	0.00	XXX	0
D2961		N	Lab labial veneer resin	0.00	0.00	0.00	0.00	XXX	0
D2962		N	Lab labial veneer porcelain	0.00	0.00	0.00	0.00	XXX	0
D2970		R	Temporary- fractured tooth	0.00	0.00	0.00	0.00	YYY	N
D2980		N	Crown repair	0.00	0.00	0.00	0.00	XXX	0
D2999		R	Dental unspec restorative pr	0.00	0.00	0.00	0.00	YYY	N
D3110		N	Pulp cap direct	0.00	0.00	0.00	0.00	XXX	0
D3120		N	Pulp cap indirect	0.00	0.00	0.00	0.00	XXX	0
D3220		N	Therapeutic pulpotomy	0.00	0.00	0.00	0.00	XXX	0
D3230		N	Pulpal therapy anterior prim	0.00	0.00	0.00	0.00	XXX	0
D3240		N	Pulpal therapy posterior pri	0.00	0.00	0.00	0.00	XXX	0
D3310		N	Anterior	0.00	0.00	0.00	0.00	XXX	0
D3320		N	Root canal therapy 2 canals	0.00	0.00	0.00	0.00	XXX	0
D3330		N	Root canal therapy 3 canals	0.00	0.00	0.00	0.00	XXX	0
D3346		N	Retreat root canal anterior	0.00	0.00	0.00	0.00	XXX	0
D3347		N	Retreat root canal bicuspid	0.00	0.00	0.00	0.00	XXX	0
D3348		N	Retreat root canal molar	0.00	0.00	0.00	0.00	XXX	0
D3351		N	Apexification/recalc initial	0.00	0.00	0.00	0.00	XXX	0
D3352		N	Apexification/recalc interim	0.00	0.00	0.00	0.00	XXX	0
D3353		N	Apexification/recalc final	0.00	0.00	0.00	0.00	XXX	0
D3410		N	Apicoect/perirad surg anter	0.00	0.00	0.00	0.00	XXX	0
D3421		N	Root surgery bicuspid	0.00	0.00	0.00	0.00	XXX	0
D3425		N	Root surgery molar	0.00	0.00	0.00	0.00	XXX	0
D3426		N	Root surgery ea add root	0.00	0.00	0.00	0.00	XXX	0
D3430		N	Retrograde filling	0.00	0.00	0.00	0.00	XXX	0
D3450		N	Root amputation	0.00	0.00	0.00	0.00	XXX	0
D3460		R	Endodontic endosseous implan	0.00	0.00	0.00	0.00	YYY	N
D3470		N	Intentional replantation	0.00	0.00	0.00	0.00	XXX	0
D3910		N	Isolation-tooth w rubb dam	0.00	0.00	0.00	0.00	XXX	0
D3920		N	Tooth splitting	0.00	0.00	0.00	0.00	XXX	0
D3950		N	Canal prep/filing of dowel	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
D3980		N	Bleaching of discolored tooth	0.00	0.00	0.00	0.00	XXX	0
D3999		R	Endodontic procedure	0.00	0.00	0.00	0.00	YYY	N
D4210		G	Gingivectomy/plasty per quad	0.00	0.00	0.00	0.00	XXX	0
D4211		G	Gingivectomy/plasty per tooth	0.00	0.00	0.00	0.00	XXX	0
D4220		N	Gingival curettage per quad	0.00	0.00	0.00	0.00	XXX	0
D4340		N	Gingival flap proc w/ planin	0.00	0.00	0.00	0.00	XXX	0
D4349		N	Crown lengthen hard tissue	0.00	0.00	0.00	0.00	XXX	0
D4350		R	Mucogingival surg per quadra	0.00	0.00	0.00	0.00	YYY	N
D4260		R	Cessous surgery per quadrant	0.00	0.00	0.00	0.00	YYY	S
D4263		R	Bone replot graft first site	0.00	0.00	0.00	0.00	YYY	N
D4264		R	Bone replot graft each add	0.00	0.00	0.00	0.00	YYY	N
D4266		N	Guided tis regen resorb	0.00	0.00	0.00	0.00	XXX	0
D4267		N	Guided tis regen nonresorb	0.00	0.00	0.00	0.00	XXX	0
D4270		R	Pedicle soft tissue graft pr	0.00	0.00	0.00	0.00	YYY	S
D4271		R	Free soft tissue graft pr	0.00	0.00	0.00	0.00	YYY	S
D4273		R	Subepithelial tissue graft	0.00	0.00	0.00	0.00	YYY	N
D4274		N	Dental/proximal wedge proc	0.00	0.00	0.00	0.00	XXX	0
D4320		N	Provision splint intracoronal	0.00	0.00	0.00	0.00	XXX	0
D4321		N	Provisional splint extracoro	0.00	0.00	0.00	0.00	XXX	0
D4341		N	Periodontal scaling & root	0.00	0.00	0.00	0.00	XXX	0
D4355		R	Full mouth debridement	0.00	0.00	0.00	0.00	YYY	N
D4381		R	Localized chemo delivery	0.00	0.00	0.00	0.00	YYY	N
D4910		N	Periodontal maint procedures	0.00	0.00	0.00	0.00	XXX	0
D4920		N	Unscheduled dressing change	0.00	0.00	0.00	0.00	XXX	0
D4999		N	Unspecified periodontal proc	0.00	0.00	0.00	0.00	XXX	0
D5110		N	Dentures complete maxillary	0.00	0.00	0.00	0.00	XXX	0
D5120		N	Dentures complete mandible	0.00	0.00	0.00	0.00	XXX	0
D5130		N	Dentures immediate maxillary	0.00	0.00	0.00	0.00	XXX	0
D5140		N	Dentures immediate mandible	0.00	0.00	0.00	0.00	XXX	0
D5211		N	Dentures maxill part resin	0.00	0.00	0.00	0.00	XXX	0
D5212		N	Dentures mand part resin	0.00	0.00	0.00	0.00	XXX	0
D5213		N	Dentures maxill part metal	0.00	0.00	0.00	0.00	XXX	0
D5214		N	Dentures mandib part metal	0.00	0.00	0.00	0.00	XXX	0
D5281		N	Removable partial denture	0.00	0.00	0.00	0.00	XXX	0
D5410		N	Dentures adjust cmplt maxill	0.00	0.00	0.00	0.00	XXX	0
D5411		N	Dentures adjust cmplt mand	0.00	0.00	0.00	0.00	XXX	0
D5421		N	Dentures adjust part maxill	0.00	0.00	0.00	0.00	XXX	0
D5422		N	Dentures adjust part mandib	0.00	0.00	0.00	0.00	XXX	0
D5510		N	Dentur repr broken cmplt bas	0.00	0.00	0.00	0.00	XXX	0
D5520		N	Replace denture teeth cmplt	0.00	0.00	0.00	0.00	XXX	0
D5510		N	Dentures repair resin base	0.00	0.00	0.00	0.00	XXX	0
D5620		N	Rep part denture cast frame	0.00	0.00	0.00	0.00	XXX	0
D5630		N	Rep partial denture clas	0.00	0.00	0.00	0.00	XXX	0
D5640		N	Replace part denture teeth	0.00	0.00	0.00	0.00	XXX	0
D5650		N	Add tooth to partial denture	0.00	0.00	0.00	0.00	XXX	0
D5660		N	Add clas to partial denture	0.00	0.00	0.00	0.00	XXX	0
D5710		N	Dentures rebase cmplt maxill	0.00	0.00	0.00	0.00	XXX	0
D5711		N	Dentures rebase cmplt mand	0.00	0.00	0.00	0.00	XXX	0
D5720		N	Dentures rebase part maxill	0.00	0.00	0.00	0.00	XXX	0
D5721		N	Dentures rebase part mandib	0.00	0.00	0.00	0.00	XXX	0
D5730		N	Denture rein cmplt maxill ch	0.00	0.00	0.00	0.00	XXX	0
D5731		N	Denture rein cmplt mandib ch	0.00	0.00	0.00	0.00	XXX	0
D5740		N	Denture rein part maxill chr	0.00	0.00	0.00	0.00	XXX	0
D5741		N	Denture rein part mandib chr	0.00	0.00	0.00	0.00	XXX	0
D5750		N	Denture rein cmplt max lab	0.00	0.00	0.00	0.00	XXX	0
D5751		N	Denture rein cmplt mand lab	0.00	0.00	0.00	0.00	XXX	0
D5760		N	Denture rein part maxill lab	0.00	0.00	0.00	0.00	XXX	0
D5761		N	Denture rein part mandib lab	0.00	0.00	0.00	0.00	XXX	0
D5810		N	Denture intern cmplt maxill	0.00	0.00	0.00	0.00	XXX	0
D5811		N	Denture intern cmplt mandib	0.00	0.00	0.00	0.00	XXX	0
D5820		N	Denture intern part maxill	0.00	0.00	0.00	0.00	XXX	0
D5821		N	Denture intern part mandib	0.00	0.00	0.00	0.00	XXX	0
D5850		N	Denture tiss conditn maxill	0.00	0.00	0.00	0.00	XXX	0
D5851		N	Denture tiss conditn mandib	0.00	0.00	0.00	0.00	XXX	0
D5990		N	Overdenture complete	0.00	0.00	0.00	0.00	XXX	0
D5991		N	Overdenture partial	0.00	0.00	0.00	0.00	XXX	0
D5992		N	Precision attachment	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
D5899		N	Removable prosthodontic proc	0.00	0.00	0.00	0.00	XXX	0
D5911		R	Facial moulage sectional	0.00	0.00	0.00	0.00	YYY	N
D5912		R	Facial moulage complete	0.00	0.00	0.00	0.00	YYY	N
D5913		G	Nasal prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5914		G	Auricular prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5915		G	Orbital prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5916		G	Ocular prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5919		G	Facial prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5922		G	Nasal septal prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5923		G	Ocular prosthesis interim	0.00	0.00	0.00	0.00	XXX	0
D5924		G	Cranial prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5925		G	Facial augmentation implant	0.00	0.00	0.00	0.00	XXX	0
D5926		G	Replacement nasal prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5927		G	Auricular replacement	0.00	0.00	0.00	0.00	XXX	0
D5928		G	Orbital replacement	0.00	0.00	0.00	0.00	XXX	0
D5929		G	Facial replacement	0.00	0.00	0.00	0.00	XXX	0
D5931		G	Surgical obturator	0.00	0.00	0.00	0.00	XXX	0
D5932		G	Postsurgical obturator	0.00	0.00	0.00	0.00	XXX	0
D5933		G	Refitting of obturator	0.00	0.00	0.00	0.00	XXX	0
D5934		G	Mandibular flange prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5935		G	Mandibular denture prosth	0.00	0.00	0.00	0.00	XXX	0
D5938		G	Temp obturator prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5937		G	Trismus appliance	0.00	0.00	0.00	0.00	XXX	0
D5951		R	Feeding aid	0.00	0.00	0.00	0.00	YYY	N
D5952		G	Pediatric speech aid	0.00	0.00	0.00	0.00	XXX	0
D5953		G	Adult speech aid	0.00	0.00	0.00	0.00	XXX	0
D5954		G	Superimposed prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5955		G	Palatal lift prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5958		G	Intraoral con del inter pit	0.00	0.00	0.00	0.00	XXX	0
D5959		G	Intraoral con del mod palat	0.00	0.00	0.00	0.00	XXX	0
D5960		G	Modify speech aid prosthesis	0.00	0.00	0.00	0.00	XXX	0
D5982		G	Surgical stent	0.00	0.00	0.00	0.00	XXX	0
D5983		R	Radiation applicator	0.00	0.00	0.00	0.00	YYY	N
D5984		R	Radiation shield	0.00	0.00	0.00	0.00	YYY	N
D5985		R	Radiation cone locator	0.00	0.00	0.00	0.00	YYY	N
D5986		N	Fluoride applicator	0.00	0.00	0.00	0.00	XXX	0
D5987		R	Commissure splint	0.00	0.00	0.00	0.00	YYY	N
D5988		G	Surgical splint	0.00	0.00	0.00	0.00	YYY	N
D5999		G	Maxillofacial prosthesis	0.00	0.00	0.00	0.00	XXX	0
D6010		G	Odontics endosteal implant	0.00	0.00	0.00	0.00	XXX	0
D6020		G	Odontics abutment placement	0.00	0.00	0.00	0.00	XXX	0
D6040		G	Odontics aposteal implant	0.00	0.00	0.00	0.00	XXX	0
D6050		G	Odontics transosteal implant	0.00	0.00	0.00	0.00	XXX	0
D6055		G	Implant connecting bar	0.00	0.00	0.00	0.00	XXX	0
D6080		G	Implant maintenance	0.00	0.00	0.00	0.00	XXX	0
D6090		G	Repair implant	0.00	0.00	0.00	0.00	XXX	0
D6095		G	Odontics repr abutment	0.00	0.00	0.00	0.00	XXX	0
D6100		G	Removal of implant	0.00	0.00	0.00	0.00	XXX	0
D6189		G	Implant procedure	0.00	0.00	0.00	0.00	XXX	0
D6210		N	Prosthodont high noble metal	0.00	0.00	0.00	0.00	XXX	0
D6211		N	Bridge base metal cast	0.00	0.00	0.00	0.00	XXX	0
D6212		N	Bridge noble metal cast	0.00	0.00	0.00	0.00	XXX	0
D6240		N	Bridge porcelain high noble	0.00	0.00	0.00	0.00	XXX	0
D6241		N	Bridge porcelain base metal	0.00	0.00	0.00	0.00	XXX	0
D6242		N	Bridge porcelain noble metal	0.00	0.00	0.00	0.00	XXX	0
D6250		N	Bridge resin w/high noble	0.00	0.00	0.00	0.00	XXX	0
D6251		N	Bridge resin base metal	0.00	0.00	0.00	0.00	XXX	0
D6252		N	Bridge resin w/noble metal	0.00	0.00	0.00	0.00	XXX	0
D6520		N	Dental retainer two surfaces	0.00	0.00	0.00	0.00	XXX	0
D6530		N	Retainer metallic 3+ surface	0.00	0.00	0.00	0.00	XXX	0
D6543		N	Dental retainer onlay 3 surf	0.00	0.00	0.00	0.00	XXX	0
D6544		N	Dental retainer onlay 4/more	0.00	0.00	0.00	0.00	XXX	0
D6545		N	Dental retainer cast metl	0.00	0.00	0.00	0.00	XXX	0
D6720		N	Retain crown resin w hi noble	0.00	0.00	0.00	0.00	XXX	0
D6721		N	Crown resin w/base metal	0.00	0.00	0.00	0.00	XXX	0
D6722		N	Crown resin w/noble metal	0.00	0.00	0.00	0.00	XXX	0
D6750		N	Crown porcelain high noble	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued.

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
D6751		N	Crown porcelain base metal	0.00	0.00	0.00	0.00	XXX	0
D6752		N	Crown porcelain noble metal	0.00	0.00	0.00	0.00	XXX	0
D6760		N	Crown 3/4 high noble metal	0.00	0.00	0.00	0.00	XXX	0
D6760		N	Crown full high noble metal	0.00	0.00	0.00	0.00	XXX	0
D6761		N	Crown full base metal cast	0.00	0.00	0.00	0.00	XXX	0
D6762		N	Crown full noble metal cast	0.00	0.00	0.00	0.00	XXX	0
D6920		R	Dental connector bar	0.00	0.00	0.00	0.00	YYY	N
D6930		N	Dental cement bridge	0.00	0.00	0.00	0.00	XXX	0
D6940		N	Stress breaker	0.00	0.00	0.00	0.00	XXX	0
D6950		N	Precision attachment	0.00	0.00	0.00	0.00	XXX	0
D6970		N	Post & core plus retainer	0.00	0.00	0.00	0.00	XXX	0
D6971		N	Cast post bridge retainer	0.00	0.00	0.00	0.00	XXX	0
D6972		N	Prefab post & core plus rets	0.00	0.00	0.00	0.00	XXX	0
D6973		N	Core build up for retainer	0.00	0.00	0.09	0.00	XXX	0
D6975		N	Coping metal	0.00	0.00	0.00	0.00	XXX	0
D6980		N	Bridge repair	0.00	0.00	0.00	0.00	XXX	0
D6999		N	Fixed prosthodontic proc	0.00	0.00	0.00	0.00	XXX	0
D7110		R	Oral surgery single tooth	0.00	0.00	0.00	0.00	YYY	S
D7120		R	Each add tooth extraction	0.00	0.00	0.00	0.00	YYY	S
D7130		R	Tooth root removal	0.00	0.00	0.00	0.00	YYY	S
D7210		R	Rem imp tooth w mucoper flap	0.00	0.00	0.00	0.00	YYY	S
D7220		R	Impact tooth remov soft tiss	0.00	0.00	0.00	0.00	YYY	S
D7230		R	Impact tooth remov part bony	0.00	0.00	0.00	0.00	YYY	S
D7240		R	Impact tooth remov comp bony	0.00	0.00	0.00	0.00	YYY	S
D7241		R	Impact tooth rem bony w/comp	0.00	0.00	0.00	0.00	YYY	S
D7250		R	Tooth root removal	0.00	0.00	0.00	0.00	YYY	S
D7260		R	Oral antral fistula closure	0.00	0.00	0.00	0.00	YYY	S
D7270		N	Tooth reimplantation	0.00	0.00	0.00	0.00	XXX	0
D7272		N	Tooth transplantation	0.00	0.00	0.00	0.00	XXX	0
D7280		N	Exposure impact tooth orthod	0.00	0.00	0.00	0.00	XXX	0
D7281		N	Exposure tooth aid eruption	0.00	0.00	0.00	0.00	XXX	0
D7286		G	Biopsy of oral tissue hard	0.00	0.00	0.00	0.00	XXX	0
D7286		G	Biopsy of oral tissue soft	0.00	0.00	0.00	0.00	XXX	0
D7290		N	Repositioning of teeth	0.00	0.00	0.00	0.00	XXX	0
D7291		R	Transseptal fibrotomy	0.00	0.00	0.00	0.00	YYY	N
D7310		G	Alveoplasty w/ extraction	0.00	0.00	0.00	0.00	XXX	0
D7320		G	Alveoplasty w/o extraction	0.00	0.00	0.00	0.00	XXX	0
D7340		G	Vestibuloplasty ridge extens	0.00	0.00	0.00	0.00	XXX	0
D7350		G	Vestibuloplasty exten graft	0.00	0.00	0.00	0.00	XXX	0
D7410		G	Rad exc lesion up to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7420		G	Lesion > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7430		G	Exc benign tumor to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7431		G	Benign tumor exc > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7440		G	Malg tumor exc to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7441		G	Malg tumor > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7450		G	Rem odontogen cyst to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7451		G	Rem odontogen cyst > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7460		G	Rem nonodont cyst to 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7461		G	Rem nonodont cyst > 1.25 cm	0.00	0.00	0.00	0.00	XXX	0
D7465		G	Lesion destruction	0.00	0.00	0.00	0.00	XXX	0
D7470		G	Rem exostosis maxilla/mandib	0.00	0.00	0.00	0.00	XXX	0
D7480		G	Partial osteotomy	0.00	0.00	0.00	0.00	XXX	0
D7490		G	Mandible resection	0.00	0.00	0.00	0.00	XXX	0
D7510		G	l&d abscess intraoral soft tiss	0.00	0.00	0.00	0.00	XXX	0
D7520		G	l&d abscess extraoral	0.00	0.00	0.00	0.00	XXX	0
D7530		G	Removal fb skin/areolar tiss	0.00	0.00	0.00	0.00	XXX	0
D7540		G	Removal of fb reaction	0.00	0.00	0.00	0.00	XXX	0
D7550		G	Removal of sloughed off bone	0.00	0.00	0.00	0.00	XXX	0
D7560		G	Maxillary sinusotomy	0.00	0.00	0.00	0.00	XXX	0
D7610		G	Maxilla open reduct simple	0.00	0.00	0.00	0.00	XXX	0
D7620		G	Cleid reduct simpl maxilla fx	0.00	0.00	0.00	0.00	XXX	0
D7630		G	Open red simpl mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7640		G	Cleid red simpl mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7650		G	Open red simp malar/zygom fx	0.00	0.00	0.00	0.00	XXX	0
D7660		G	Cleid red simp malar/zygom fx	0.00	0.00	0.00	0.00	XXX	0
D7670		G	Open red simple alveolus fx	0.00	0.00	0.00	0.00	XXX	0
D7680		G	Reduct simple facial bone fx	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
D7710		G	Maxilla open reduct compound	0.00	0.00	0.00	0.00	XXX	0
D7720		G	Cleid reduct compd maxilla fx	0.00	0.00	0.00	0.00	XXX	0
D7730		G	Open reduct compd mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7740		G	Cleid reduct compd mandible fx	0.00	0.00	0.00	0.00	XXX	0
D7750		G	Open red comp malar/zygma fx	0.00	0.00	0.00	0.00	XXX	0
D7760		G	Cleid red comp malar/zygma fx	0.00	0.00	0.00	0.00	XXX	0
D7770		G	Open reduct compd alveolus fx	0.00	0.00	0.00	0.00	XXX	0
D7780		G	Reduct compd facial bone fx	0.00	0.00	0.00	0.00	XXX	0
D7810		G	Trmj open reduct-dislocation	0.00	0.00	0.00	0.00	XXX	0
D7820		G	Closed trmj manipulation	0.00	0.00	0.00	0.00	XXX	0
D7830		G	Trmj manipulation under anest	0.00	0.00	0.00	0.00	XXX	0
D7840		G	Removal of trmj condyle	0.00	0.00	0.00	0.00	XXX	0
D7850		G	Trmj meniscectomy	0.00	0.00	0.00	0.00	XXX	0
D7852		G	Trmj repair of joint disc	0.00	0.00	0.00	0.00	XXX	0
D7854		G	Trmj excision of joint membrane	0.00	0.00	0.00	0.00	XXX	0
D7856		G	Trmj cutting of a muscle	0.00	0.00	0.00	0.00	XXX	0
D7858		G	Trmj reconstruction	0.00	0.00	0.00	0.00	XXX	0
D7860		G	Trmj cutting into joint	0.00	0.00	0.00	0.00	XXX	0
D7865		G	Trmj reshaping components	0.00	0.00	0.00	0.00	XXX	0
D7870		G	Trmj aspiration joint fluid	0.00	0.00	0.00	0.00	XXX	0
D7872		G	Trmj diagnostic arthroscopy	0.00	0.00	0.00	0.00	XXX	0
D7873		G	Trmj arthroscopy lysis adhe	0.00	0.00	0.00	0.00	XXX	0
D7874		G	Trmj arthroscopy disc reposit	0.00	0.00	0.00	0.00	XXX	0
D7875		G	Trmj arthroscopy synovectomy	0.00	0.00	0.00	0.00	XXX	0
D7876		G	Trmj arthroscopy disectomy	0.00	0.00	0.00	0.00	XXX	0
D7877		G	Trmj arthroscopy debridement	0.00	0.00	0.00	0.00	XXX	0
D7880		G	Occlusal orthotic appliance	0.00	0.00	0.00	0.00	XXX	0
D7899		G	Trmj unspecified therapy	0.00	0.00	0.00	0.00	XXX	0
D7910		G	Dent suture recent wnd to 5 cm	0.00	0.00	0.00	0.00	XXX	0
D7911		G	Dental suture wound to 5 cm	0.00	0.00	0.00	0.00	XXX	0
D7912		G	Suture complicate wnd > 5 cm	0.00	0.00	0.00	0.00	XXX	0
D7920		G	Dental skin graft	0.00	0.00	0.00	0.00	XXX	0
D7940		R	Reshaping bone orthognathic	0.00	0.00	0.00	0.00	XXX	S
D7941		G	Bone cutting ramus closed	0.00	0.00	0.00	0.00	YYY	S
D7942		G	Bone cutting ramus open	0.00	0.00	0.00	0.00	XXX	0
D7943		G	Cutting ramus open w/graft	0.00	0.00	0.00	0.00	XXX	0
D7944		G	Bone cutting segmented	0.00	0.00	0.00	0.00	XXX	0
D7945		G	Bone cutting body mandible	0.00	0.00	0.00	0.00	XXX	0
D7946		G	Reconstruction maxilla total	0.00	0.00	0.00	0.00	XXX	0
D7947		G	Reconstruct maxilla segment	0.00	0.00	0.00	0.00	XXX	0
D7948		G	Reconstruct midface no graft	0.00	0.00	0.00	0.00	XXX	0
D7949		G	Reconstruct midface w/graft	0.00	0.00	0.00	0.00	XXX	0
D7950		G	Mandible graft	0.00	0.00	0.00	0.00	XXX	0
D7955		G	Repair maxillofacial defects	0.00	0.00	0.00	0.00	XXX	0
D7960		G	Frenulectomy/frenulotomy	0.00	0.00	0.00	0.00	XXX	0
D7970		G	Excision hyperplastic tissue	0.00	0.00	0.00	0.00	XXX	0
D7971		G	Excision pericoronel gingiva	0.00	0.00	0.00	0.00	XXX	0
D7980		G	Sialolithotomy	0.00	0.00	0.00	0.00	XXX	0
D7981		G	Excision of salivary gland	0.00	0.00	0.00	0.00	XXX	0
D7982		G	Sialodochoplasty	0.00	0.00	0.00	0.00	XXX	0
D7983		G	Closure of salivary fistula	0.00	0.00	0.00	0.00	XXX	0
D7990		G	Emergency tracheotomy	0.00	0.00	0.00	0.00	XXX	0
D7991		G	Dental coronoidectomy	0.00	0.00	0.00	0.00	XXX	0
D7995		G	Synthetic graft facial bones	0.00	0.00	0.00	0.00	XXX	0
D7998		G	Implant mandible for augment	0.00	0.00	0.00	0.00	XXX	0
D7999		G	Oral surgery procedure	0.00	0.00	0.00	0.00	XXX	0
D8010		N	Limited dental tx primary	0.00	0.00	0.00	0.00	XXX	0
D8020		N	Limited dental tx transition	0.00	0.00	0.00	0.00	XXX	0
D8030		N	Limited dental tx adolescent	0.00	0.00	0.00	0.00	XXX	0
D8040		N	Limited dental tx adult	0.00	0.00	0.00	0.00	XXX	0
D8050		N	Intercep dental tx primary	0.00	0.00	0.00	0.00	XXX	0
D8060		N	Intercep dental tx transition	0.00	0.00	0.00	0.00	XXX	0
D8070		N	Compre dental tx transition	0.00	0.00	0.00	0.00	XXX	0
D8080		N	Compre dental tx adolescent	0.00	0.00	0.00	0.00	XXX	0
D8090		N	Compre dental tx adult	0.00	0.00	0.00	0.00	XXX	0
D8210		N	Orthodontic rem appliance fx	0.00	0.00	0.00	0.00	XXX	0
D8220		N	Fixed appliance therapy habt	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
D8860		N	Preorthodontic tx visit	0.00	0.00	0.00	0.00	XXX	0
D8879		N	Periodic orthodontic tx visit	0.00	0.00	0.00	0.00	XXX	0
D8880		N	Orthodontic retention	0.00	0.00	0.00	0.00	XXX	0
D8890		N	Orthodontic treatment	0.00	0.00	0.00	0.00	XXX	0
D8999		N	Orthodontic procedure	0.00	0.00	0.00	0.00	XXX	0
D9110		R	Tx dental pain minor proc	0.00	0.00	0.00	0.00	YYY	N
D9210		G	Dent anesthesia w/o surgery	0.00	0.00	0.00	0.00	XXX	0
D9211		G	Regional block anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9212		G	Trigeminal block anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9215		G	Local anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9220		G	General anesthesia	0.00	0.00	0.00	0.00	XXX	0
D9221		G	General anesthesia ea ad 15m	0.00	0.00	0.00	0.00	XXX	0
D9230		R	Analgesia	0.00	0.00	0.00	0.00	YYY	N
D9240		G	Intravenous sedation	0.00	0.00	0.00	0.00	XXX	0
D9310		G	Dental consultation	0.00	0.00	0.00	0.00	XXX	0
D9410		G	Dental house call	0.00	0.00	0.00	0.00	XXX	0
D9420		G	Hospital call	0.00	0.00	0.00	0.00	XXX	0
D9430		G	Office visit during hours	0.00	0.00	0.00	0.00	XXX	0
D9440		G	Office visit after hours	0.00	0.00	0.00	0.00	XXX	0
D9610		G	Dent therapeutic drug inject	0.00	0.00	0.00	0.00	XXX	0
D9630		R	Other drugs/medications	0.00	0.00	0.00	0.00	YYY	N
D9910		N	Dent appl desensitizing med	0.00	0.00	0.00	0.00	XXX	0
D9920		N	Behavior management	0.00	0.00	0.00	0.00	XXX	0
D9930		R	Treatment of complications	0.00	0.00	0.00	0.00	YYY	N
D9940		R	Dental occlusal guard	0.00	0.00	0.00	0.00	YYY	N
D9941		N	Fabrication athletic guard	0.00	0.00	0.00	0.00	XXX	0
D9950		R	Occlusion analysis	0.00	0.00	0.00	0.00	YYY	N
D9951		R	Limited occlusal adjustment	0.00	0.00	0.00	0.00	YYY	N
D9952		R	Complete occlusal adjustment	0.00	0.00	0.00	0.00	YYY	N
D9970		N	Enamel microabrasion	0.00	0.00	0.00	0.00	XXX	0
D9999		G	Adjunctive procedure	0.00	0.00	0.00	0.00	XXX	0
G0001		X	Drawing blood for specimen	0.00	0.00	0.00	0.00	XXX	0
G0002		A	Temporary urinary catheter	0.50	0.70	0.02	1.22	000	S
G0004		A	ECG transm phys review & int	0.52	7.31	0.85	8.48	XXX	N
G0005		A	ECG 24-hour recording	0.00	1.18	0.09	1.27	XXX	N
G0006		A	ECG transmission & analysis	0.00	5.73	0.51	6.24	XXX	N
G0007		A	ECG phy review & interpret	0.52	0.40	0.05	0.97	XXX	N
G0008		X	Admin influenza virus vac	0.00	0.00	0.00	0.00	XXX	0
G0009		X	Admin pneumococcal vaccine	0.00	0.00	0.00	0.00	XXX	0
G0010		X	Admin hepatitis b vaccine	0.00	0.00	0.00	0.00	XXX	0
G0015		A	Post symptom ECG tracing	0.00	5.73	0.51	6.24	XXX	N
G0016		A	Post symptom ECG md review	0.52	0.40	0.05	0.97	XXX	N
G0025		A	Collagen skin test kit	0.00	0.95	0.00	0.95	XXX	N
G0026		X	Fecal leukocyte examination	0.00	0.00	0.00	0.00	XXX	0
G0027		X	Semen analysis	0.00	0.00	0.00	0.00	XXX	0
G0030		C	PET imaging prev PET single	0.00	0.00	0.00	0.00	XXX	N
G0030 26	A	A	PET imaging prev PET single	1.09	0.48	0.07	1.64	XXX	N
G0030 TC	C	C	PET imaging prev PET single	0.00	0.00	0.00	0.00	XXX	N
G0031		C	PET imaging prev PET multiple	0.00	0.00	0.00	0.00	XXX	N
G0031 26	A	A	PET imaging prev PET multiple	1.46	0.85	0.10	2.21	XXX	N
G0031 TC	C	C	PET imaging prev PET multiple	0.00	0.00	0.00	0.00	XXX	N
G0032		C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	XXX	N
G0032 26	A	A	PET follow SPECT 78464 singl	1.09	0.48	0.07	1.64	XXX	N
G0032 TC	C	C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	XXX	N
G0033		C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	XXX	N
G0033 26	A	A	PET follow SPECT 78464 mult	1.46	0.85	0.10	2.21	XXX	N
G0033 TC	C	C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	XXX	N
G0034		C	PET follow SPECT 78865 singl	0.00	0.00	0.00	0.00	XXX	N
G0034 26	A	A	PET follow SPECT 78865 singl	1.09	0.48	0.07	1.64	XXX	N
G0034 TC	C	C	PET follow SPECT 78865 singl	0.00	0.00	0.00	0.00	XXX	N
G0035		C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	XXX	N
G0035 26	A	A	PET follow SPECT 78465 mult	1.46	0.85	0.10	2.21	XXX	N
G0035 TC	C	C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	XXX	N
G0036		C	PET follow comry angio sing	0.00	0.00	0.00	0.00	XXX	N
G0036 26	A	A	PET follow comry angio sing	1.09	0.48	0.07	1.64	XXX	N
G0036 TC	C	C	PET follow comry angio sing	0.00	0.00	0.00	0.00	XXX	N
G0037		C	PET follow comry angio mult	0.00	0.00	0.00	0.00	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Malpractice RVUs	Total	Global period	Update
G0037	26	A	PET follow comry angio mult	1.46	0.85	0.10	2.21	XXX	N
G0037 TC	C	C	PET follow comry angio mult	0.00	0.00	0.00	0.00	XXX	N
G0038	26	A	PET follow myocard perf sing	0.00	0.00	0.00	0.00	XXX	N
G0038 TC	C	C	PET follow myocard perf sing	1.09	0.48	0.07	1.64	XXX	N
G0039	26	A	PET follow myocard perf mult	0.00	0.00	0.00	0.00	XXX	N
G0039 TC	C	C	PET follow myocard perf mult	1.46	0.85	0.10	2.21	XXX	N
G0040	26	A	PET follow stress echo singl	0.00	0.00	0.00	0.00	XXX	N
G0040 TC	C	C	PET follow stress echo singl	1.09	0.48	0.07	1.64	XXX	N
G0041	26	A	PET follow stress echo mult	0.00	0.00	0.00	0.00	XXX	N
G0041 TC	C	C	PET follow stress echo mult	1.46	0.85	0.10	2.21	XXX	N
G0042	26	A	PET follow ventriculogr sing	0.00	0.00	0.00	0.00	XXX	N
G0042 TC	C	C	PET follow ventriculogr sing	1.09	0.48	0.07	1.64	XXX	N
G0043	26	A	PET follow ventriculogr mult	0.00	0.00	0.00	0.00	XXX	N
G0043 TC	C	C	PET follow ventriculogr mult	1.46	0.85	0.10	2.21	XXX	N
G0044	26	A	PET following rest ECG singl	0.00	0.00	0.00	0.00	XXX	N
G0044 TC	C	C	PET following rest ECG singl	1.09	0.48	0.07	1.64	XXX	N
G0045	26	A	PET following rest ECG mult	0.00	0.00	0.00	0.00	XXX	N
G0045 TC	C	C	PET following rest ECG mult	1.46	0.85	0.10	2.21	XXX	N
G0046	26	A	PET follow stress ECG singl	0.00	0.00	0.00	0.00	XXX	N
G0046 TC	C	C	PET follow stress ECG singl	1.09	0.48	0.07	1.64	XXX	N
G0047	26	A	PET follow stress ECG mult	0.00	0.00	0.00	0.00	XXX	N
G0047 TC	C	C	PET follow stress ECG mult	1.46	0.85	0.10	2.21	XXX	N
G0050		A	Residual urine by ultrasound	0.00	0.81	0.05	0.86	XXX	N
G0051		A	Destruct benign/premial lesion	0.55	0.41	0.04	1.00	010	S
G0052		A	Destruction of add'l lesions	0.18	0.13	0.01	0.32	ZZZ	S
G0053		A	Destruction of add'l lesions	3.05	2.26	0.20	5.50	ZZZ	S
G0054		D	Blood cholesterol test	0.00	0.00	0.00	0.00	XXX	0
G0055		D	Glucose post dose measure	0.00	0.00	0.00	0.00	XXX	0
G0056		D	Glucose tolerance 3 specimen	0.00	0.00	0.00	0.00	XXX	0
G0057		D	Glucose tolerance > 3 specimen	0.00	0.00	0.00	0.00	XXX	0
G0058		X	Auto multichannel 20 tests	0.00	0.00	0.00	0.00	XXX	0
G0059		X	Auto multichannel 21 tests	0.00	0.00	0.00	0.00	XXX	0
G0060		X	Auto multichannel 22 tests	0.00	0.00	0.00	0.00	XXX	0
G0061		D	Lung volume reduction surg	0.00	0.00	0.00	0.00	XXX	0
G0062	26	A	Peripheral bone densitometry	0.22	0.82	0.07	1.11	XXX	N
G0062 TC	C	C	Peripheral bone densitometry	0.00	0.72	0.05	0.77	XXX	N
G0063	26	A	Central bone densitometry	0.30	3.07	0.21	3.58	XXX	N
G0063 TC	C	C	Central bone densitometry	0.00	0.12	0.02	0.44	XXX	N
G0064		A	Care plan oversight, hme hlt	1.73	0.51	0.04	2.28	XXX	P
G0065		A	Care plan oversight, hospice	1.73	0.51	0.04	2.28	XXX	P
G0066		B	Care plan oversight nurs fac	0.00	0.00	0.00	0.00	XXX	0
G0071		A	Psychotherapy, office, no E/M	1.11	0.35	0.05	1.51	XXX	N
G0072		A	Psychotherapy, office, with E/M	1.47	0.35	0.05	1.87	XXX	N
G0073		A	Psychotherapy, office, no E/M	1.73	0.54	0.08	2.35	XXX	N
G0074		A	Psychotherapy, office, with E/M	2.00	0.54	0.08	2.62	XXX	N
G0075		A	Psychotherapy, office, no E/M	2.76	1.05	0.15	3.96	XXX	N
G0076		A	Psychotherapy, office, with E/M	3.15	1.05	0.15	4.35	XXX	N
G0077		A	Psychotherapy, office, no E/M	1.19	0.59	0.09	1.87	XXX	N
G0078		A	Psychotherapy, office, with E/M	1.58	0.59	0.09	2.26	XXX	N
G0079		A	Psychotherapy, office, no E/M	1.86	0.59	0.09	2.54	XXX	N
G0080		A	Psychotherapy, office, with E/M	2.15	0.59	0.09	2.83	XXX	N
G0081		A	Psychotherapy, office, no E/M	2.97	0.59	0.09	3.65	XXX	N
G0082		A	Psychotherapy, office, with E/M	3.39	0.59	0.09	4.07	XXX	N
G0083		A	Psychotherapy, inpt, no E/M	1.24	0.35	0.05	1.64	XXX	N
G0084		A	Psychotherapy, inpt, with E/M	1.65	1.05	0.15	2.85	XXX	N

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ¹	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
G0085		A	Psychotherapy, inpt, no E/M	1.94	0.54	0.08	2.56	XXX	N
G0086		A	Psychotherapy, inpt, with E/M	2.24	0.54	0.08	2.86	XXX	N
G0087		A	Psychotherapy, inpt, no E/M	3.09	1.05	0.15	4.29	XXX	N
G0088		A	Psychotherapy, inpt, with E/M	3.53	1.05	0.15	4.73	XXX	N
G0089		A	Psychotherapy, inpt, no E/M	1.33	0.35	0.05	1.73	XXX	N
G0090		A	Psychotherapy, inpt, with E/M	1.77	0.35	0.05	2.17	XXX	N
G0091		A	Psychotherapy, inpt, no E/M	2.08	0.54	0.08	2.70	XXX	N
G0092		A	Psychotherapy, inpt, with E/M	2.41	0.54	0.08	3.03	XXX	N
G0093		A	Psychotherapy, inpt, no E/M	3.32	1.05	0.15	4.52	XXX	N
G0094		A	Psychotherapy, inpt, with E/M	3.80	1.05	0.15	5.00	XXX	N
H5300		G	Occupational therapy	0.32	0.24	0.03	0.59	XXX	0
J0120		E	Tetracyclin injection	0.00	0.00	0.00	0.00	XXX	0
J0150		E	Injection adenosine 6 MG	0.00	0.00	0.00	0.00	XXX	0
J0170		E	Adrenalin epinephrin inject	0.00	0.00	0.00	0.00	XXX	0
J0190		E	Inj biperiden lactate/5 mg	0.00	0.00	0.00	0.00	XXX	0
J0205		E	Aggluterase injection	0.00	0.00	0.00	0.00	XXX	0
J0210		E	Methylglucose hcl injection	0.00	0.00	0.00	0.00	XXX	0
J0266		E	Alpha 1-proteinase 500 MG	0.00	0.00	0.00	0.00	XXX	0
J0270		N	Alprostadil for injection	0.00	0.00	0.00	0.00	XXX	0
J0280		E	Aminophyllin 250 MG inj	0.00	0.00	0.00	0.00	XXX	0
J0290		E	Ampicillin 500 MG inj	0.00	0.00	0.00	0.00	XXX	0
J0296		E	Ampicillin sodium per 1.5 gm	0.00	0.00	0.00	0.00	XXX	0
J0300		E	Amobarbital 125 MG inj	0.00	0.00	0.00	0.00	XXX	0
J0330		E	Succinylcholine chloride inj	0.00	0.00	0.00	0.00	XXX	0
J0340		E	Nandrolon phenpropionate inj	0.00	0.00	0.00	0.00	XXX	0
J0350		E	Injection anistreplese 30 u	0.00	0.00	0.00	0.00	XXX	0
J0360		E	Hydralazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J0360		E	Inj metaraminol bitartrate	0.00	0.00	0.00	0.00	XXX	0
J0390		E	Chloroquine injection	0.00	0.00	0.00	0.00	XXX	0
J0400		E	Inj trimethaphan camsylate	0.00	0.00	0.00	0.00	XXX	0
J0460		E	Atropine sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J0470		E	Dimecprol injection	0.00	0.00	0.00	0.00	XXX	0
J0475		E	Baclofen 10 MG injection	0.00	0.00	0.00	0.00	XXX	0
J0500		E	Dicyclomine injection	0.00	0.00	0.00	0.00	XXX	0
J0510		E	Benzquinamide injection	0.00	0.00	0.00	0.00	XXX	0
J0515		E	Inj benzotropine mesylate	0.00	0.00	0.00	0.00	XXX	0
J0520		E	Bethanechol chloride inject	0.00	0.00	0.00	0.00	XXX	0
J0530		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0540		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0550		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0560		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0570		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0580		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	XXX	0
J0585		E	Botulinum toxin s per unit	0.00	0.00	0.00	0.00	XXX	0
J0590		E	Ethynorepinephrine hcl inj	0.00	0.00	0.00	0.00	XXX	0
J0600		E	Edetate calcium disodium inj	0.00	0.00	0.00	0.00	XXX	0
J0610		E	Calcium gluconate injection	0.00	0.00	0.00	0.00	XXX	0
J0620		E	Calcium glycer & lact/10 ML	0.00	0.00	0.00	0.00	XXX	0
J0630		E	Calcitonin salmon injection	0.00	0.00	0.00	0.00	XXX	0
J0635		E	Calcitriol injection	0.00	0.00	0.00	0.00	XXX	0
J0640		E	Leucovorin calcium injection	0.00	0.00	0.00	0.00	XXX	0
J0670		E	Inj mepivacaine HCL/10 ml	0.00	0.00	0.00	0.00	XXX	0
J0690		E	Cefazolin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0694		E	Cefoxitin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0695		E	Cefonoxid sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0696		E	Ceftriaxone sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0697		E	Sterile cefuroxime injection	0.00	0.00	0.00	0.00	XXX	0
J0698		E	Cefotaxime sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0702		E	Betamethasone acet/sod phosp	0.00	0.00	0.00	0.00	XXX	0
J0704		E	Betamethasone sod phosp/4 MG	0.00	0.00	0.00	0.00	XXX	0
J0710		E	Cephapirin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J0713		E	Inj cefazidime per 500 mg	0.00	0.00	0.00	0.00	XXX	0
J0715		E	Ceftiozime sodium / 500 MG	0.00	0.00	0.00	0.00	XXX	0
J0720		E	Chloramphenicol sodium injec	0.00	0.00	0.00	0.00	XXX	0
J0725		E	Chorionic gonadotroph/1000u	0.00	0.00	0.00	0.00	XXX	0
J0730		E	Chlorpheniramin maleate inj	0.00	0.00	0.00	0.00	XXX	0
J0743		E	Cilastatin sodium injection	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT / HCPCS ²	MOD	Status	Description	Physician work RVUs ¹	Practice expense RVUs	Mal-practice RVUs	Total	Global period	Update
J0745		E	Inj codeine phosphate /30 MG	0.00	0.00	0.00	0.00	XXX	0
J0760		E	Colchicine injection	0.00	0.00	0.00	0.00	XXX	0
J0770		E	Colistimethate sodium inj	0.00	0.00	0.00	0.00	XXX	0
J0780		E	Prochlorperazine injection	0.00	0.00	0.00	0.00	XXX	0
J0800		E	Corticotropin injection	0.00	0.00	0.00	0.00	XXX	0
J0810		E	Cortisone injection	0.00	0.00	0.00	0.00	XXX	0
J0835		E	Inj cosyntropin per 0.25 MG	0.00	0.00	0.00	0.00	XXX	0
J0850		E	Cytomegalovirus imm IV /ml	0.00	0.00	0.00	0.00	XXX	0
J0895		E	Deferoxamine mesylate inj	0.00	0.00	0.00	0.00	XXX	0
J0900		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	XXX	0
J0945		E	Brompheniramine maleate inj	0.00	0.00	0.00	0.00	XXX	0
J0970		E	Estradiol valerate injection	0.00	0.00	0.00	0.00	XXX	0
J1000		E	Depo-estradiol cypionate inj	0.00	0.00	0.00	0.00	XXX	0
J1020		E	Methylprednisolone 20 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1030		E	Methylprednisolone 40 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1040		E	Methylprednisolone 80 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1050		E	Medroxyprogesterone inj	0.00	0.00	0.00	0.00	XXX	0
J1055		N	Medroxyprogester acetate inj	0.00	0.00	0.00	0.00	XXX	0
J1060		E	Testosterone cypionate 1 ML	0.00	0.00	0.00	0.00	XXX	0
J1070		E	Testosterone cypionate 100 MG	0.00	0.00	0.00	0.00	XXX	0
J1080		E	Testosterone cypionate 200 MG	0.00	0.00	0.00	0.00	XXX	0
J1090		E	Testosterone cypionate 50 MG	0.00	0.00	0.00	0.00	XXX	0
J1095		E	Inj dexamethasone acetate	0.00	0.00	0.00	0.00	XXX	0
J1100		E	Dexamethasone sodium phos	0.00	0.00	0.00	0.00	XXX	0
J1110		E	Inj dihydroergotamine mesyl	0.00	0.00	0.00	0.00	XXX	0
J1120		E	Acetazolamid sodium injectio	0.00	0.00	0.00	0.00	XXX	0
J1160		E	Digoxin injection	0.00	0.00	0.00	0.00	XXX	0
J1185		E	Phenytoin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J1170		E	Hydromorphone injection	0.00	0.00	0.00	0.00	XXX	0
J1180		E	Dyphyline injection	0.00	0.00	0.00	0.00	XXX	0
J1190		E	Dexamazone HCL injection	0.00	0.00	0.00	0.00	XXX	0
J1200		E	Diphenhydramine hcl injectio	0.00	0.00	0.00	0.00	XXX	0
J1205		E	Chlorothiazide sodium inj	0.00	0.00	0.00	0.00	XXX	0
J1212		E	Dimethyl sulfoxide 50% 50 ML	0.00	0.00	0.00	0.00	XXX	0
J1230		E	Methadone injection	0.00	0.00	0.00	0.00	XXX	0
J1240		E	Dimethydrinate injection	0.00	0.00	0.00	0.00	XXX	0
J1246		E	Dipyridamole injection	0.00	0.00	0.00	0.00	XXX	0
J1250		E	Inj dobutamine HCL/250 mg	0.00	0.00	0.00	0.00	XXX	0
J1320		E	Amitriptyline injection	0.00	0.00	0.00	0.00	XXX	0
J1330		E	Ergonovine maleate injection	0.00	0.00	0.00	0.00	XXX	0
J1362		E	Erythromycin glucop / 250 MG	0.00	0.00	0.00	0.00	XXX	0
J1364		E	Erythro lactobionate /500 MG	0.00	0.00	0.00	0.00	XXX	0
J1380		E	Estradiol valerate 10 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1390		E	Estradiol valerate 20 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1410		E	Inj estrogen conjugate 25 MG	0.00	0.00	0.00	0.00	XXX	0
J1435		E	Injection estrone per 1 MG	0.00	0.00	0.00	0.00	XXX	0
J1436		E	Eldronate disodium inj	0.00	0.00	0.00	0.00	XXX	0
J1440		E	Filgrastim 300 mcg injection	0.00	0.00	0.00	0.00	XXX	0
J1441		E	Filgrastim 480 mcg injection	0.00	0.00	0.00	0.00	XXX	0
J1455		E	Foscarnet sodium injection	0.00	0.00	0.00	0.00	XXX	0
J1460		E	Gamma globulin 1 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1470		E	Gamma globulin 2 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1480		E	Gamma globulin 3 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1480		E	Gamma globulin 4 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1500		E	Gamma globulin 5 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1510		E	Gamma globulin 6 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1520		E	Gamma globulin 7 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1530		E	Gamma globulin 8 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1540		E	Gamma globulin 9 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1550		E	Gamma globulin 10 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1560		E	Gamma globulin > 10 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1561		E	Immune globulin injection	0.00	0.00	0.00	0.00	XXX	0
J1562		E	Immune globulin 10% /5 grams	0.00	0.00	0.00	0.00	XXX	0
J1570		E	Ganciclovir sodium injection	0.00	0.00	0.00	0.00	XXX	0
J1580		E	Garamycin gentamicin inj	0.00	0.00	0.00	0.00	XXX	0
J1600		E	Gold sodium thiomaleate inj	0.00	0.00	0.00	0.00	XXX	0
J1610		E	Glucagon hydrochloride/1 MG	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
J1620		E	Gonadorelin hydrochl/ 100 mcg	0.00	0.00	0.00	0.00	XXX	0
J1625		E	Granisetron hydrochloride 1 MG	0.00	0.00	0.00	0.00	XXX	0
J1630		E	Haloperidol injection	0.00	0.00	0.00	0.00	XXX	0
J1631		E	Haloperidol decanoate inj	0.00	0.00	0.00	0.00	XXX	0
J1642		E	Inj heparin sodium per 10 u	0.00	0.00	0.00	0.00	XXX	0
J1644		E	Inj heparin sodium per 1000 u	0.00	0.00	0.00	0.00	XXX	0
J1645		E	Dalteparin sodium	0.00	0.00	0.00	0.00	XXX	0
J1650		E	Inj enoxaparin sodium 30 mg	0.00	0.00	0.00	0.00	XXX	0
J1670		E	Tetanus immune globulin inj	0.00	0.00	0.00	0.00	XXX	0
J1690		E	Prednisolone tebutate inj	0.00	0.00	0.00	0.00	XXX	0
J1700		E	Hydrocortisone acetate inj	0.00	0.00	0.00	0.00	XXX	0
J1710		E	Hydrocortisone sodium ph inj	0.00	0.00	0.00	0.00	XXX	0
J1720		E	Hydrocortisone sodium succ i	0.00	0.00	0.00	0.00	XXX	0
J1730		E	Diazoxide injection	0.00	0.00	0.00	0.00	XXX	0
J1739		E	Hydroxyprogesterone cap 125	0.00	0.00	0.00	0.00	XXX	0
J1741		E	Hydroxyprogesterone cap 250	0.00	0.00	0.00	0.00	XXX	0
J1760		E	Iron dextran 2 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1770		E	Iron dextran 5 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1780		E	Iron dextran 10 CC inj	0.00	0.00	0.00	0.00	XXX	0
J1785		E	Injection imiglucerase unit	0.00	0.00	0.00	0.00	XXX	0
J1790		E	Droperidol injection	0.00	0.00	0.00	0.00	XXX	0
J1800		E	Propofol injection	0.00	0.00	0.00	0.00	XXX	0
J1810		E	Droperidol/fentanyl inj	0.00	0.00	0.00	0.00	XXX	0
J1820		E	Insulin injection	0.00	0.00	0.00	0.00	XXX	0
J1830		E	Interferon beta-1b / 25 MG	0.00	0.00	0.00	0.00	XXX	0
J1840		E	Kanamycin sulfate 500 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1850		E	Kanamycin sulfate 75 MG inj	0.00	0.00	0.00	0.00	XXX	0
J1885		E	Ketorolac tromethamine inj	0.00	0.00	0.00	0.00	XXX	0
J1890		E	Cephalothin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J1910		E	Kutapressin injection	0.00	0.00	0.00	0.00	XXX	0
J1930		E	Propiomazine injection	0.00	0.00	0.00	0.00	XXX	0
J1940		E	Furosemide injection	0.00	0.00	0.00	0.00	XXX	0
J1950		E	Leuprolide acetate /3.75 MG	0.00	0.00	0.00	0.00	XXX	0
J1955		E	Inj levocarnitine per 1 gm	0.00	0.00	0.00	0.00	XXX	0
J1960		E	Lavorphanol tartrate inj	0.00	0.00	0.00	0.00	XXX	0
J1970		E	Methotrimeprazine injection	0.00	0.00	0.00	0.00	XXX	0
J1980		E	Hyoscyamine sulfate inj	0.00	0.00	0.00	0.00	XXX	0
J1990		E	Chloridazepoxide injection	0.00	0.00	0.00	0.00	XXX	0
J2000		E	Lidocaine injection	0.00	0.00	0.00	0.00	XXX	0
J2010		E	Lincomycin injection	0.00	0.00	0.00	0.00	XXX	0
J2050		E	Liver injection	0.00	0.00	0.00	0.00	XXX	0
J2060		E	Lorazepam injection	0.00	0.00	0.00	0.00	XXX	0
J2150		E	Mannitol injection	0.00	0.00	0.00	0.00	XXX	0
J2175		E	Meperidine hydrochl /100 MG	0.00	0.00	0.00	0.00	XXX	0
J2180		E	Meperidine/promethazine inj	0.00	0.00	0.00	0.00	XXX	0
J2210		E	Methylgonovin maleate inj	0.00	0.00	0.00	0.00	XXX	0
J2240		E	Metocurine iodide injection	0.00	0.00	0.00	0.00	XXX	0
J2250		E	Inj midazolam hydrochloride	0.00	0.00	0.00	0.00	XXX	0
J2260		E	Inj miltirone lactate / 5 ML	0.00	0.00	0.00	0.00	XXX	0
J2270		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J2275		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J2300		E	Inj nalbuphine hydrochloride	0.00	0.00	0.00	0.00	XXX	0
J2310		E	Inj naloxone hydrochloride	0.00	0.00	0.00	0.00	XXX	0
J2320		E	Nandrolone decanoate 50 MG	0.00	0.00	0.00	0.00	XXX	0
J2321		E	Nandrolone decanoate 100 MG	0.00	0.00	0.00	0.00	XXX	0
J2322		E	Nandrolone decanoate 200 MG	0.00	0.00	0.00	0.00	XXX	0
J2330		E	Thiothixene injection	0.00	0.00	0.00	0.00	XXX	0
J2350		E	Niacinamide/niacin injection	0.00	0.00	0.00	0.00	XXX	0
J2360		E	Orphenadrine injection	0.00	0.00	0.00	0.00	XXX	0
J2370		E	Phenylephrine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2400		E	Chloroprocaine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2405		E	Ondansetron hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2410		E	Oxymorphone hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2430		E	Pamidronate disodium /30 MG	0.00	0.00	0.00	0.00	XXX	0
J2440		E	Papaverin hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2460		E	Oxytetracycline injection	0.00	0.00	0.00	0.00	XXX	0
J2480		E	Hydrochlorides of opium inj	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
J2510		E	Penicillin g procaine inj	0.00	0.00	0.00	0.00	XXX	0
J2512		E	Inj pentagastrin per 2 ML	0.00	0.00	0.00	0.00	XXX	0
J2515		E	Pentobarbital sodium inj	0.00	0.00	0.00	0.00	XXX	0
J2540		E	Penicillin g potassium inj	0.00	0.00	0.00	0.00	XXX	0
J2545		E	Pentamidine isethionate/300mg	0.00	0.00	0.00	0.00	XXX	0
J2550		E	Promethazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2560		E	Phenobarbital sodium inj	0.00	0.00	0.00	0.00	XXX	0
J2590		E	Oxytocin injection	0.00	0.00	0.00	0.00	XXX	0
J2597		E	Inj desmopressin acetate	0.00	0.00	0.00	0.00	XXX	0
J2640		E	Prednisolone sodium ph inj	0.00	0.00	0.00	0.00	XXX	0
J2650		E	Prednisolone acetate inj	0.00	0.00	0.00	0.00	XXX	0
J2670		E	Totazoline hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2675		E	Inj progesterone per 50 MG	0.00	0.00	0.00	0.00	XXX	0
J2680		E	Fluphenazine decanoate 25 MG	0.00	0.00	0.00	0.00	XXX	0
J2690		E	Procainamide hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2700		E	Oxacillin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J2710		E	Neostigmine methylsulfate inj	0.00	0.00	0.00	0.00	XXX	0
J2720		E	Inj protamine sulfate/10 MG	0.00	0.00	0.00	0.00	XXX	0
J2725		E	Inj protirelin per 250 mcg	0.00	0.00	0.00	0.00	XXX	0
J2730		E	Pralidoxime chloride inj	0.00	0.00	0.00	0.00	XXX	0
J2760		E	Phentolamine mesylate inj	0.00	0.00	0.00	0.00	XXX	0
J2765		E	Metoclopramide hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2790		E	Rho d immune globulin inj	0.00	0.00	0.00	0.00	XXX	0
J2800		E	Methocarbamol injection	0.00	0.00	0.00	0.00	XXX	0
J2810		E	Inj theophylline per 40 MG	0.00	0.00	0.00	0.00	XXX	0
J2820		E	Sargramostim injection	0.00	0.00	0.00	0.00	XXX	0
J2860		E	Secobarbital sodium inj	0.00	0.00	0.00	0.00	XXX	0
J2910		E	Aurothioglucose injection	0.00	0.00	0.00	0.00	XXX	0
J2912		E	Sodium chloride injection	0.00	0.00	0.00	0.00	XXX	0
J2920		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	XXX	0
J2930		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	XXX	0
J2950		E	Promazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J2970		E	Methicillin sodium injection	0.00	0.00	0.00	0.00	XXX	0
J2995		E	Inj streptokinase /250000 IU	0.00	0.00	0.00	0.00	XXX	0
J2996		E	Alteplase recombinant inj	0.00	0.00	0.00	0.00	XXX	0
J3000		E	Streptomycin injection	0.00	0.00	0.00	0.00	XXX	0
J3005		E	Strontium-89 chloride /10 ML	0.00	0.00	0.00	0.00	XXX	0
J3010		E	Fentanyl citrate injection	0.00	0.00	0.00	0.00	XXX	0
J3030		E	Sumatriptan succinate / 6 MG	0.00	0.00	0.00	0.00	XXX	0
J3070		E	Pentazocine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3080		E	Chlorprothixene injection	0.00	0.00	0.00	0.00	XXX	0
J3105		E	Terbutaline sulfate inj	0.00	0.00	0.00	0.00	XXX	0
J3120		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	XXX	0
J3130		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	XXX	0
J3140		E	Testosterone suspension inj	0.00	0.00	0.00	0.00	XXX	0
J3150		E	Testosterone propionate inj	0.00	0.00	0.00	0.00	XXX	0
J3230		E	Chlorpromazine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3240		E	Thyrotropin injection	0.00	0.00	0.00	0.00	XXX	0
J3250		E	Trimethobenzamide hcl inj	0.00	0.00	0.00	0.00	XXX	0
J3260		E	Tobramycin sulfate injection	0.00	0.00	0.00	0.00	XXX	0
J3265		E	Injection torsemide 10 mg/ml	0.00	0.00	0.00	0.00	XXX	0
J3270		E	Imipramine hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3280		E	Thiethylperazine maleate inj	0.00	0.00	0.00	0.00	XXX	0
J3301		E	Triamcinolone acetonide inj	0.00	0.00	0.00	0.00	XXX	0
J3302		E	Triamcinolone diacetate inj	0.00	0.00	0.00	0.00	XXX	0
J3303		E	Triamcinolone hexacetonol inj	0.00	0.00	0.00	0.00	XXX	0
J3305		E	Inj trimetrexate glucuronate	0.00	0.00	0.00	0.00	XXX	0
J3310		E	Perphenazine injection	0.00	0.00	0.00	0.00	XXX	0
J3320		E	Spectinomycin di-hcl inj	0.00	0.00	0.00	0.00	XXX	0
J3350		E	Urea injection	0.00	0.00	0.00	0.00	XXX	0
J3360		E	Diazepam injection	0.00	0.00	0.00	0.00	XXX	0
J3364		E	Urokinase 5000 IU injection	0.00	0.00	0.00	0.00	XXX	0
J3365		E	Urokinase 250,000 IU inj	0.00	0.00	0.00	0.00	XXX	0
J3370		E	Vancomycin hcl injection	0.00	0.00	0.00	0.00	XXX	0
J3390		E	Methoxamine injection	0.00	0.00	0.00	0.00	XXX	0
J3400		E	Trifluoperazine hcl inj	0.00	0.00	0.00	0.00	XXX	0
J3410		E	Hydroxyzine hcl injection	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
J3420		E	Vitamin b12 injection	0.00	0.00	0.00	0.00	XXX 0	
J3430		E	Vitamin k phytonadione inj	0.00	0.00	0.00	0.00	XXX 0	
J3450		E	Mephentermine sulfate inj	0.00	0.00	0.00	0.00	XXX 0	
J3470		E	Hyaluronidase injection	0.00	0.00	0.00	0.00	XXX 0	
J3475		E	Inj magnesium sulfate	0.00	0.00	0.00	0.00	XXX 0	
J3480		E	Inj potassium chloride	0.00	0.00	0.00	0.00	XXX 0	
J3490		E	Drugs unclassified injection	0.00	0.00	0.00	0.00	XXX 0	
J3520		N	Edetate disodium per 150 mg	0.00	0.00	0.00	0.00	XXX 0	
J3530		E	Nasal vaccine inhalation	0.00	0.00	0.00	0.00	XXX 0	
J3535		N	Metered dose inhaler drug	0.00	0.00	0.00	0.00	XXX 0	
J3570		N	Laetile amygdalin vit B17	0.00	0.00	0.00	0.00	XXX 0	
J7030		E	Normal saline solution infus	0.00	0.00	0.00	0.00	XXX 0	
J7040		E	Normal saline solution infus	0.00	0.00	0.00	0.00	XXX 0	
J7042		E	5% dextrose/normal saline	0.00	0.00	0.00	0.00	XXX 0	
J7050		E	Normal saline solution infus	0.00	0.00	0.00	0.00	XXX 0	
J7051		E	Sterile saline/water	0.00	0.00	0.00	0.00	XXX 0	
J7060		E	5% dextrose/water	0.00	0.00	0.00	0.00	XXX 0	
J7070		E	D5w infusion	0.00	0.00	0.00	0.00	XXX 0	
J7100		E	Dextran 40 infusion	0.00	0.00	0.00	0.00	XXX 0	
J7110		E	Dextran 75 infusion	0.00	0.00	0.00	0.00	XXX 0	
J7120		E	Fingers lactate infusion	0.00	0.00	0.00	0.00	XXX 0	
J7130		E	Hypertonic saline solution	0.00	0.00	0.00	0.00	XXX 0	
J7140		D	Prescription oral drug	0.00	0.00	0.00	0.00	XXX 0	
J7150		D	Prescription oral chemo drug	0.00	0.00	0.00	0.00	XXX 0	
J7190		X	Factor viii	0.00	0.00	0.00	0.00	XXX 0	
J7191		X	Factor viii (porcine)	0.00	0.00	0.00	0.00	XXX 0	
J7192		X	Factor viii recombinant	0.00	0.00	0.00	0.00	XXX 0	
J7194		X	Factor ix complex	0.00	0.00	0.00	0.00	XXX 0	
J7196		X	Othr hemophilia clot factors	0.00	0.00	0.00	0.00	XXX 0	
J7197		X	Antithrombin iii injection	0.00	0.00	0.00	0.00	XXX 0	
J7300		N	Intraut copper contraceptive	0.00	0.00	0.00	0.00	XXX 0	
J7310		E	Ganciclovir long act implant	0.00	0.00	0.00	0.00	XXX 0	
J7500		X	Azathiop po tab 50mg 100s ea	0.00	0.00	0.00	0.00	XXX 0	
J7501		X	Azathioprine parenteral	0.00	0.00	0.00	0.00	XXX 0	
J7502		D	Cyclosporine oral solution	0.00	0.00	0.00	0.00	XXX 0	
J7503		X	Cyclosporine parenteral	0.00	0.00	0.00	0.00	XXX 0	
J7504		X	Lymphocyte immune globulin	0.00	0.00	0.00	0.00	XXX 0	
J7505		X	Monoclonal antibodies	0.00	0.00	0.00	0.00	XXX 0	
J7506		X	Prednisone oral	0.00	0.00	0.00	0.00	XXX 0	
J7507		E	Tacrolimus oral per 1 MG	0.00	0.00	0.00	0.00	XXX 0	
J7508		E	Tacrolimus oral per 5 MG	0.00	0.00	0.00	0.00	XXX 0	
J7509		X	Methylprednisolone oral	0.00	0.00	0.00	0.00	XXX 0	
J7510		X	Prednisolone oral per 5 mg	0.00	0.00	0.00	0.00	XXX 0	
J7599		X	Immunosuppressive drug noc	0.00	0.00	0.00	0.00	XXX 0	
J7610		E	Acetylcysteine 10% injection	0.00	0.00	0.00	0.00	XXX 0	
J7615		E	Acetylcysteine 20% injection	0.00	0.00	0.00	0.00	XXX 0	
J7620		E	Albuterol sulfate .083%/ml	0.00	0.00	0.00	0.00	XXX 0	
J7625		E	Albuterol sulfate .5% inj	0.00	0.00	0.00	0.00	XXX 0	
J7627		E	Bioterolmesylate inhal sol	0.00	0.00	0.00	0.00	XXX 0	
J7630		E	Cromolyn sodium injection	0.00	0.00	0.00	0.00	XXX 0	
J7640		E	Epinephrine injection	0.00	0.00	0.00	0.00	XXX 0	
J7645		E	Ipratropium bromide .02%/ml	0.00	0.00	0.00	0.00	XXX 0	
J7650		E	Isoetharine hcl .1% inj	0.00	0.00	0.00	0.00	XXX 0	
J7651		E	Isoetharine hcl .125% inj	0.00	0.00	0.00	0.00	XXX 0	
J7652		E	Isoetharine hcl .167% inj	0.00	0.00	0.00	0.00	XXX 0	
J7653		E	Isoetharine hcl .2% inj	0.00	0.00	0.00	0.00	XXX 0	
J7654		E	Isoetharine hcl .25% inj	0.00	0.00	0.00	0.00	XXX 0	
J7655		E	Isoetharine hcl 1% inj	0.00	0.00	0.00	0.00	XXX 0	
J7660		E	Isoproterenol hcl .5% inj	0.00	0.00	0.00	0.00	XXX 0	
J7665		E	Isoproterenol hcl 1% inj	0.00	0.00	0.00	0.00	XXX 0	
J7670		E	Metaproterenol sulfate .4%	0.00	0.00	0.00	0.00	XXX 0	
J7672		E	Metaproterenol sulfate .8%	0.00	0.00	0.00	0.00	XXX 0	
J7675		E	Metaproterenol sulfate .5%	0.00	0.00	0.00	0.00	XXX 0	
J7699		E	Inhalation solution for DME	0.00	0.00	0.00	0.00	XXX 0	
J7799		E	Non-inhalation drug for DME	0.00	0.00	0.00	0.00	XXX 0	
J8499		N	Oral prescrip drug non chemo	0.00	0.00	0.00	0.00	XXX 0	
J8530		E	Cyclophosphamide oral 25 MG	0.00	0.00	0.00	0.00	XXX 0	

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs 3	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
J8560		E	Etoposide oral 50 MG	0.00	0.00	0.00	0.00	XXX 0	
J8600		E	Melphalan oral 2 MG	0.00	0.00	0.00	0.00	XXX 0	
J8610		E	Methotrexate oral 2.5 MG	0.00	0.00	0.00	0.00	XXX 0	
J8999		E	Oral prescription drug chemo	0.00	0.00	0.00	0.00	XXX 0	
J9000		E	Doxorubic hcl 10 MG vi chemo	0.00	0.00	0.00	0.00	XXX 0	
J9010		D	Doxorubicin hcl 50 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9015		E	Aldesleukin/single use vial	0.00	0.00	0.00	0.00	XXX 0	
J9020		E	Asparaginase injection	0.00	0.00	0.00	0.00	XXX 0	
J9031		E	Bcg live intravesical vac	0.00	0.00	0.00	0.00	XXX 0	
J9040		E	Bleomycin sulfate injection	0.00	0.00	0.00	0.00	XXX 0	
J9045		E	Carboplatin injection	0.00	0.00	0.00	0.00	XXX 0	
J9050		E	Carmustine bichl nitro inj	0.00	0.00	0.00	0.00	XXX 0	
J9060		E	Cisplatin 10 MG injection	0.00	0.00	0.00	0.00	XXX 0	
J9062		E	Cisplatin 50 MG injection	0.00	0.00	0.00	0.00	XXX 0	
J9065		E	Inj cladribine per 1 MG	0.00	0.00	0.00	0.00	XXX 0	
J9070		E	Cyclophosphamide 100 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9080		E	Cyclophosphamide 200 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9090		E	Cyclophosphamide 500 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9091		E	Cyclophosphamide 1.0 gm inj	0.00	0.00	0.00	0.00	XXX 0	
J9092		E	Cyclophosphamide 2.0 gm inj	0.00	0.00	0.00	0.00	XXX 0	
J9093		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX 0	
J9094		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX 0	
J9095		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX 0	
J9096		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX 0	
J9097		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	XXX 0	
J9100		E	Cytarabine hcl 100 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9110		E	Cytarabine hcl 500 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9120		E	Dactinomycin actinomycin d	0.00	0.00	0.00	0.00	XXX 0	
J9130		E	Decarbazine 10 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9140		E	Decarbazine 200 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9150		E	Daunorubicin hcl injection	0.00	0.00	0.00	0.00	XXX 0	
J9165		E	Diethylstilbestrol injection	0.00	0.00	0.00	0.00	XXX 0	
J9181		E	Etoposide 10 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9182		E	Etoposide 100 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9185		E	Fludarabine phosphate inj	0.00	0.00	0.00	0.00	XXX 0	
J9190		E	Fluorouracil injection	0.00	0.00	0.00	0.00	XXX 0	
J9200		E	Floxuridine injection	0.00	0.00	0.00	0.00	XXX 0	
J9202		E	Goferlin acetate implant	0.00	0.00	0.00	0.00	XXX 0	
J9208		E	Isofomide injection	0.00	0.00	0.00	0.00	XXX 0	
J9209		E	Measa injection	0.00	0.00	0.00	0.00	XXX 0	
J9211		E	Icarubicin hcl injection	0.00	0.00	0.00	0.00	XXX 0	
J9213		E	Interferon alfa-2a inj	0.00	0.00	0.00	0.00	XXX 0	
J9214		E	Interferon alfa-2b inj	0.00	0.00	0.00	0.00	XXX 0	
J9215		E	Interferon alfa-n3 inj	0.00	0.00	0.00	0.00	XXX 0	
J9216		E	Interferon gamma 1-b inj	0.00	0.00	0.00	0.00	XXX 0	
J9217		E	Leuprolide acetate suspension	0.00	0.00	0.00	0.00	XXX 0	
J9218		E	Leuprolide acetate injection	0.00	0.00	0.00	0.00	XXX 0	
J9230		E	Mechlorethamine hcl inj	0.00	0.00	0.00	0.00	XXX 0	
J9245		E	Inj melphalan hydrochl 50 MG	0.00	0.00	0.00	0.00	XXX 0	
J9250		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	XXX 0	
J9260		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	XXX 0	
J9265		E	Paclitaxel injection	0.00	0.00	0.00	0.00	XXX 0	
J9266		E	Pegaspargase/singl dose vial	0.00	0.00	0.00	0.00	XXX 0	
J9268		E	Pentostatin injection	0.00	0.00	0.00	0.00	XXX 0	
J9270		E	Plicamycin (mithramycin) inj	0.00	0.00	0.00	0.00	XXX 0	
J9280		E	Mitomycin 5 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9290		E	Mitomycin 20 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9291		E	Mitomycin 40 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9293		E	Mitoxantrone hydrochl/5 MG	0.00	0.00	0.00	0.00	XXX 0	
J9320		E	Streptozocin injection	0.00	0.00	0.00	0.00	XXX 0	
J9340		E	Thiotepa injection	0.00	0.00	0.00	0.00	XXX 0	
J9360		E	Vinblastine sulfate inj	0.00	0.00	0.00	0.00	XXX 0	
J9370		E	Vincristine sulfate 1 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9375		E	Vincristine sulfate 2 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9380		E	Vincristine sulfate 5 MG inj	0.00	0.00	0.00	0.00	XXX 0	
J9390		E	Vinorelbine tartrate/10 mg	0.00	0.00	0.00	0.00	XXX 0	
J9999		E	Chemotherapy drug	0.00	0.00	0.00	0.00	XXX 0	

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
M0005		G	Off visit 2/more modalities	+0.76	0.31	0.03	1.10	XXX	0
M0006		G	One phys therapy modality	+0.50	0.15	0.02	0.67	XXX	0
M0007		G	Combined phys ther mod & tx	+1.01	0.35	0.04	1.40	XXX	0
M0008		G	Combined phys ther mod & tx	+0.50	0.11	0.01	0.62	XXX	0
M0054		A	Visit for drug monitoring	0.37	0.19	0.03	0.59	XXX	N
M0075		N	Cellular therapy	0.00	0.00	0.00	0.00	XXX	0
M0076		N	Proctotherapy	0.00	0.00	0.00	0.00	XXX	0
M0100		N	Intragastric hypothermia	0.00	0.00	0.00	0.00	XXX	0
M0101		A	Foot care hygienic/pm	0.43	0.35	0.03	0.81	XXX	S
M0300		N	IV chelationtherapy	0.00	0.00	0.00	0.00	XXX	0
M0301		N	Fabric wrapping of aneurysm	0.00	0.00	0.00	0.00	XXX	0
M0302		N	Assessment of cardiac output	0.00	0.00	0.00	0.00	XXX	0
P2028		X	Cephalin flocculation test	0.00	0.00	0.00	0.00	XXX	0
P2029		X	Congo red blood test	0.00	0.00	0.00	0.00	XXX	0
P2031		N	Hair analysis	0.00	0.00	0.00	0.00	XXX	0
P2033		X	Blood thymol turbidity	0.00	0.00	0.00	0.00	XXX	0
P2038		X	Blood mucoprotein	0.00	0.00	0.00	0.00	XXX	0
P3000		X	Screen pap by tech w md supv	0.00	0.00	0.00	0.00	XXX	0
P3001		X	Screening pap smear by phys	0.42	0.32	0.04	0.78	XXX	N
P3001	26	A	Screening pap smear by phys	0.00	0.00	0.00	0.00	XXX	0
P7001		G	Culture bacterial urine	0.00	0.00	0.00	0.00	XXX	0
P9010		E	Whole blood for transfusion	0.00	0.00	0.00	0.00	XXX	0
P9011		E	Blood split unit	0.00	0.00	0.00	0.00	XXX	0
P9012		E	Cryoprecipitate each unit	0.00	0.00	0.00	0.00	XXX	0
P9013		E	Unit/s blood fibrinogen	0.00	0.00	0.00	0.00	XXX	0
P9014		E	Gamma globulin 1 ML	0.00	0.00	0.00	0.00	XXX	0
P9015		E	Rh immune globulin 1 ML	0.00	0.00	0.00	0.00	XXX	0
P9016		E	Leukocyte poor blood, unit	0.00	0.00	0.00	0.00	XXX	0
P9017		E	One donor fresh frozen plasma	0.00	0.00	0.00	0.00	XXX	0
P9018		E	Plasma protein fract, unit	0.00	0.00	0.00	0.00	XXX	0
P9019		E	Platelet concentrate unit	0.00	0.00	0.00	0.00	XXX	0
P9020		E	Platelet rich plasma unit	0.00	0.00	0.00	0.00	XXX	0
P9021		E	Red blood cells unit	0.00	0.00	0.00	0.00	XXX	0
P9022		E	Washed red blood cells unit	0.00	0.00	0.00	0.00	XXX	0
P9603		X	One-way allow prorated miles	0.00	0.00	0.00	0.00	XXX	0
P9604		X	One-way allow prorated trip	0.00	0.00	0.00	0.00	XXX	0
P9610		X	Urine specimen collect singl	0.00	0.00	0.00	0.00	XXX	0
P9615		X	Urine specimen collect mult	0.00	0.00	0.00	0.00	XXX	0
Q0034		X	Admin of influenza vaccine	0.00	0.00	0.00	0.00	XXX	0
Q0035		A	Cardiokymography	0.17	0.49	0.04	0.70	XXX	N
Q0035	26	A	Cardiokymography	0.17	0.12	0.01	0.30	XXX	N
Q0035	TC	A	Cardiokymography	0.00	0.37	0.03	0.40	XXX	N
Q0068		A	Extracorporeal plasmapheresis	1.67	1.27	0.16	3.10	Q00	N
Q0091		A	Obtaining screen pap smear	0.37	0.28	0.03	0.68	XXX	N
Q0092		A	Set up port x-ray equipment	0.00	0.30	0.01	0.31	XXX	N
Q0103		A	Physical therapy evaluation	1.01	0.35	0.11	1.47	XXX	N
Q0104		A	Phys therapy re-evaluation	0.50	0.04	0.01	0.55	XXX	N
Q0109		A	Occupational therapy eval	1.01	0.35	0.11	1.47	XXX	N
Q0110		A	Occupational therap re-eval	0.50	0.04	0.01	0.55	XXX	N
Q0111		X	Wet mounts/ w preparations	0.00	0.00	0.00	0.00	XXX	0
Q0112		X	Potassium hydroxide preps	0.00	0.00	0.00	0.00	XXX	0
Q0113		X	Pinworm examinations	0.00	0.00	0.00	0.00	XXX	0
Q0114		X	Fem test	0.00	0.00	0.00	0.00	XXX	0
Q0115		X	Post-coital mucous exam	0.00	0.00	0.00	0.00	XXX	0
Q0116		D	Hemoglobin angle analyt exam	0.00	0.00	0.00	0.00	XXX	0
Q0132		X	Dispensing fee DME neo drug	0.00	0.00	0.00	0.00	XXX	0
Q0136		X	Non eard epoetin alpha inj	0.00	0.00	0.00	0.00	XXX	0
Q0144		N	Azithromycin dihydrate, oral	0.00	0.00	0.00	0.00	XXX	0
Q0156		X	Human albumin 5%	0.00	0.00	0.00	0.00	XXX	0
Q0157		X	Human albumin 25%	0.00	0.00	0.00	0.00	XXX	0
Q9920		E	Epoetin with hct <= 20	0.00	0.00	0.00	0.00	XXX	0
Q9921		E	Epoetin with hct = 21	0.00	0.00	0.00	0.00	XXX	0
Q9922		E	Epoetin with hct = 22	0.00	0.00	0.00	0.00	XXX	0
Q9923		E	Epoetin with hct = 23	0.00	0.00	0.00	0.00	XXX	0
Q9924		E	Epoetin with hct = 24	0.00	0.00	0.00	0.00	XXX	0
Q9925		E	Epoetin with hct = 25	0.00	0.00	0.00	0.00	XXX	0
Q9926		E	Epoetin with hct = 26	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT 1/ HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
Q9927		E	Epoetin with hct = 27	0.00	0.00	0.00	0.00	XXX	0
Q9928		E	Epoetin with hct = 28	0.00	0.00	0.00	0.00	XXX	0
Q9929		E	Epoetin with hct = 29	0.00	0.00	0.00	0.00	XXX	0
Q9930		E	Epoetin with hct = 30	0.00	0.00	0.00	0.00	XXX	0
Q9931		E	Epoetin with hct = 31	0.00	0.00	0.00	0.00	XXX	0
Q9932		E	Epoetin with hct = 32	0.00	0.00	0.00	0.00	XXX	0
Q9933		E	Epoetin with hct = 33	0.00	0.00	0.00	0.00	XXX	0
Q9934		E	Epoetin with hct = 34	0.00	0.00	0.00	0.00	XXX	0
Q9935		E	Epoetin with hct = 35	0.00	0.00	0.00	0.00	XXX	0
Q9936		E	Epoetin with hct = 36	0.00	0.00	0.00	0.00	XXX	0
Q9937		E	Epoetin with hct = 37	0.00	0.00	0.00	0.00	XXX	0
Q9938		E	Epoetin with hct = 38	0.00	0.00	0.00	0.00	XXX	0
Q9939		E	Epoetin with hct = 39	0.00	0.00	0.00	0.00	XXX	0
Q9940		E	Epoetin with hct >= 40	0.00	0.00	0.00	0.00	XXX	0
R0070		C	Transport portable x-ray	0.00	0.00	0.00	0.00	XXX	N
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	XXX	N
R0076		B	Transport portable EKG	0.00	0.00	0.00	0.00	XXX	N
V2020		X	Vision svcs frames purchases	0.00	0.00	0.00	0.00	XXX	0
V2025		N	Eyeglasses delux frames	0.00	0.00	0.00	0.00	XXX	0
V2100		X	Lens spher single plano 4.00	0.00	0.00	0.00	0.00	XXX	0
V2101		X	Single vian sphere 4.12-7.00	0.00	0.00	0.00	0.00	XXX	0
V2102		X	Singl vian sphere 7.12-20.00	0.00	0.00	0.00	0.00	XXX	0
V2103		X	Sphero cylindr 4.00d/12-2.00d	0.00	0.00	0.00	0.00	XXX	0
V2104		X	Sphero cylindr 4.00d/2.12-4d	0.00	0.00	0.00	0.00	XXX	0
V2105		X	Sphero cylindr 4.00d/4.25-6d	0.00	0.00	0.00	0.00	XXX	0
V2106		X	Sphero cylindr 4.00d/6.00d	0.00	0.00	0.00	0.00	XXX	0
V2107		X	Sphero cylindr 4.25d/12-2d	0.00	0.00	0.00	0.00	XXX	0
V2108		X	Sphero cylindr 4.25d/2.12-4d	0.00	0.00	0.00	0.00	XXX	0
V2109		X	Sphero cylindr 4.25d/4.25-6d	0.00	0.00	0.00	0.00	XXX	0
V2110		X	Sphero cylindr 4.25d/over 6d	0.00	0.00	0.00	0.00	XXX	0
V2111		X	Sphero cylindr 7.25d/2.25-4d	0.00	0.00	0.00	0.00	XXX	0
V2112		X	Sphero cylindr 7.25d/4.25-6d	0.00	0.00	0.00	0.00	XXX	0
V2113		X	Sphero cylindr 7.25d/over 12.00d	0.00	0.00	0.00	0.00	XXX	0
V2114		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	XXX	0
V2115		X	Nonaspheric lens bifocal	0.00	0.00	0.00	0.00	XXX	0
V2116		X	Aspheric lens bifocal	0.00	0.00	0.00	0.00	XXX	0
V2117		X	Lens aniseikonic single	0.00	0.00	0.00	0.00	XXX	0
V2118		X	Lens single vision not oth c	0.00	0.00	0.00	0.00	XXX	0
V2119		X	Lens spher bifocal 4.00d	0.00	0.00	0.00	0.00	XXX	0
V2200		X	Lens sphere bifocal 4.12-7.0	0.00	0.00	0.00	0.00	XXX	0
V2201		X	Lens sphere bifocal 7.12-20	0.00	0.00	0.00	0.00	XXX	0
V2202		X	Lens sphcyl bifocal 4.00d/1	0.00	0.00	0.00	0.00	XXX	0
V2203		X	Lens sphcyl bifocal 4.00d/2.1	0.00	0.00	0.00	0.00	XXX	0
V2204		X	Lens sphcyl bifocal 4.00d/4.2	0.00	0.00	0.00	0.00	XXX	0
V2205		X	Lens sphcyl bifocal 4.25-7d/	0.00	0.00	0.00	0.00	XXX	0
V2206		X	Lens sphcyl bifocal 4.25-7/2	0.00	0.00	0.00	0.00	XXX	0
V2207		X	Lens sphcyl bifocal 4.25-7/4	0.00	0.00	0.00	0.00	XXX	0
V2208		X	Lens sphcyl bifo 7.25-12/2.25	0.00	0.00	0.00	0.00	XXX	0
V2209		X	Lens sphcyl bifo 7.25-12/4.2	0.00	0.00	0.00	0.00	XXX	0
V2210		X	Lens sphcyl bifocal over 12	0.00	0.00	0.00	0.00	XXX	0
V2211		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	XXX	0
V2212		X	Lens lenticular aspheric bif	0.00	0.00	0.00	0.00	XXX	0
V2213		X	Lens aniseikonic bifocal	0.00	0.00	0.00	0.00	XXX	0
V2214		X	Lens bifocal seg width over	0.00	0.00	0.00	0.00	XXX	0
V2215		X	Lens bifocal add over 3.25d	0.00	0.00	0.00	0.00	XXX	0
V2216		X	Lens bifocal specialty	0.00	0.00	0.00	0.00	XXX	0
V2217		X	Lens sphere trifocal 4.00d	0.00	0.00	0.00	0.00	XXX	0
V2218		X	Lens sphere trifocal 4.12-7	0.00	0.00	0.00	0.00	XXX	0
V2219		X	Lens sphere trifocal 7.12-20	0.00	0.00	0.00	0.00	XXX	0
V2220		X	Lens sphcyl trifocal 4.0/12	0.00	0.00	0.00	0.00	XXX	0
V2221		X	Lens sphcyl trifocal 4.0/2.25	0.00	0.00	0.00	0.00	XXX	0
V2222		X	Lens sphcyl trifocal 4.0/4.25	0.00	0.00	0.00	0.00	XXX	0

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
V2306		X	Lens sphcyl trifocal 4.00-6	0.00	0.00	0.00	0.00	XXX	0
V2307		X	Lens sphcyl trifocal 4.25-7	0.00	0.00	0.00	0.00	XXX	0
V2308		X	Lens sphc trifocal 4.25-7/2	0.00	0.00	0.00	0.00	XXX	0
V2309		X	Lens sphc trifocal 4.25-7/4	0.00	0.00	0.00	0.00	XXX	0
V2310		X	Lens sphc trifocal 4.25-7/6	0.00	0.00	0.00	0.00	XXX	0
V2311		X	Lens sphc trifo 7.25-12/2	0.00	0.00	0.00	0.00	XXX	0
V2312		X	Lens sphc trifo 7.25-12/2.25	0.00	0.00	0.00	0.00	XXX	0
V2313		X	Lens sphc trifo 7.25-12/4.25	0.00	0.00	0.00	0.00	XXX	0
V2314		X	Lens sphcyl trifocal over 12	0.00	0.00	0.00	0.00	XXX	0
V2315		X	Lens lenticular trifocal	0.00	0.00	0.00	0.00	XXX	0
V2316		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	XXX	0
V2317		X	Lens lenticular aspheric tri	0.00	0.00	0.00	0.00	XXX	0
V2318		X	Lens anisotropic trifocal	0.00	0.00	0.00	0.00	XXX	0
V2319		X	Lens trifocal seg width > 29	0.00	0.00	0.00	0.00	XXX	0
V2320		X	Lens trifocal add over 3.25d	0.00	0.00	0.00	0.00	XXX	0
V2399		X	Lens trifocal specialty	0.00	0.00	0.00	0.00	XXX	0
V2410		X	Lens variable asphericity sing	0.00	0.00	0.00	0.00	XXX	0
V2430		X	Lens variable asphericity bi	0.00	0.00	0.00	0.00	XXX	0
V2499		X	Variable asphericity lens	0.00	0.00	0.00	0.00	XXX	0
V2500		X	Contact lens prima spherical	0.00	0.00	0.00	0.00	XXX	0
V2501		X	Contact lens prima-toric/prism	0.00	0.00	0.00	0.00	XXX	0
V2502		X	Contact lens prima bifocal	0.00	0.00	0.00	0.00	XXX	0
V2503		X	Contact lens prima color vision	0.00	0.00	0.00	0.00	XXX	0
V2510		X	Contact gas permeable spherical	0.00	0.00	0.00	0.00	XXX	0
V2511		X	Contact toric prism ballast	0.00	0.00	0.00	0.00	XXX	0
V2512		X	Contact lens gas permbl bifocl	0.00	0.00	0.00	0.00	XXX	0
V2513		X	Contact lens extended wear	0.00	0.00	0.00	0.00	XXX	0
V2520		P	Contact lens hydrophilic	0.00	0.00	0.00	0.00	XXX	0
V2521		X	Contact lens hydrophilic toric	0.00	0.00	0.00	0.00	XXX	0
V2522		X	Contact lens hydrophil bifocl	0.00	0.00	0.00	0.00	XXX	0
V2523		X	Contact lens hydrophil extend	0.00	0.00	0.00	0.00	XXX	0
V2530		X	Contact lens gas impermeable	0.00	0.00	0.00	0.00	XXX	0
V2531		X	Contact lens gas permeable	0.00	0.00	0.00	0.00	XXX	0
V2599		X	Contact lens/ee other type	0.00	0.00	0.00	0.00	XXX	0
V2600		X	Hand held low vision aide	0.00	0.00	0.00	0.00	XXX	0
V2610		X	Single lens spectacle mount	0.00	0.00	0.00	0.00	XXX	0
V2615		X	Telescop/othr compound lens	0.00	0.00	0.00	0.00	XXX	0
V2623		X	Plastic eye prosth custom	0.00	0.00	0.00	0.00	XXX	0
V2624		X	Polishing artificial eye	0.00	0.00	0.00	0.00	XXX	0
V2625		X	Enlargemnt of eye prosthesis	0.00	0.00	0.00	0.00	XXX	0
V2626		X	Reduction of eye prosthesis	0.00	0.00	0.00	0.00	XXX	0
V2627		X	Scleral cover shell	0.00	0.00	0.00	0.00	XXX	0
V2628		X	Fabrication & fitting	0.00	0.00	0.00	0.00	XXX	0
V2629		X	Prosthetic eye other type	0.00	0.00	0.00	0.00	XXX	0
V2630		X	Anter chamber intraocul lens	0.00	0.00	0.00	0.00	XXX	0
V2631		X	Iris support intraocul lens	0.00	0.00	0.00	0.00	XXX	0
V2632		X	Post chmb intraocular lens	0.00	0.00	0.00	0.00	XXX	0
V2700		X	Balance lens	0.00	0.00	0.00	0.00	XXX	0
V2710		X	Glass/plastic slab off prism	0.00	0.00	0.00	0.00	XXX	0
V2715		X	Prism lens/es	0.00	0.00	0.00	0.00	XXX	0
V2716		X	Fresnell prism press-on lens	0.00	0.00	0.00	0.00	XXX	0
V2730		X	Special base curve	0.00	0.00	0.00	0.00	XXX	0
V2740		X	Rose tint plastic	0.00	0.00	0.00	0.00	XXX	0
V2741		X	Non-rose tint plastic	0.00	0.00	0.00	0.00	XXX	0
V2742		X	Rose tint glass	0.00	0.00	0.00	0.00	XXX	0
V2743		X	Non-rose tint glass	0.00	0.00	0.00	0.00	XXX	0
V2744		X	Tint photochromatic lens/es	0.00	0.00	0.00	0.00	XXX	0
V2750		X	Anti-reflective coating	0.00	0.00	0.00	0.00	XXX	0
V2755		X	UV lens/es	0.00	0.00	0.00	0.00	XXX	0
V2760		X	Scratch resistant coating	0.00	0.00	0.00	0.00	XXX	0
V2770		X	Occluder lens/es	0.00	0.00	0.00	0.00	XXX	0
V2780		X	Oversize lens/es	0.00	0.00	0.00	0.00	XXX	0
V2781		X	Progressive lens per lens	0.00	0.00	0.00	0.00	XXX	0
V2785		X	Corneal tissue processing	0.00	0.00	0.00	0.00	XXX	0
V2789		X	Miscellaneous vision service	0.00	0.00	0.00	0.00	XXX	0
V5008		N	Hearing screening	0.00	0.00	0.00	0.00	XXX	0
V5010		N	Assessment for hearing aid	0.00	0.00	0.00	0.00	XXX	0

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² Copyright 1994 American Dental Association. All rights reserved.
³ Indicates RVUs are not used for Medicare payment.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT ¹ / HCPCS ²	MOD	Status	Description	Physician work RVUs ³	Practice expense RVUs	Mal- practice RVUs	Total	Global period	Update
V5011		N	Hearing aid fitting/checking	0.00	0.00	0.00	0.00	XXX	0
V5014		N	Hearing aid repair/modifying	0.00	0.00	0.00	0.00	XXX	0
V5020		N	Conformity evaluation	0.00	0.00	0.00	0.00	XXX	0
V5030		N	Body-worn hearing aid air	0.00	0.00	0.00	0.00	XXX	0
V5040		N	Body-worn hearing aid bone	0.00	0.00	0.00	0.00	XXX	0
V5050		N	Body-worn hearing aid in ear	0.00	0.00	0.00	0.00	XXX	0
V5060		N	Behind ear hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5070		N	Glasses air conduction	0.00	0.00	0.00	0.00	XXX	0
V5080		N	Glasses bone conduction	0.00	0.00	0.00	0.00	XXX	0
V5090		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	XXX	0
V5100		N	Body-worn blast hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5110		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	XXX	0
V5120		N	Body-worn binaur hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5130		N	In ear binaural hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5140		N	Behind ear binaur hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5150		N	Glasses binaural hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5160		N	Dispensing fee binaural	0.00	0.00	0.00	0.00	XXX	0
V5170		N	Within ear cros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5180		N	Behind ear cros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5190		N	Glasses cros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5200		N	Cros hearing aid dispense fee	0.00	0.00	0.00	0.00	XXX	0
V5210		N	In ear bicros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5220		N	Behind ear bicros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5230		N	Glasses bicros hearing aid	0.00	0.00	0.00	0.00	XXX	0
V5240		N	Dispensing fee bicros	0.00	0.00	0.00	0.00	XXX	0
V5299		R	Hearing service	0.00	0.00	0.00	0.00	XXX	0
V5336		N	Repair communication device	0.00	0.00	0.00	0.00	XXX	N
V5362		R	Speech screening	0.00	0.00	0.00	0.00	XXX	0
V5363		R	Language screening	0.00	0.00	0.00	0.00	XXX	N
V5364		R	Dysphagia screening	0.00	0.00	0.00	0.00	XXX	N

Addendum C—Codes With Interim Relative Value Units

Addendum C lists the codes for which interim RVUs have been established. Because these RVUs are interim, public comments on these codes will be considered if they are received by 5 p.m., January 21, 1997. Any revisions to the interim RVUs will be announced in a document to be published in 1997 that provides our analysis of and responses to public comments. These revisions will apply to services furnished beginning January 1, 1998.

Addendum C contains the following information:

1. **CPT/HCPCS code.** This is either a CPT or alphanumeric HCPCS code for the service in question. CPT codes are listed first, followed by alphanumeric HCPCS codes.

2. **Modifier.** A modifier is shown if there is TC (modifier TC) and a PC (modifier -26) for the service. If there is a PC and a TC for the service, Addendum C contains three entries for

the code: One for the global values (both professional and technical); one for modifier -26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PCs and the TCs of the service.

3. **Status indicator.** This indicator shows whether the CPT/HCPCS code is in the fee schedule and whether it is separately payable if the service is covered. See Addendum B for a description of the status indicators.

4. **Description of the code.** This is an abbreviated version of the narrative description of the code.

5. **Physician work RVUs.** These are the interim RVUs for the physician work for this service.

6. **Practice expense RVUs.** These are the interim RVUs for the practice expense for the service.

7. **Malpractice expense RVUs.** These are the interim RVUs for the malpractice expense for the service.

8. **Total RVUs.** This is the sum of the work, practice expense, and malpractice expense RVUs.

9. **Global period.** This indicator shows the number of days in the global period for the code (0, 10, or 90 days). See Addendum B for explanations of the alpha codes.

10. **Update.** This column indicates whether the update for surgical procedures, primary care services, or other nonsurgical services applies to the CPT/HCPCS code in column 1. A "0" appears in this field for codes that are deleted in 1997 or are not paid under the physician fee schedule. A "P" in this column indicates that the update and CF for primary care services applies to this code. An "N" in this column indicates that the update and CF for other nonsurgical services applies to this code. An "S" in this column indicates that the separate update and CF for surgical procedures applies.

ADDENDUM C.—CODES WITH INTERIM RVUS

CPT/HCPCS ¹	MOD	Proc status	Short description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total RVUs	Global period	Update IND
11010		A	Debride skin, fx	4.15	3.96	0.65	8.76	010	S
11011		A	Debride skin/muscle, fx	4.95	4.72	0.77	10.44	000	S
11012		A	Debride skin/muscle/bone, fx	6.68	6.56	1.07	14.51	000	S
11720		A	Debride nail, 1-5	0.32	0.32	0.03	0.67	000	S
11721		A	Debride nail, 6 or more	0.54	0.54	0.05	1.13	000	S
11971		A	Remove tissue expander(s)	1.51	2.30	0.82	4.63	090	S
13300		A	Repair of wound or lesion	5.11	5.71	0.86	11.68	010	S
14300		A	Skin tissue rearrangement	10.78	11.31	1.84	23.91	090	S
15000		A	Skin graft procedure	1.95	2.49	0.53	4.97	ZZZ	S
15101		A	Skin split graft procedure	1.72	1.59	0.33	3.64	ZZZ	S
15121		A	Skin split graft procedure	2.67	2.91	0.53	6.11	ZZZ	S
15201		A	Skin full graft procedure	1.32	1.68	0.50	3.50	ZZZ	S
15221		A	Skin full graft procedure	1.19	1.59	0.50	3.28	ZZZ	S
15241		A	Skin full graft procedure	1.86	2.38	0.58	4.82	ZZZ	S
15261		A	Skin full graft procedure	2.23	2.85	0.60	5.68	ZZZ	S
15756		A	Free muscle flap, microvasc.	33.23	30.09	5.33	68.65	090	S
15757		A	Free skin flap, microvasc	33.23	30.09	5.33	68.65	090	S
15758		A	Free fascial flap, microvasc	33.23	30.09	5.33	68.65	090	S
20150		A	Excise epiphyseal bar	13.00	12.40	2.03	27.43	090	S
20956		A	Iliac bone graft, microvasc	37.00	26.90	5.26	69.16	090	S
20957		A	Mt bone graft, microvasc	38.33	27.87	5.45	71.65	090	S
20962		A	Other bone graft, microvasc.	37.00	26.90	5.26	69.16	090	S
20969		A	Bone/skin graft, microvasc	42.08	40.13	6.57	88.78	090	S
20970		A	Bone/skin graft, iliac crest	41.22	39.31	6.44	86.97	090	S
24149		A	Radical resection of elbow	13.25	12.64	2.07	27.96	090	S
24341		A	Repair tendon/muscle arm	7.33	6.99	1.14	15.46	090	S
24342		A	Repair of ruptured tendon	10.13	10.38	1.76	22.27	090	S
25332		A	Revises wrist joint	10.83	9.98	1.61	22.42	090	S
26040		A	Release palm contracture	3.09	2.66	0.49	6.44	090	S
26060		A	Incision of finger tendon	2.71	1.13	0.17	4.01	090	S
26070		A	Explore/treat hand joint	3.34	2.76	0.42	6.52	090	S
26121		A	Release palm contracture	7.34	9.40	1.61	18.35	090	S
26123		A	Release palm contracture	8.64	9.10	1.53	19.27	090	S
26125		A	Release palm contracture	4.61	2.62	0.45	7.68	ZZZ	S
26185		A	Remove finger bone	5.00	4.24	0.41	9.65	090	S
26540		A	Repair hand joint	6.03	6.84	1.12	13.79	090	S
26541		A	Repair hand joint with graft	8.20	8.94	1.47	18.61	090	S
26546		A	Repair non-union hand	8.50	8.11	1.33	17.94	090	S
26551		A	Great toe-hand transfer	44.31	42.25	6.92	93.48	090	S
26553		A	Single toe-hand transfer	44.00	41.96	6.87	92.83	090	S
26554		A	Double toe-hand transfer	52.50	50.06	8.20	110.76	090	S
26556		A	Toe joint transfer	44.75	42.67	6.99	94.41	090	S
27028		A	Excision of hip joint/muscle	12.00	11.44	1.87	25.31	090	S
28114		A	Removal of metastatic heads.	6.65	9.17	1.42	18.24	090	S
31090		A	Exploration of sinuses	8.66	11.32	2.12	22.09	090	S
32491		N	Lung volume reduction	421.25	15.45	3.02	38.72	XXX	O
33234		A	Removal of pacemaker system.	7.50	2.84	0.23	10.57	090	S
33235		A	Removal pacemaker electrode.	8.74	3.14	0.33	12.21	090	N
33970		A	Aortic circulation assist	6.75	7.54	1.00	15.29	000	S
33971		A	Aortic circulation assist	8.40	5.16	0.91	14.47	090	S
35556		A	Artery bypass graft	19.84	18.71	3.71	42.26	090	S
35566		A	Artery bypass graft	25.00	20.62	4.08	49.70	090	S
35571		A	Artery bypass graft	17.14	19.36	3.67	40.37	090	S
35583		A	Vein bypass graft	20.50	20.44	4.13	45.07	090	S
35585		A	Vein bypass graft	26.47	22.95	4.63	54.05	090	S
35587		A	Vein bypass graft	17.55	21.51	4.13	43.19	090	S
35656		A	Artery bypass graft	18.42	17.73	3.60	39.75	090	S
35666		A	Artery bypass graft	17.60	20.06	4.00	41.66	090	S
35671		A	Artery bypass graft	13.39	15.60	4.08	33.07	090	S
35681		A	Artery bypass graft	8.05	10.42	3.52	21.99	ZZZ	S
35875		A	Removal of clot in graft	9.07	8.21	1.65	18.93	090	S

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²Indicates RVUs are not used for Medicare payment.

ADDENDUM C.—CODES WITH INTERIM RVUS—Continued

CPT/HCPCS ¹	MOD	Proc status	Short description	Physician work RVUs ²	Practice expense RVUs	Mal-practice RVUs	Total RVUs	Global period	Update IND
37250		A	Intravascular us	1.51	1.14	0.13	2.78	ZZZ	N
37251		A	Intravascular us	1.15	0.87	0.10	2.12	ZZZ	N
43496		C	Free jejunum flap, microvasc.	0.00	0.00	0.00	0.00	090	S
46900		A	Destruction, anal lesion(s)	1.81	0.39	0.06	2.26	010	S
49020		A	Drain abdominal abscess	14.25	4.82	0.91	19.98	090	S
49021		A	Drain abdominal abscess	9.06	4.82	0.91	14.79	090	N
49906		C	Free omental flap, microvasc.	0.00	0.00	0.00	0.00	090	S
52300		A	Cystoscopy and treatment	5.31	3.47	0.36	9.14	000	S
52301		A	Cystoscopy and treatment	5.51	3.47	0.36	9.34	000	S
52340		A	Cystoscopy and treatment	9.00	5.15	0.50	14.65	090	S
54100		A	Biopsy of penis	1.90	0.65	0.07	2.62	000	S
56300		A	Pelvic laparoscopy, dx	3.65	4.46	0.93	9.03	000	S
56305		A	Pelvic laparoscopy; biopsy	3.97	4.90	0.79	9.66	000	S
56362		A	Laparoscopy w/cholangio	4.89	2.77	0.19	7.85	000	S
56363		A	Laparoscopy w/biopsy	5.18	3.93	0.45	9.56	000	S
56399		C	Laparoscopy procedure	0.00	0.00	0.00	0.00	YYY	S
56805		A	Repair clitoris	18.00	11.75	1.37	31.12	090	S
57160		A	Insertion of pessary/device	0.89	0.25	0.05	1.19	000	S
57335		A	Repair vagina	18.00	6.91	0.81	25.72	090	S
59525		A	Remove uterus after cesar-	8.54	3.81	0.68	13.23	MMM	S
59866		A	Abortion	4.00	2.66	0.66	7.52	000	S
61586		A	Resect nasopharynx, skull	23.50	21.38	2.32	47.30	090	S
61793		A	Focus radiation beam	16.70	21.35	1.96	40.01	090	S
67210		A	Treatment of retinal lesion	9.48	9.02	0.47	18.97	090	S
68801		A	Dilate tear duct opening	0.89	0.42	0.02	1.33	010	S
68810		A	Probe nasolacrimal duct	1.27	0.65	0.03	1.95	010	S
68811		A	Probe nasolacrimal duct	2.25	1.49	0.09	3.83	010	S
68815		A	Probe nasolacrimal duct	3.00	1.93	0.10	5.03	010	S
69801		A	Incise inner ear	8.19	10.48	1.84	20.51	090	S
75554	26	A	Cardiac MRI/function	1.83	0.72	0.11	2.66	XXX	N
75555	26	A	Cardiac MRI/limited study	1.74	0.72	0.11	2.57	XXX	N
75845	26	A	Intravascular us	0.29	0.22	0.03	0.54	XXX	N
75846	26	A	Intravascular us	0.29	0.22	0.03	0.54	XXX	N
77420		A	Weekly radiation therapy	1.61	0.72	0.11	2.44	XXX	N
77425		A	Weekly radiation therapy	2.44	1.10	0.17	3.71	XXX	N
77430		A	Weekly radiation therapy	3.80	1.61	0.23	5.44	XXX	N
78445	26	A	Vascular flow imaging	0.49	0.24	0.04	0.77	XXX	N
78460	26	A	Heart muscle blood single	0.86	0.39	0.06	1.31	XXX	N
78461	26	A	Heart muscle blood multiple.	1.23	0.54	0.08	1.85	XXX	N
78464	26	A	Heart image (3D) single	1.09	0.48	0.07	1.64	XXX	N
78465	26	A	Heart image (3D) multiple	1.46	0.65	0.10	2.21	XXX	N
78468	26	A	Heart infarct image (3D)	0.92	0.41	0.06	1.39	XXX	N
78481	26	A	Heart first pass single	0.98	0.44	0.07	1.49	XXX	N
78483	26	A	Heart first pass multiple	1.47	0.65	0.10	2.22	XXX	N
90875		A	Psychophysiological therapy.	1.11	0.35	0.05	1.51	XXX	N
90876		A	Psychophysiological therapy.	1.73	0.54	0.08	2.35	XXX	N
90901		A	Biobiofeedback, any method	0.41	0.29	0.02	0.72	000	N
92240	26	A	log angiography	1.10	0.59	0.03	1.72	XXX	N
92548	26	A	Posturography	0.50	0.45	0.05	1.00	XXX	N
92978	26	A	Intravascular us, heart	1.80	1.06	0.08	2.94	ZZZ	N
92979	26	A	Intravascular us, heart	1.44	0.85	0.06	2.35	ZZZ	N
92995		A	Coronary atherectomy	12.09	15.47	1.22	28.78	000	N
93303	26	A	Echo transthoracic	1.30	1.00	0.09	2.39	XXX	N
93304	26	A	Echo transthoracic	0.75	0.68	0.05	1.48	XXX	N
93315	26	A	Echo transeophageal	2.78	1.35	0.12	4.25	XXX	N
93316		A	Echo transeophageal	0.95	0.67	0.06	1.68	XXX	N
93317	26	A	Echo transeophageal	1.83	0.67	0.06	2.56	XXX	N
93619	26	A	Electrophysiology evaluation.	7.32	9.37	0.86	17.55	000	N
93620	26	A	Electrophysiology evaluation.	11.59	13.63	0.95	26.07	000	N

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²Indicates RVUs are not used for Medicare payment.

ADDENDUM C.—CODES WITH INTERIM RVUS—Continued

CPT/ HCPCS ¹	MOD	Proc status	Short description	Physician work RVUs ²	Practice expense RVUs	Mal- practice RVUs	Total RVUs	Global period	Update IND
93621	26	A	Electrophysiology evaluation.	12.66	14.94	1.11	28.71	000	N
93975	26	A	Vascular study	1.80	0.42	0.05	2.27	XXX	N
93976	26	A	Vascular study	1.21	0.26	0.03	1.52	XXX	N
95921	26	A	Autonomic nerve func test	0.45	0.32	0.02	0.79	XXX	N
95922	26	A	Autonomic nerve func test	0.48	0.34	0.03	0.85	XXX	N
95923	26	A	Autonomic nerve func test	0.45	0.32	0.02	0.79	XXX	N
95950	26	A	Ambulatory eeg monitoring	1.51	1.21	0.10	2.82	XXX	N
95951	26	A	EEG monitoring/ videorecord.	6.00	1.50	0.11	7.61	XXX	N
97504		A	Orthotic training	0.45	0.14	0.02	0.61	XXX	N
97520		A	Prosthetic training	0.45	0.16	0.02	0.62	XXX	N
98940		A	Chiropractic manipulation	0.45	0.29	0.01	0.75	000	N
98941		A	Chiropractic manipulation	0.65	0.29	0.01	0.95	000	N
98942		A	Chiropractic manipulation	0.87	0.29	0.01	1.17	000	N
98943		N	Chiropractic manipulation	+0.40	0.29	0.01	0.70	XXX	O
G0061		A	Destroy benign/premal lesion.	0.55	0.41	0.04	1.00	010	S
G0062		A	Destruction of add'l lesions	0.18	0.13	0.01	0.32	ZZZ	S
G0063		A	Destruction of add'l lesions	3.05	2.25	0.20	5.50	ZZZ	S
G0062	26	A	Peripheral bone densitometry.	0.22	0.10	0.02	0.34	XXX	N
G0063	26	A	Central bone densitometry	0.30	0.12	0.02	0.44	XXX	N
G0071		A	Psychotherapy, office, no E/M.	1.11	0.35	0.05	1.51	XXX	N
G0072		A	Psychotherapy, office, with E/M.	1.47	0.35	0.05	1.87	XXX	N
G0073		A	Psychotherapy, office, no E/M.	1.73	0.54	0.08	2.35	XXX	N
G0074		A	Psychotherapy, office, with E/M.	2.00	0.54	0.08	2.62	XXX	N
G0075		A	Psychotherapy, office, no E/M.	2.76	1.05	0.15	3.96	XXX	N
G0076		A	Psychotherapy, office, with E/M.	3.15	1.05	0.15	4.35	XXX	N
G0077		A	Psychotherapy, office, no E/M.	1.19	0.59	0.09	1.87	XXX	N
G0078		A	Psychotherapy, office, with E/M.	1.58	0.59	0.09	2.26	XXX	N
G0079		A	Psychotherapy, office, no E/M.	1.86	0.59	0.09	2.54	XXX	N
G0080		A	Psychotherapy, office, with E/M.	2.15	0.59	0.09	2.83	XXX	N
G0081		A	Psychotherapy, office, no E/M.	2.97	0.59	0.09	3.65	XXX	N
G0082		A	Psychotherapy, office, with E/M.	3.39	0.59	0.09	4.07	XXX	N
G0083		A	Psychotherapy, inpt, no E/M.	1.24	0.35	0.05	1.64	XXX	N
G0084		A	Psychotherapy, inpt, with E/M.	1.65	1.05	0.15	2.85	XXX	N
G0085		A	Psychotherapy, inpt, no E/M.	1.94	0.54	0.08	2.56	XXX	N
G0086		A	Psychotherapy, inpt, with E/M.	2.24	0.54	0.08	2.86	XXX	N
G0087		A	Psychotherapy, inpt, no E/M.	3.09	1.05	0.15	4.29	XXX	N
G0088		A	Psychotherapy, inpt, with E/M.	3.53	1.05	0.15	4.73	XXX	N
G0089		A	Psychotherapy, inpt, no E/M.	1.33	0.35	0.05	1.73	XXX	N
G0090		A	Psychotherapy, inpt, with E/M.	1.77	0.35	0.05	2.17	XXX	N
G0091		A	Psychotherapy, inpt, no E/M.	2.08	0.54	0.08	2.70	XXX	N
G0092		A	Psychotherapy, inpt, with E/M.	2.41	0.54	0.08	3.03	XXX	N

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ADDENDUM C.—CODES WITH INTERIM RVUS—Continued

CPT/ HCPCS ¹	MOD	Proc status	Short description	Physician work RVUs ²	Practice expense RVUs	Mal- practice RVUs	Total RVUs	Global period	Update IND
G0093		A	Psychotherapy, inpt, no E/M.	3.32	1.05	0.15	4.52	XXX	N
G0094		A	Psychotherapy, inpt, with E/M.	3.80	1.05	0.15	5.00	XXX	N

ADDENDUM D.—1997 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier number	Locality number	Locality name	Work	Practice expense	Mal- practice
00510	00	Alabama	0.980	0.871	0.927
01020	01	Alaska	1.084	1.155	1.617
01030	00	Arizona	0.996	0.955	1.321
00520	13	Arkansas	0.954	0.853	0.427
00542	03	Marin/Napa/Solano, CA	1.015	1.180	0.596
00542	05	San Francisco, CA	1.068	1.330	0.596
00542	06	San Mateo, CA	1.040	1.300	0.596
00542	07	Oakland/Berkeley, CA	1.042	1.215	0.596
00542	09	Santa Clara, CA	1.064	1.269	0.596
02050	17	Ventura, CA	1.028	1.192	0.686
02050	18	Los Angeles, CA	1.056	1.207	0.752
02050	25	Anaheim/Santa Ana, CA	1.037	1.205	0.752
02050	99	Rest of California	1.009	1.048	0.827
00542	99	Rest of California	1.008	1.048	0.827
00624	01	Colorado	0.989	0.951	0.827
10230	00	Connecticut	1.050	1.194	1.001
00570	01	Delaware	1.021	1.032	0.792
00580	01	DC & MD/VA Suburbs	1.051	1.192	0.980
00560	04	Miami, FL	1.016	1.087	2.456
00560	03	Fort Lauderdale, FL	0.998	1.036	1.867
00590	99	Rest of Florida	0.977	0.944	1.417
01040	01	Atlanta, GA	1.007	1.030	0.902
01040	99	Rest of Georgia	0.971	0.891	0.902
01120	01	Hawaii	0.999	1.220	0.921
05130	00	Idaho	0.962	0.882	0.568
00621	16	Chicago, IL	1.025	1.080	1.382
00621	15	Suburban Chicago, IL	1.007	1.083	1.159
00621	12	East St Louis, IL	0.968	0.929	1.202
00621	99	Rest of Illinois	0.965	0.884	0.824
00630	00	Indiana	0.982	0.917	0.356
00640	00	Iowa	0.960	0.877	0.679
00650	00	Kansas	0.964	0.891	1.191
00660	00	Kentucky	0.971	0.869	0.819
00528	01	New Orleans, LA	0.989	0.946	0.997
00528	99	Rest of Louisiana	0.969	0.870	0.912
21200	03	Southern Maine	0.980	1.034	0.759
21200	99	Rest of Maine	0.962	0.925	0.759
00901	01	Balto/Surr Clys, MD	1.021	1.036	1.115
00901	99	Rest of Maryland	0.984	0.953	0.862
00700	01	Boston, MA	1.040	1.213	0.976
00700	99	Rest of Massachusetts	1.012	1.086	0.976
00623	01	Detroit, MI	1.043	1.038	3.051
00623	99	Rest of Michigan	0.998	0.935	1.844
10240	00	Minnesota	0.990	0.965	0.594
10250	00	Mississippi	0.958	0.845	0.726
11260	01	St Louis, MO	0.994	0.944	1.207
00740	02	Metro Kansas City, MO	0.989	0.940	1.207
00740	99	Rest of Missouri	0.947	0.835	1.159
11260	99	Rest of Missouri	0.947	0.835	1.159
00751	01	Montana	0.952	0.864	0.756
00655	00	Nebraska	0.951	0.872	0.444
01290	00	Nevada	1.007	1.029	0.887
00780	40	New Hampshire	0.988	1.034	0.916
00660	01	Northern New Jersey	1.059	1.215	0.762
00660	99	Rest of New Jersey	1.029	1.115	0.762
01360	05	New Mexico	0.975	0.903	0.792

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ADDENDUM D.—1997 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier number	Locality number	Locality name	Work	Practice expense	Med. practice
00803	01	Manhattan, NY	1.095	1.359	1.546
00803	02	NYC Suburbs/LI, NY	1.068	1.235	1.759
00803	03	Poughkeepsie/N NYC, NY	1.011	1.081	1.218
14330	04	Queens, NY	1.058	1.240	1.686
00901	99	Rest of New York	1.002	0.955	0.821
05535	00	North Carolina	0.971	0.918	0.435
00820	01	North Dakota	0.551	0.860	0.617
16360	00	Ohio	0.901	0.940	1.049
01370	00	Oklahoma	0.970	0.882	0.481
01380	01	Portland, OR	0.996	0.998	0.837
01380	99	Rest of Oregon	0.963	0.930	0.637
00885	01	Philadelphia, PA	1.025	1.081	1.314
00885	99	Rest of Pennsylvania	0.990	0.924	0.735
00973	20	Puerto Rico	0.883	0.739	0.268
00870	01	Rhode Island	1.019	1.074	1.569
00890	01	South Carolina	0.978	0.899	0.361
00820	02	South Dakota	0.906	0.856	0.443
05440	35	Tennessee	0.976	0.869	0.524
00900	09	Brazoria, TX	0.993	0.966	1.428
00900	11	Dallas, TX	1.012	1.012	0.893
00900	15	Galveston, TX	0.989	0.966	1.428
00900	18	Houston, TX	1.021	1.005	1.428
00900	20	Beaumont, TX	0.993	0.893	1.428
00900	26	Fort Worth, TX	0.989	0.972	0.893
00900	31	Austin, TX	0.987	0.966	0.827
00900	99	Rest of Texas	0.967	0.879	0.839
00910	09	Utah	0.978	0.891	0.844
00780	50	Vermont	0.974	0.986	0.452
10490	00	Virginia	0.987	0.941	0.518
00973	50	Virgin Islands	0.986	0.978	1.023
01390	02	Seattle (King Co.), WA	1.006	1.077	0.748
01390	99	Rest of Washington	0.983	0.961	0.748
16510	00	West Virginia	0.964	0.850	1.004
00851	00	Wisconsin	0.982	0.926	1.160
00825	21	Wyoming	0.968	0.881	0.611

Note: Work GPCI is the 1/4 work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act.

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BILLING CODE 4199-01-P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-883-FW]

RN 0030-AH41

Medicare Program; Physician Fee Schedule Update for Calendar Year 1997 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the calendar year 1997 updates to the Medicare physician fee schedule and the Federal fiscal year 1997 volume performance standard rates of increase for expenditures for physicians' services under the Medicare Supplementary Medical Insurance (Part B) program as required by sections 1848 (d) and (f), respectively, of the Social Security Act. The fee schedule updates for calendar year 1997 are 1.9 percent for surgical services, 2.5 percent for primary care services, and -0.8 percent for other nonsurgical services. While it does not affect payment for any particular service, there was a 0.6 percent increase in the update for all physicians' services for 1997. The physician volume performance standard rates of increase for Federal fiscal year 1997 are -3.7 percent for surgical services, 4.5 percent for primary care services, -0.5 percent for other nonsurgical services, and a weighted average of -0.3 percent for all physicians' services.

EFFECTIVE DATE: The provisions in this final notice pertaining to the Medicare volume performance standard rates of increase are effective October 1, 1996, and the provisions pertaining to the Medicare physician fee schedule update are effective January 1, 1997, as provided by the Medicare statute. Ordinarily, 5 U.S.C. section 801 requires that agencies submit major rules to Congress 60 days before the rules are scheduled to become effective. However, the 104th Congress adjourned on October 4, 1996, and the 105th Congress is not scheduled to convene until January 7, 1997. The Department has concluded that, in this instance, a further delay in the effective dates in order to satisfy section 801 would not serve the law's intent, since Congress will not be in session during this period, and such delay in the effective dates established by the Medicare statute is unnecessary and contrary to the public interest. The Department finds, on this

basis, that there is good cause for establishing these effective dates pursuant to 5 U.S.C. section 552(2).

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FOR FURTHER INFORMATION CONTACT: Ordering information: See ADDRESSES section.

Content information: Contact Don Thompson, (410) 786-4586.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Legislation

A. The Physician Fee Schedule Update and Medicare Volume Performance Standard

Section 1848 of the Social Security Act (the Act) requires the Secretary of Health and Human Services to—

- Establish annual updates to payment rates under the Medicare physician fee schedule, and
- Establish volume performance standard rates of increase to help control the rate of growth in expenditures for physicians' services.

Under section 1848(b)(1) of the Act, payment for physicians' services, except for anesthesia services, equals the product of the relative value units (RVUs) for a service, a geographic adjustment factor, and a conversion factor. Anesthesia services are paid under a different relative value system, and payment is equal to the sum of the base and time units for the service multiplied by a geographically adjusted anesthesia-specific conversion factor. The RVUs and anesthesia base units reflect the relative amount of resources used by physicians to furnish the service, and the geographic adjustment factor measures practice cost differences between areas. The geographically adjusted RVUs are multiplied by a conversion factor to obtain the physician fee schedule payment amounts. As is discussed in section IV.C.1. of the final rule for the 1997 physician fee schedule, "Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1997," published elsewhere in this Federal Register issue, there is a separate adjustment to the work RVUs in 1997. (This rule is referenced from now on as the 1997 physician fee schedule final rule.) Therefore, for 1997, the work RVUs are adjusted by this separate factor, and all RVUs are adjusted by a geographic practice cost index and multiplied by a conversion factor to obtain the physician fee schedule payment amounts. We plan on eliminating this separate adjuster in 1998 when we implement resource-based practice expense RVUs.

The 1997 conversion factors are \$16.68 for anesthesia services, \$40.9603 for surgical services, \$35.7671 for primary care services, and \$33.8454 for other nonsurgical services.

1. Physician Fee Schedule Update

Section 1848(d) of the Act requires the Secretary to provide the Congress with her recommendation of a physician fee schedule update by April 15 of each year. Under section 1848(d)(2)(A) of the Act, the Secretary is required to consider a number of factors, including the following:

- The percentage change in the Medicare economic index (MEI), a measure of the change in the cost of operating a medical practice.
- The growth in actual expenditures for physicians' services in the prior fiscal year.
- The relationship between that growth and the volume performance standard rate of increase.
- Changes in the volume and intensity of services.
- Access to services.
- Other factors that may contribute to changes in the volume and intensity of services or access to services.

If the Congress does not set the update, section 1848(d)(3) of the Act establishes the process for updating the physician fee schedule. Under section 1848(d)(3), unless otherwise specified by the Congress, the fee schedule update for a category of physicians' services equals the appropriate update index (the MEI) adjusted by the number of percentage points by which expenditure growth exceeded or was less than the volume performance standard rates of increase for the second preceding year for that category of physicians' services. That is, the calendar year 1997 update would equal the 1997 MEI increased or decreased by the difference between the rate of increase in expenditures for fiscal year 1995 and the volume performance standard for that year. However, section 1848(d)(3)(B) of the Act limits the maximum downward adjustment for 1995 and any succeeding year to 5.0 percentage points. There is no restriction on upward adjustments to the MEI.

Section 1848(d)(1)(C) of the Act requires the Secretary to publish in the Federal Register, within the last 15 days of October, the updates for the following calendar year.

The updates are required by the Medicare statute, and any budget implications associated with them are

due to the requirements of the law and not this notice.

2. Medicare Volume Performance Standard Rates of Increase

Section 1848(f) of the Act requires the Secretary to establish volume performance standard rates of increase for Medicare expenditures for physicians' services. The use of volume performance standard rates of increase is intended to control the rate of increase in expenditures for physicians' services.

The volume performance standard rates of increase are not limits on expenditures. Payments for services are not withheld if volume performance standard rates of increase are exceeded. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3)(A) of the Act, is adjusted to reflect the success or failure in meeting the volume performance standard rates of increase.

Section 1848(f) of the Act sets forth the process for establishing the volume performance standard rates of increase by requiring the Secretary to recommend to the Congress the physician volume performance standard rates of increase for the following Federal fiscal year by not later than April 15. The Secretary is required to recommend MVPS rates for surgical, primary care, other nonsurgical, and all physicians' services. In making the recommendations, the Secretary is required to confer with organizations that represent physicians and to consider the following factors:

- Inflation.
- Changes in the number and age composition of Medicare enrollees under Part B (excluding risk health maintenance organization enrollees).
- Changes in technology.
- Evidence of inappropriate utilization of services.
- Evidence of lack of access to necessary physicians' services.
- Other appropriate factors as determined by the Secretary.

If the Congress does not set the volume performance standard rates of increase, section 1848(f)(2)(A) and (B) of the Act requires the Secretary to set MVPS rates for all physicians' services and each category of physicians' services equal to the product of the

following four factors reduced by a performance standard factor, which for fiscal year 1997 is 4.0 percentage points:

- 1.0 plus the Secretary's estimate of the weighted-average percentage increase (divided by 100) in fees for all physicians' services or for the category of physicians' services for the portions of calendar year 1996 and calendar year 1997 contained in fiscal year 1997.

- 1.0 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of Part B enrollees (excluding risk health maintenance organization enrollees) from fiscal year 1996 to fiscal year 1997.

- 1.0 plus the Secretary's estimate of the average annual percentage growth (divided by 100) in the volume and intensity of all physicians' services or of the category of physicians' services for fiscal year 1991 through fiscal year 1996.

- 1.0 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services or of the category of physicians' services that will result from changes in law or regulations in fiscal year 1997 as compared with expenditures for physicians' services in fiscal year 1996.

Section 1848(f)(1)(C) of the Act requires the Secretary to publish in the Federal Register within the last 15 days of October of each year the volume performance standard rates of increase for all physicians' services and for each category of physicians' services for the Federal fiscal year that began on October 1 of that year. (The MVPS for all physicians' services has no practical effect on the update. We publish it only because we are required to do so by section 1848(f) of the Act.)

3. Past Years' Medicare Volume Performance Standard Rates of Increase and Physician Fee Schedule Updates

MVPS rates have been established under section 1848 of the Act since fiscal year 1990. Calendar year 1992 was the first year in which the update was affected by expenditures under the MVPS system. The following tables illustrate the MVPS rates in each fiscal year since their inception, the actual rates of increase, and the corresponding updates in the second subsequent calendar year.

FEE SCHEDULE UPDATE
(In Percent)

Calendar year	MEI	Performance adjustment	Legislative adjustment	Update
CY 1992:				
All services				
CY 1993:	3.2	-0.9	-0.4	1.9
Surgical	2.7	0.4		3.1
Nonsurgical	2.7	-1.9		0.8
All services ¹				1.4
CY 1994:				
Surgical	2.3	11.3	-3.6	10.0
Primary care	2.3	5.6	0.0	7.9
Other nonsurgical	2.3	5.6	-2.6	5.3
All services ¹				7.0
CY 1995:				
Surgical	2.1	12.8	-2.7	12.2
Primary care	2.1	5.6	0.0	7.0
Other nonsurgical	2.1	5.6	-2.7	5.2
All services ¹				7.7
CY 1996:				
Surgical	2.0	1.8		3.8
Primary care	2.0	-4.3		-2.3
Other nonsurgical	2.0	-1.6		-0.4
All services ¹				0.8
CY 1997:				
Surgical	2.0	-0.1		1.9
Primary care	2.0	0.5		2.5
Other nonsurgical	2.0	-2.8		-0.8
All services ¹				0.6

¹ The all services update is the weighted average of the category updates and, except for 1992, does not affect payment.

MEDICARE VOLUME PERFORMANCE STANDARD RATES OF INCREASE
(In Percent)

Fiscal Year	MVPS	Actual	Difference
FY 1990:			
All services			
FY 1991:	9.1	10.0	-0.9
Surgical	3.3	2.9	0.4
Nonsurgical	8.6	10.5	-1.9
FY 1992:			
Surgical	6.5	-4.8	11.3
Nonsurgical	11.2	5.6	5.6
FY 1993:			
Surgical	8.4	-4.4	12.8
Nonsurgical	10.8	5.0	5.8
FY 1994:			
Surgical	9.1	7.3	1.8
Primary care	10.5	14.8	-4.3
Other nonsurgical	9.2	10.8	-1.6
FY 1995:			
Surgical	9.2	9.3	-0.1
Primary care	13.8	13.3	0.5
Other nonsurgical	4.4	7.2	-2.8
FY 1996:			
Surgical	-0.5		
Primary care	9.3		
Other nonsurgical	0.6		
FY 1997:			
Surgical	-3.7		
Primary care	4.5		
Other nonsurgical	-0.5		

Separate MVPS rates for surgical and nonsurgical services were not required until fiscal year 1991. Separate fee schedule updates were not required until calendar year 1993. Beginning with the calendar year 1994 fee schedule update and the fiscal year 1994 MVPS, we established separate updates and MVPS rates of increase for surgical, primary care, and other nonsurgical services.

B. Physicians' Services

Section 1848(f)(5)(A) of the Act defines physicians' services for purposes of the volume performance standard rates of increase as including other items or services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed by a physician or furnished in a physician's office. Section 1861(s) of the Act defines medical and other health services covered under Part B. As provided for in the fiscal year 1990 volume performance standard rates of increase notice in the Federal Register on December 29, 1989 (54 FR 53819), we are including the following medical and other health services in section 1861(s) of the Act in the physician volume performance standard rates of increase if bills for the items are processed and paid for by Medicare carriers:

- Physicians' services.
- Services and supplies furnished incident to physicians' services.
- Outpatient physical therapy and speech therapy services, and outpatient occupational therapy services.
- Antigens prepared by or under the direct supervision of a physician.
- Services of physician assistants, certified registered nurse anesthetists, certified nurse midwives, clinical psychologists, clinical social workers, nurse practitioners, and clinical nurse specialists.
- Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests.
- X-ray, radium, and radioactive isotope therapy.
- Surgical dressings, splints, casts, and other devices used for reduction of fractures and dislocations.

As stated in our December 8, 1994 final notice (59 FR 63638) announcing the fiscal year 1995 volume performance standard rates of increase, we included outpatient diagnostic laboratory tests paid through intermediaries in the MVPS definition of physicians' services beginning in fiscal year 1996 (59 FR 63640).

C. Definition of Surgical, Primary Care, and Other Nonsurgical Services

As described in the December 2, 1993 notice (58 FR 63858) containing our definitions of surgical, primary care, or other nonsurgical services, we consider a procedure to be surgical if the following conditions are met:

- In the HCFA Part B data system, the service is classified under "type of service" as a "surgery."
- The service is performed by surgical specialists more than 50 percent of the time.

As also discussed in the December 1993 notice, section 1842(i)(4) of the Act defines primary care services as "office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services." Since this language was the result of an amendment to the Act made by section 4042(b) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Pub. L. 100-203), enacted on December 22, 1987, we rely on the conference report accompanying OBRA 1987 (H. R. Rep. No. 100-495, 100th Congress, 1st Session 594-595 (1987)) to determine the HCFA Common Procedure Coding System (HCPCS) codes to be included in the definition of primary care services. In addition, section 6102(f)(10) of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Pub. L. 101-239), enacted on December 19, 1989, indicated intermediate and comprehensive office visits for eye examinations and treatments for new patients were to be considered primary care services.

We classify physicians' services not meeting the surgical or primary care definitions as nonsurgical services.

For a procedure code that is new in 1997 and does not meet the primary care definition, we do not have any data for determining how often the procedure is performed by surgical specialists and therefore whether the service should be classified as surgical or nonsurgical. We categorized these codes as surgical or nonsurgical based on the judgment of our medical staff. To assist us in making these determinations, we considered the type-of-service classification within the Physicians' Current Procedural Terminology (CPT) and the relationship of services represented by the new codes to surgical services meeting the above-described criteria. We followed a similar process to classify codes that were new in 1996. For the 1997 classification of the new 1996 codes, however, we used 6 months of 1996 data to determine whether they meet the criteria for being considered surgical

services. Based on these data, we did not need to reclassify any codes as surgical or nonsurgical.

Beginning in 1996, we classified monthly end-stage renal disease services (HCPCS codes 90918 through 90921) as primary care services. For a full discussion of this classification, see the final rule with comment period entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1996" published in the Federal Register on December 8, 1995 (60 FR 63155 through 63158).

Also, Addendum B of the 1997 physician fee schedule final rule, published elsewhere in this Federal Register issue, lists the RVUs and related information used in determining Medicare payments for HCPCS codes. For the purposes of the physician fee schedule, we have assigned the following surgical, primary care, or other nonsurgical service update indicators to these codes:

Update Indicator	Interpretation
S	Surgical services.
P	Primary care services.
N	The physician fee schedule update applies, but the code is not defined as surgical or primary care.
O	The physician fee schedule update does not apply.

The MVPS indicator for a procedure code is identical to the update indicator for codes that have a surgical, primary care, or other nonsurgical service update indicator. However, we consider some codes with an update indicator of "O" to be nonsurgical for the purposes of the MVPS, most notably the clinical diagnostic laboratory codes.

II. Provisions of This Final Notice**A. Physician Fee Schedule Update for Calendar Year 1997**

Under the requirements of section 1848(d)(3) of the Act, the fee schedule update for calendar year 1997 will be 1.9 percent for surgical services, 2.5 percent for primary care services, and -0.8 percent for other nonsurgical services. The weighted average update across all services for 1997 will be 0.6 percent. We determined this update as follows:

	Surgical services	Primary care services	Nonsurgical services
1997 MEI	(In Percent)		
MVPS Adjustment	2.0	2.0	2.0
1997 Update	-0.1	0.5	-2.5
	1.9	2.5	-0.5

As discussed in our December 8, 1995 final rule for the 1996 physician fee schedule (60 FR 63172 through 63173), we began applying budget-neutrality adjustments to the conversion factors rather than to the RVUs in 1996. As we discuss in section IX of the 1997 physician fee schedule final rule, published elsewhere in this Federal Register issue, there will be two separate budget neutrality adjustments in 1997. The first will be a budget neutrality adjustment applied to the work RVUs when calculating Medicare physicians' fees for 1997. This budget neutrality adjustment, 8.3 percent, will account for fee changes related to the 5-year review of work RVUs. The second budget neutrality adjustment, 1.5 percent, will be applied uniformly to the conversion factors to account for both the fee schedule changes unrelated to the 5-year review and the anticipated

volume and intensity response to all fee schedule changes unrelated to the conversion factor updates. Because anesthesia services are not paid on the basis of work RVUs, an equivalent -7.5 percent adjustment will be made to the anesthesia conversion factor to account for both these budget neutrality adjustments.

Applying the updates and conversion factor budget neutrality adjustment to the 1996 conversion factors of \$40.7986 for surgical services (other than anesthesia services), \$35.4173 for primary care services, and \$34.6293 for nonsurgical services yields 1997 conversion factors of \$40.9603 for surgical services, \$35.7671 for primary care services, and \$33.8454 for other nonsurgical services. The 1996 anesthesia conversion factor of \$15.28, which includes the effect of the 1996 budget neutrality adjustment, will be updated by the surgical update to

\$16.68 for 1997, after adjusting for the 1997 budget neutrality adjustments.

The specific calculations to determine the fee schedule updates for physicians' services for calendar year 1997 are explained in section III.A. of this notice.

B. Physician Volume Performance Standard Rates of Increase for Fiscal Year 1997

Under the requirements in section 1848(f)(2)(A) and (B) of the Act, we have determined that the volume performance standard rates of increase for physicians' services for fiscal year 1997 are -3.7 percent for surgical services, 4.5 percent for primary care services, -0.5 percent for other nonsurgical services, and a weighted average of -0.3 percent for all physicians' services.

This determination is based on the following statutory factors:

Statutory factors	Surgical services	Primary care services	Nonsurgical services
	(In Percent)		
Fee	2.0	2.0	2.2
Enrollment	-1.1	-1.1	-1.1
	(In Percent)		
Volume and Intensity	1.6	4.0	4.0
Legislation	-2.1	3.4	-1.5
Performance Standard Factor	4.0	4.0	4.0
Total	-3.7	4.5	-0.5

The specific calculations to determine the volume performance standard rates of increase for physicians' services for fiscal year 1997 are explained in section III.B. of this notice.

III. Detail on Calculation of the Calendar Year 1997 Physician Fee Schedule Update and the Fiscal Year 1997 Physician Volume Performance Standard Rates of Increase**A. Physician Fee Schedule Update****1. The Percentage Change in the Medicare Economic Index**

The MEI measures the weighted-average annual price change for various inputs needed to produce physicians' services. The MEI is a fixed-weight input price index, with an adjustment for the change in economy-wide labor

productivity. This index, which has 1989 base weights, is comprised of two broad categories: (1) Physician's own time, and (2) physician's practice expense.

The physician's own time component represents the net income portion of business receipts and primarily reflects the input of the physician's own time into the production of physicians' services in physicians' offices. This category consists of two subcomponents, wages and salaries and fringe benefits. These components are adjusted by the 10-year moving average percent change in output per man-hour for the nonfarm business sector to eliminate double counting for productivity growth in physicians' offices and the general economy.

The physician's practice expense category represents the rate of price growth in nonphysician inputs to the production of services in physicians' offices. This category consists of wages and salaries and fringe benefits for nonphysician staff and other nonlabor inputs. Like physician's own time, the nonphysician staff categories are adjusted for productivity using the 10-year moving average percent change in output per man-hour for the nonfarm business sector. The physician's practice expense component also includes the following categories of nonlabor inputs: office expense, medical materials and supplies, professional liability insurance, medical equipment, professional car, and other expense. The table below presents a listing of the MEI cost categories with associated weights

and percent changes for price proxies for the 1997 update. The calendar year 1997 MEI is 2.0 percent.

INCREASE IN THE MEDICARE ECONOMIC INDEX UPDATE FOR CALENDAR YEAR 1997¹

	1986 weights ²	CY 1997 percent changes
Medicare Economic Index Total	100.0	2.0
1. Physician's Own Time ^{3,4}	54.2	2.0
a. Wages and Salaries: Average hourly earnings private nonfarm, net of productivity	45.3	2.2
b. Fringe Benefits: Employment Cost Index, benefits, private nonfarm, net of productivity	8.8	1.0
2. Physician's Practice Expense ⁵	45.8	2.0
a. Nonphysician Employee Compensation	16.3	1.0
1. Wages and Salaries: Employment Cost Index, wages and salaries, weighted by occupation, net of productivity	13.8	2.0
2. Fringe Benefits: Employment Cost Index, fringe benefits, white collar, net of productivity	2.5	1.4
b. Office Expense: Consumer Price Index for Urban Consumers (CPI-U), housing	10.3	2.8
c. Medical Materials and Supplies: Producer Price Index (PPI), ethical drugs/PPI, surgical appliances and supplies/CPI-U, medical equipment and supplies (equally weighted)	5.2	2.2
d. Professional Liability Insurance: HCFA professional liability insurance survey ⁶	4.8	-1.1
e. Medical Equipment: PPI, medical instruments and equipment	2.3	1.6
f. Other Professional Expense	6.9	2.8
1. Professional Car: CPI-U, private transportation	1.4	2.3
2. Other: CPI-U, all items less food and energy	5.5	2.9
Addendum:		
Productivity: 10-year moving average of output per man-hour, nonfarm business sector	N/A	0.9
Physician's Own Time, not productivity adjusted	54.2	2.9
Wages and salaries, not productivity adjusted	45.3	3.1
Fringe benefits, not productivity adjusted	8.8	1.9
Nonphysician Employee Compensation, not productivity adjusted	16.3	2.0
Wages and salaries, not productivity adjusted	13.8	2.9
Fringe benefits, not productivity adjusted	2.5	2.3

¹ The rates of change are for the 12-month period ending June 30, 1996, which is the period used for computing the calendar year 1997 update. The price proxy values are based upon the latest available Bureau of Labor Statistics data as of September 1996.

² The weights shown for the MEI components are the 1986 base-year weights, which may not sum to subtotals or totals because of rounding. The MEI is a fixed-weight, Laspeyres-type input price index whose category weights indicate the distribution of expenditures among the inputs to physicians' services for calendar year 1990. To determine the MEI level for a given year, the price proxy level for each component is multiplied by its 1986 weight. The sum of these products (weights multiplied by the price index levels) over all cost categories yields the composite MEI level for a given year. The annual percent change in the MEI levels is an estimate of price change over time for a fixed market basket of inputs to physicians' services.

³ The Physician's Own Time and Nonphysician Employee Compensation category price measures include an adjustment for productivity. The price measure for each category is divided by the 10-year moving average of output per man-hour in the nonfarm business sector. For example, the wages and salaries component of Physician's Own Time is calculated by dividing the rate of growth in average hourly earnings by the 10-year moving average rate of growth of output per man-hour for the nonfarm business sector. Dividing one plus the decimal form of the percent change in the average hourly earnings (1+.031=1.031) by one plus the decimal form of the percent change in the 10-year moving average of labor productivity (1+.009=1.009) equals one plus the change in average hourly earnings net of the change in output per man-hour (1.031/1.009=1.022). All Physician's Own Time and Nonphysician Employee Compensation categories are adjusted in this way. Due to a higher level of precision the computer calculated quotient may differ from the quotient calculated from rounded individual percent changes.

⁴ The average hourly earnings proxy, the Employment Cost Index proxies, as well as the CPI-U, housing and CPI-U, private transportation are published in the Current Labor Statistics Section of the Bureau of Labor Statistics' Monthly Labor Review. The remaining CPIs and PPIs in the revised index can be obtained from the Bureau of Labor Statistics' CPI Detailed Report or Producer Price Indexes.

⁵ Derived from a HCFA survey of several major insurers (the latest available historical percent change data are for calendar year 1995). This is consistent with prior computations of the professional liability insurance component of the MEI.

⁶ N/A Productivity is factored into the MEI compensation categories as an adjustment to the price variables; therefore, no explicit weight exists for productivity in the MEI.

2. Medicare Volume Performance Standard Performance Adjustment

As required by section 1848(d)(3)(B)(i) of the Act, we are increasing the update by 0.5 percentage points for primary care services and decreasing it by 0.1 percentage points for surgical and 2.8 percentage points for other nonsurgical services to reflect the percentage increase in expenditures between fiscal year 1994 and fiscal year 1995 relative to the volume performance standard rates of increase for fiscal year 1995.

Our estimate of the percentage growth in surgical services between fiscal year 1994 and fiscal year 1995 is 9.3 percent.

Because the volume performance standard rate of increase for fiscal year 1995 was 9.2 percent, the rate of increase in expenditures for surgical services was greater than the volume performance standard rate of increase by 0.1 percentage points. For primary care services, the rate of increase in expenditures was 13.3 percent, 0.5 percentage points less than the volume performance standard rate of increase of 13.8 percent. For other nonsurgical services, the rate of increase in expenditures was 7.2 percent, 2.8 percentage points greater than the

volume performance standard rate of increase of 4.4 percent.

B. Fiscal Year 1997 Physician Volume Performance Standard Rates of Increase

Below we explain how we determined the increases for each of the four factors used in determining the volume performance standard rates of increase for fiscal year 1997.

Factor 1—Weighted-Average Percentage Increase in Fees for Physicians' Services (Before Applying Legislative Reductions) for Months of Calendar Years 1996 and 1997 Included in Fiscal Year 1997

This factor was calculated as a weighted average of the fee increases that apply to fiscal year 1997; that is, the fee increases that apply to the last 3 months of calendar year 1996 multiplied by 25 percent plus the fee increases that apply to the first 9 months of calendar year 1997 multiplied by 75 percent. Beginning with calendar year 1992, physicians' services are updated by a physician fee schedule update factor that is based on the MEI adjusted for several statutory factors. The update factor for a category of physicians' services for calendar year 1997 is adjusted by the number of percentage points that the rate of increase in expenditures in fiscal year 1995 compared to fiscal year 1994 was less than the volume performance standard rate of increase for the category of physicians' services in fiscal year 1995. Laboratory services are updated by increases in the Consumer Price Index for Urban Consumers (CPI-U).

Table 2 shows the updates that were used to determine the weighted-average percentage increase in physicians' fees.

TABLE 2.—MEDICARE ECONOMIC INDEX AND CONSUMER PRICE INDEX FOR URBAN CONSUMERS FOR CALENDAR YEARS 1996 AND 1997

	1996	1997
MEI	2.0	2.0
CPI-U	3.2	2.7

Physicians' services make up approximately 90 percent of the total expenditures in the definition of physicians' services used for purposes of the volume performance standard rates of increase; laboratory services represent approximately 10 percent.

In addition to the annual updates and individual weights of the above services, one other element has an effect on the rate of increase in physician fees. Section 1842(b)(1) of the Act provides for "participating physicians" who agree to accept Medicare payment as payment in full and to bill Medicare beneficiaries only for the 20 percent coinsurance amount and any unmet portion of the \$100 annual deductible amount. Sections 1842(b)(4)(A)(iv) and 1848(a)(3) of the Act provide that nonparticipating physicians are paid 5 percent less for their Medicare services than participating physicians. The

nonparticipating physicians are given an opportunity at the end of each calendar year to enroll as participating physicians for the next calendar year. Participation rates have increased each year, and we assume that this trend will continue. The increase in the number of participating physicians and the fact that they are paid at a rate higher than nonparticipating physicians also add to the rate of increase in the weighted-average percentage increase in physician fees.

After taking into account all the elements described above, we estimate that the weighted-average increase in fees for physicians' services in fiscal year 1997 before applying the legislative changes will be 2.0 percent for surgical services, 2.0 percent for primary care services, 2.2 percent for other nonsurgical services, and a weighted average of 2.1 percent for all physicians' services.

Factor 2—The Percentage Increase in the Average Number of Part B Enrollees from Fiscal Year 1996 to Fiscal Year 1997

We estimate that average Medicare Part B enrollment in fiscal year 1997, excluding those enrolled in risk health maintenance organizations (whose Medicare-covered medical care is paid for through the adjusted average per capita cost mechanism and is therefore outside the scope of the MVPS) will be 32.170 million.

The corresponding figure for 1996 is estimated to be 32.532 million total Part B enrollees not enrolled in risk health maintenance organizations. This represents a 1.1 percent decrease in enrollment from fiscal year 1996 to fiscal year 1997 for surgical services, primary care services, other nonsurgical services, and the average of all physicians' services.

Factor 3—Average Annual Growth in the Volume and Intensity of Physicians' Services for Fiscal Year 1992 Through Fiscal Year 1996

Section 1848(f)(2)(A)(iii) of the Act requires the Secretary to estimate the average annual percentage growth in the volume and intensity of physicians' services or of the category of physicians' services for fiscal year 1992 through fiscal year 1996. This estimate must be based upon information contained in the most recent annual report issued by the Board of Trustees of the Supplementary Medical Insurance Trust Fund (Trustees' Report).

The data on the percentage increase in the volume and intensity of services in the Trustees' Report are based on historical trends in increases in allowed

charges, which are not influenced by the Part B deductible. Increases in expenditures, however, are influenced by the Part B deductible. Section 1832(b) of the Act specifies that the Part B deductible will be \$100 for calendar year 1991 and subsequent years. The effect of the deductible remaining fixed at \$100 is that the overall annual increases in allowed charges for MVPS physicians' services are lower than the overall annual increases in expenditures. Although we believe it would be consistent with a literal interpretation of section 1848(f)(2)(A)(iii) of the Act, it would be inappropriate to base the volume and intensity component on the lower 5-year growth in allowed charges and compare the volume performance standards to the higher growth in expenditures, so we instead compare the standards to the growth in allowed charges.

Consistent with data contained in the Trustees' Report, we estimated Factor 3 using a definition of physicians' services that includes certain supplies and nonphysician services not otherwise included in computing the volume performance standard rates of increase (primarily durable medical equipment and ambulance services). We included data for these services because we were required to base the estimate on data contained in the Trustees' Report, and it was not feasible to recompute the data from the 5-year period to exclude these supplies and nonphysician services. We believe the inclusion of these nonphysician supplies and services in this component has a minimal effect on the estimate because the component measures rates of change. Since durable medical equipment and ambulance services constitute only about 10 percent of the total charges used in the Trustees' Report, the rate of change for these nonphysician services and supplies would have to be significantly different from the rate of change for physicians' services to have any measurable impact on this volume and intensity increase factor. (Factor 3 is the only component of the volume performance standard rate of increase that was estimated using data that included nonphysician services and supplies.) The volume increases for services performed in independent laboratories were included in the calculation of the physician increases, as were the volume increases for clinical laboratory tests performed in hospital outpatient departments.

As described earlier, the fiscal year 1997 volume performance standards were calculated using category-specific volume and intensity. The 5-year average rate of increase in volume and

intensity equals 1.6 percent for surgical services, 4.0 percent for primary care services, and 4.0 percent for other nonsurgical services. The weighted-average increase for all physicians' services is 3.4 percent.

Factor 4—Percentage Increase in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in Fiscal Year 1997 Compared With Fiscal Year 1996

Legislative changes enacted in OBRA 1993 and changes in the regulations required by this law, as well as implementation of the physician fee schedule (including changes made in the RVUs for 1996 and 1997) will have an impact on the volume performance standard rates of increase for fiscal year 1997.

The net effect of implementing the physician fee schedule after making RVU changes for 1996 and 1997 is to increase payment rates for primary care services and the volume performance standard for those services. Similarly, the net effect of refining the RVUs and implementing the fee schedule reduces payment rates for most surgical services and many nonsurgical services other than primary care, thus, lowering the volume performance standard rates of increase for these services.

Implementing the fee schedule will increase the volume performance standard rates of increase for all physicians' services because, although the net effect of increases in fees for certain services and decreases in fees for other services will have a budget neutral effect on fees for all physicians' services, an adjustment is required to ensure that changes in volume and intensity related to the fee changes do not cause an increase in expenditures. The MVPS targets are increased by this volume and intensity adjustment.

After taking into account these provisions, this factor equals -2.1

percent for surgical services, 3.4 percent for primary care services, and -1.5 percent for other nonsurgical services, and a weighted average of -0.7 percent for all physicians' services.

IV. Inapplicability of 30-Day Delay in Effective Date

We usually provide a delay of 30 days in the effective date for final Federal Register documents. In this case, however, the volume performance standard rates of increase are required by law to be published in the last 15 days of October 1996 and are effective on October 1, 1996. Thus, the Congress has clearly indicated its intent that the rates of increase be implemented without the usual 30-day delay in the effective date and has foreclosed any discretion by us in this matter. Therefore, the requirement for a 30-day delay in the effective date does not apply to this notice. With regard to the physician fee schedule, the effective date will be January 1, 1997, which is more than 30 days beyond the publication date of this notice.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

A. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States

and individuals are not entities, but we consider all physicians to be small entities.

We are not preparing a regulatory flexibility analysis since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact analysis since we have determined, and the Secretary certifies, that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Sections 1848 (d) and (f) of the Social Security Act)

(42 U.S.C. 1395w-4 (d) and (f))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 7, 1996.

Brace C. Vlaseck,
Administrator, Health Care Financing
Administration.

Dated: November 12, 1996.

Donna E. Skalala,
Secretary.
[FR Doc. 96-29587 Filed 11-15-96; 11:51
am]

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federal register

Friday
November 22, 1996

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed
Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: On July 8, 1996, the NIH published a Notice of Intent to modify NIH's oversight of gene therapy. Specifically, the NIH proposed to: (1) Terminate the NIH Recombinant DNA Advisory Committee (RAC); (2) relinquish all approval responsibilities for recombinant DNA experiments involving human gene transfer to the Food and Drug Administration (FDA), which holds statutory authority for such approval; (3) establish the Office of Recombinant DNA Activities Advisory Committee (OAC); (4) limit the membership of OAC to 6-10 individuals, as compared to the 25 members appointed to the RAC; (5) regularly convene Gene Therapy Policy Conferences; and (6) continue the publicly available, comprehensive NIH database of human gene transfer clinical trials, including adverse events.

The NIH received 71 written comments in response to the Notice of Intent, reflecting a broad range of opinions. After careful consideration of these comments, the NIH Director revised the proposal put forward in the July 8, Notice of Intent. This revised proposal, described herein as the Notice of Proposed Actions, reflects both public opinion and the NIH Director's intent to increase the effectiveness and efficiency of public discussion of gene therapy. Specifically, because of the historical importance of the RAC as a public platform for discussion of the science, as well as the safe and ethical conduct of gene therapy research, the NIH Director proposes to: (1) Retain the RAC, while modifying its roles and responsibilities relevant to human gene therapy research; (2) continue RAC discussion of novel human gene transfer experiments without RAC approval of individual human gene transfer experiments; (3) reduce the membership of RAC from 25 members to 15 members; (4) regularly convene Gene Therapy Policy Conferences; and (5) maintain public access to human gene transfer clinical trial information.

This notice sets forth proposed actions to be taken by the Director,

National Institutes of Health (NIH), regarding enhanced mechanisms for scientific and ethical/societal oversight of human gene transfer research, under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines) (59 FR 34496, amended 59 FR 40170, amended 60 FR 20726, amended 61 FR 1482, amended 61 FR 10004). These proposed actions reflect a revision of the proposal set forth in the July 8, 1996, Federal Register Notice of Intent. It is important to note that the proposal outlined in the July 8, 1996, Notice of Intent and the revised proposed actions described herein are applicable only to recombinant DNA experiments involving human subjects. NIH oversight of recombinant DNA research conducted in compliance with the NIH Guidelines (with the exception of human gene transfer research) remains unchanged.

DATES: Interested parties are invited to submit comments concerning this proposal. Comments received by December 2, 1996, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its December 9, 1996, meeting. After consideration of this proposal and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

ADDRESSES: Written comments and recommendations should be submitted to Debra Knorr, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, or by FAX to 301-496-9839.

All comments received in response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, Phone 301-496-9838, FAX 301-496-9839.

SUPPLEMENTARY INFORMATION: In 1990, the NIH reviewed and approved its first gene therapy experiment. In the ensuing six years, knowledge about and experience with somatic cell human gene therapy has grown substantially. As the field has matured, the NIH has sought to preserve both the effectiveness and efficiency of its oversight of human

gene therapy research by periodically modifying the functions of the Recombinant DNA Advisory Committee (RAC).

When the NIH first published the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects (Points to Consider) in the Federal Register in 1990, each human gene therapy experiment was reviewed by both the Human Gene Therapy Subcommittee (HGTSC) and the RAC, and then approved by the NIH Director. In 1992, when the HGTSC was merged with its parent committee (the Recombinant DNA Advisory Committee), the NIH adopted a semiannual reporting process for human gene transfer experiments. One year later, the NIH established an expedited review process for single patient protocols by allowing written RAC review of such protocols between the committee's quarterly meetings. In the following year, the NIH adopted an accelerated review process for certain categories of clinical trials that had been routinely reviewed by the RAC and determined not to represent any significant risk to human health and the environment. Under this mechanism, such protocols were subject to written review by several RAC members outside of the committee's quarterly meetings and NIH Office of Recombinant DNA Activities (ORDA) approval. In 1995, another change relevant to RAC review occurred when the RAC approved consolidated review, in which all protocols determined not to represent a novel gene therapy delivery strategy or target disease were exempted from RAC review and approval and were approved solely by the Food and Drug Administration (FDA).

On July 8, 1996, the NIH Director published a Notice of Intent to Propose Amendments to the NIH Guidelines for Research Involving Recombinant DNA Molecules Regarding Enhanced Oversight of Recombinant DNA Activities (61 FR 35774). This Notice of Intent proposed modifications in NIH oversight of human gene transfer research. Specifically, it was proposed that the RAC would be terminated and that all approval responsibilities for recombinant DNA experiments involving human gene transfer would be relinquished to the FDA, which retains statutory authority for such approval. Under this revised oversight structure, a newly created ORDA Advisory Committee (OAC) would preserve continued public accountability for recombinant DNA research. To ensure quality and efficiency of public discussion of the scientific merit and

the ethical issues relevant to gene therapy clinical trials, it was proposed that the NIH Director implement a regular series of Gene Therapy Policy Conferences. Finally, the proposal assured the continuation of the publicly available comprehensive NIH database of clinical trials with human gene transfer, including reporting of adverse events.

I. Revised Proposal in Response to Public Comment

In response to the Notice of Intent, the NIH received 71 written comments (90 signatures) reflecting a broad spectrum of public opinion on the proposed changes. Comments were received from a variety of stakeholders, including individuals representing academia, industry, patient advocacy organizations, consumer advocacy organizations, professional scientific societies, ethicists, other Federal agencies, NIH-funded investigators, past and present RAC members, and private citizens. Careful consideration was given to each of the written comments that were submitted.

In response to public opinion and in keeping with the NIH Director's intent to increase the usefulness and productivity of public discussion of gene therapy, the NIH Director has revised the proposal set forth in the July 8, 1996, Notice of Intent. In this amended proposal, the NIH Director proposes to retain the RAC, while modifying its responsibilities relevant to human gene therapy research. In doing so, the NIH Director acknowledges the public's view that the RAC has historical importance as a societal platform for discussion of the science, as well as the safe and ethical conduct of gene therapy research. The NIH Director recognizes that this tradition is lacking in OAC and, therefore, decided to retain the RAC instead of replacing it with OAC. The NIH Director's intent to increase the effectiveness and efficiency of the RAC will be achieved by the continuing discussion of novel human gene transfer experiments without RAC approval of individual human gene transfer experiments. The membership of the RAC will be reduced from 25 to 15 individuals to increase efficiency while ensuring sufficient representation from scientific, ethical, and legal communities. In order to stimulate public discussion of the safety, scientific merit, and ethical nature of present and future opportunities in gene therapy research, the NIH Director proposes to regularly convene Gene Therapy Policy Conferences (GTPCs). Finally, recognizing the importance of public access to human gene transfer

clinical trial information, the NIH will continue to maintain the gene therapy clinical trial database.

II. Analysis of Written Comments in Response to the Notice of Intent

The following analysis compares and contrasts, point by point, the proposal set forth in the July 8, 1996, Notice of Intent, the public response to each point, and the new proposal described herein as the Notice of Proposed Actions.

II-A. Notice of Intent

Terminate the RAC and establish the Office of Recombinant DNA Activities Advisory Committee (OAC).

Notice of Proposed Actions

Retain the RAC, while modifying its roles and responsibilities relevant to human gene therapy research.

Of the 71 comments submitted in response to the Notice of Intent, 10 did not specifically address NIH's proposal to terminate the RAC. Of the 61 responses which did address the proposal to terminate the RAC, 20 expressed support and 41 expressed opposition. Supporting and opposing comments were submitted by representatives of: Academia (5 supported, 15 opposed), industry (8 supported, 4 opposed), private citizens (4 supported, 6 opposed), current and previous RAC members (3 supported, 10 opposed), professional scientific societies (1 supported, 2 opposed), the ethics community (1 supported, 5 opposed), consumer advocacy organizations (0 supported, 4 opposed), patient advocacy organizations (0 supported, 6 opposed), and professional scientific societies (0 supported, 2 opposed).

Comments in support of termination of the RAC reflected an interest in making substantive changes in the role of the RAC. Most of these comments supported the proposed restructuring of the functions of the RAC and did not specifically endorse termination of RAC. Opposing comments focused on the historical importance of retaining the RAC as an internationally recognized forum for public discussion of the science, safety, and ethics of human gene therapy research. These authors articulated the critical role that the RAC plays in maintaining public confidence in human gene therapy research.

The importance of the continuation of the RAC, *per se*, was underscored by comments which specifically addressed the establishment of the OAC. Of the 53 comments which addressed this issue, 12 expressed support and 41 expressed opposition. The majority of comments

submitted in opposition to the OAC stated that the proposed functions of the OAC could be accomplished by the RAC, or by a restructured version of the RAC. Several authors emphasized that, absent the historic credibility of the RAC, the OAC might suffer from an inability to attract and motivate the type of expertise and judgement needed for this important public forum.

II-B. Notice of Intent

Relinquish all approval responsibilities for recombinant DNA experiments involving human gene transfer to the Food and Drug Administration (FDA) which holds statutory authority for such approval.

Notice of Proposed Actions

Relinquish all approval responsibilities of the RAC to the Food and Drug Administration (FDA) which holds statutory authority for such approval, while maintaining RAC discussion of novel human gene transfer experiments.

Of the 71 comments submitted in response to the Notice of Intent, 24 respondents did not specifically address the proposal to eliminate RAC approval of human gene transfer experiments; 23 respondents were in support and 24 respondents were opposed to abolishing protocol approval. Supporting and opposing comments were submitted by representatives of: academia (7 supported, 7 opposed), industry (11 supported, 0 opposed), private citizens (2 supported, 7 opposed), previous or current RAC members (4 supported, 5 opposed), professional scientific societies (4 supported, 1 opposed), the ethics community (2 supported, 4 opposed), patient advocacy organizations (0 supported, 2 opposed), and consumer advocacy organizations (0 supported, 4 opposed).

In discussing the responses to the proposal to eliminate RAC approval of human gene therapy protocols, it is important to note that the NIH Director's interest in relinquishing RAC approval recognizes FDA authority to approve human gene therapy research under its Investigational New Drug regulations. This proposal eliminates duplication of this effort by the NIH, which does not have such regulatory authority.

Respondents supporting elimination of RAC approval felt that the current status of human gene transfer research is such that NIH approval is no longer warranted and that it is appropriate that the FDA exclusively manage the approval process. This point of view was supported by authors who suggested that the efficient use of Federal resources is optimized by

eliminating duplicate approval by the NIH. Opposing points of view emphasized that the FDA does not routinely take moral and ethical considerations into account in their review and approval process. Other comments opposed to exclusive FDA approval expressed concern that without NIH authority to approve individual human gene transfer experiments, the FDA could ignore any recommendations coming from the NIH.

After careful consideration of these letters, the NIH Director proposes to retain this element of the Notice of Intent, i.e., eliminate NIH approval of individual protocols. Under this new proposal the RAC will continue to emphasize the ethical, social, and scientific issues arising from the public review and discussion of individual novel protocols. The NIH Director recognizes that opinions on the proposed elimination of NIH approval of human gene transfer experiments were diverse. The majority of comments submitted in opposition to this issue emphasized the critical role of the RAC in providing a forum for the public discussion of ethical issues relevant to human gene therapy research. The NIH Director maintains that the elimination of RAC approval will not hamper critical public discussion, nor will it result in any untoward effects on human health or the environment. NIH's mission is to sponsor and conduct medical research of the highest scientific merit to improve the health of the nation and the world. Many of the submitted comments confirmed the NIH Director's concern that NIH approval on the grounds of safety is often perceived as a scientific endorsement of early-phase clinical trials, some of which have inadequate study design and insufficient preclinical foundations.

II-C. Notice of Intent

Limit the membership of OAC to 6-10 individuals, as compared to the 25 members appointed to the RAC; membership would represent the scientific, ethical and public advocacy communities.

Notice of Proposed Actions

Reduce the membership of RAC from 25 members to 15 members representing the scientific, ethical, and public advocacy communities.

Of the 71 comments submitted in response to the Notice of Intent, only 6 comments submitted specifically addressed the composition of OAC: 2 expressed support and 4 expressed opposition. Supporting and opposing comments were submitted by representatives of academia (1

supported, 0 opposed), current RAC members (1 supported, 2 opposed) and private citizens (0 supported, 2 opposed). Although the vast majority of responses to the Notice of Intent did not address the proposed reduction in the size of the committee membership, those who were opposed expressed concern that a standing committee membership of 6-10 individuals could not adequately represent the four fields of expertise required under the committee charter. Other suggested that a minimum of 12-15 members would be sufficient.

In order to facilitate efficient review and discussion and in response to comments questioning the extent of the reduction, the NIH Director proposes to reduce the current RAC membership from 25 to 15 members, including the Chair. The appointment of the 15 member RAC will adhere to the RAC Charter such that they will be appointed by the DHHS Secretary or his/her designee. At least eight of these members shall be knowledgeable in the fields of molecular genetics, molecular biology, recombinant DNA research, or other related fields and at least four of these members shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives of Federal agencies shall continue to serve as non-voting members.

II-D. Notice of Intent

Convene regular Gene Therapy Policy Conferences.

Notice of Proposed Actions

Convene regular Gene Therapy Policy Conferences.

Of the 71 comments submitted in response to the Notice of Intent, 33 specifically addressed NIH's proposal to convene GTPCs. These responses were equally divided, with 16 expressing support and 17 expressing opposition. Supporting and opposing comments were submitted by representatives of academia (3 supported, 5 opposed), industry (7 supported, 3 opposed), private citizens (4 supported, 1 opposed), current or previous RAC members (2 supported, 7 opposed), professional scientific societies (0 supported, 2 opposed), consumer advocacy organizations (0 supported, 2 opposed), patient advocacy organizations (0 supported, 1 opposed), and the ethics community (0 supported, 4 opposed).

Opposing comments did not question the concept of holding GTPCs, but

rather suggested that the roles and responsibilities of the GTPCs could be accomplished through the RAC. Supporting comments were enthusiastic about a separate forum for public discussion of human gene therapy issues which would expand its discussions beyond individual protocols. Some responses put forth suggestions for future GTPCs, including discussion of controversial issues that arise as a consequence of human gene transfer clinical trials such as reproductive decisions, susceptibility to workplace dangers, and privacy questions. It was also suggested that GTPC topics should be actively solicited from industry and academia to facilitate development of new technologies.

After careful consideration of the comments submitted with regard to the proposed establishment of GTPCs, the NIH Director proposes to retain this element of the Notice of Intent and to establish GTPCs. However, it is important to note several clarifications of the previous proposal. GTPCs will focus on broad over-arching policy and scientific issues related to gene therapy research. The RAC will advise the NIH Director on GTPC topics. GTPC topics submitted by a member of the RAC, representatives of academia, industry, patient and consumer advocacy organizations, other Federal agencies, professional scientific societies, and the general public will be considered by the NIH Director. GTPC topics will not be limited to discussion of human applications of gene therapy research, i.e., they may include basic research on the use of novel gene delivery vehicles, or novel applications of gene transfer. A member of the RAC will co-chair each GTPC. This member will be selected by the RAC. All RAC members will be encouraged to attend these meetings. The NIH Director anticipates that GTPCs will serve as a model for interagency communication and collaboration, concentrated expert discussion of novel scientific issues, and enhanced opportunity for public understanding of specific gene therapy issues including ethical, legal, and social concerns.

II-E. Notice of Intent

Ensure public access to human gene transfer experiments information by maintaining the publicly available, comprehensive NIH database of human gene transfer clinical trials, including adverse events.

Notice of Proposed Actions

Ensure public access to human gene transfer experiments information by maintaining the publicly available, comprehensive NIH database of human

gene transfer clinical trials, including adverse events.

Of the 71 comments submitted in response to the Notice of Intent, 25 comments specifically addressed NIH's proposal to maintain its human gene transfer database; 20 expressed support and 5 expressed opposition. Supporting and opposing comments were submitted by representatives of academia (8 supported, 1 opposed), industry (4 supported, 2 opposed), private citizens (1 supported, 0 opposed), current or previous RAC members (5 supported, 2 opposed), the ethics community (1 supported, 0 opposed), and the European community (France) (1 supported, 0 opposed).

The overwhelming majority of comments expressed strong support for the NIH Director's proposal to maintain the human gene transfer database. Supporting comments emphasized the importance of maintaining public understanding of human gene therapy research. The majority of comments argued that the human gene transfer database is a vital tool for ensuring public confidence in this novel area of research. Many comments underscored the importance of capturing positive as well as negative data derived from gene therapy clinical trials. Other commentators felt that public access to such information avoids unnecessary duplication of effort and clearly identifies gaps in knowledge that are worthy of further preclinical and clinical investigation.

In response to these comments, the NIH Director will maintain public accountability for human gene therapy research through the publicly available, comprehensive database for human gene transfer clinical trials. Information entered into the database will be derived from the documentation submitted to NIH/ORDA in compliance with: (i) Appendix M-I, Submission Requirements—Human Gene Transfer Experiments and (ii) Appendix M-VII—Reporting Requirements—Human Gene Transfer Experiments, of the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into One or More Human Subjects (Points to Consider) of the NIH Guidelines. In compliance with the NIH Guidelines, investigators will continue to be required to register human gene transfer experiments with NIH/ORDA to ensure continued public access to protocol information, ongoing data (including adverse and significant clinical events), and long-term follow-up data.

III. Proposed Roles and Responsibilities in Accordance With the NIH Guidelines

III-A. The NIH Director

The roles and responsibilities of the NIH Director remain unchanged except for relinquishing approval of human gene transfer experiments. The NIH Director is responsible for: (1) Establishing the NIH Guidelines and overseeing their implementation. (2) Promulgating requirements as necessary to implement the NIH Guidelines. (3) Establishing and maintaining the RAC. (4) Establishing and maintaining ORDA.

III-B. The Recombinant DNA Advisory Committee

The RAC will remain a chartered public advisory committee to the NIH Director regarding recombinant DNA research conducted in compliance with the NIH Guidelines. The RAC will conduct quarterly meetings. RAC members will continue to be appointed by the DHHS Secretary or his/her designee for 4-year terms. RAC membership will be reduced from 25 to 15 members. At least eight of these members shall be knowledgeable in the fields of molecular genetics, molecular biology, recombinant DNA research, or other related fields and at least four of these members shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives of Federal agencies shall continue to serve as non-voting members.

The RAC will be responsible for: (1) Identifying novel human gene transfer experiments deserving of public discussion by the full RAC and transmitting comments/recommendations about specific human gene transfer experiments or categories of human gene transfer experiments to the NIH Director. (2) Identifying novel ethical issues relevant to specific human applications of gene transfer and recommending appropriate modifications to the Points to Consider that will provide guidance in the preparation of relevant Informed Consent documents. (3) Identifying novel scientific and safety issues relevant to specific human applications of gene transfer and recommending appropriate modifications to the Points to Consider that will provide guidance in the design and submission of human gene transfer clinical trials. (4) Publicly reviewing human gene transfer clinical trial data captured by NIH/ORDA in accordance with the annual data reporting requirements. (5) Identifying

broad scientific and ethical/social issues relevant to gene therapy research as potential Gene Therapy Policy Conference topics.

The RAC will advise the NIH Director on the following actions: (1) Adopting changes in the NIH Guidelines. (2) Assigning containment levels, changing containment levels, and approving experiments considered as Major Actions under the NIH Guidelines, i.e., the deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire the trait naturally, if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture. (3) Promulgating and amending lists of classes of recombinant DNA molecules to be exempt from the NIH Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes or otherwise do not present a significant risk to health or the environment. (4) Certifying new host-vector systems.

III-C. Gene Therapy Policy Conferences (GTPCs)

In order to enhance the depth and value of public discussion relevant to scientific, safety, and ethical/social implications of gene therapy research, the NIH Director will convene Gene Therapy Policy Conferences (GTPC) at regular intervals. As appropriate, the NIH Director will convene GTPC immediately following scheduled RAC meetings. GTPC will be administered by the NIH/ORDA. Conference participation will not involve a standing committee membership but rather will offer the unique advantage of assembling numerous participants who possess significant scientific, ethical, and legal expertise and/or interest that is directly applicable to a specific gene therapy research issue. At least one member of the RAC will serve as Co-chair of each GTPC and report the findings of the GTPC to the full committee at its next scheduled meeting. The RAC representative for each GTPC will be chosen based on the participant's area of expertise relative to the specific gene therapy research issue to be discussed. GTPC will also have representation from other Federal agencies, including the FDA. GTPCs will focus on broad over-arching policy and scientific issues related to gene therapy research. Proposals for GTPC topics may be submitted by members of the RAC, representatives of academia, industry, patient and consumer advocacy organizations, other Federal agencies, professional scientific societies, and the general public. GTPC

topics will not be limited to discussion of human applications of gene therapy research, i.e., they may include basic research on the use of novel gene delivery vehicles, or novel applications of gene transfer. The findings of the GTPC will be transmitted to the NIH Director and will be made publicly available. The NIH Director anticipates that this public policy forum will serve as a model for interagency communications and collaboration, concentrated expert discussion of novel scientific issues and their potential societal implications, and enhanced opportunity for public discussion of specific issues and potential impact of such applications on human health and the environment.

III-D. The Office of Recombinant DNA Activities (ORDA)

ORDA is an organizational unit of the NIH Office of Science Policy within the Office of the Director. ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH including institutions, Biological Safety Officers, Principal Investigators, Federal agencies, state and local governments, and institutions in the private sector. ORDA's responsibilities include (but are not limited to) the following: (1) Serving as the focal point for public access to summary information pertaining to human gene transfer experiments. (2) Serving as the focal point for data management of human gene transfer experiments. (3) Administering the annual data reporting requirements (and subsequent review) for human gene transfer experiments. (4) Transmitting comments/recommendations arising from public RAC discussion of a novel human gene transfer experiment to the NIH Director. RAC recommendations shall be forwarded to the Principal Investigator, sponsoring institution, and other Department of Health and Human Services (DHHS) components, as appropriate. (5) Collaborating with Principal Investigators, Institutional Biosafety Committees, Institutional Review Boards, and other DHHS components, to ensure the safe conduct of recombinant DNA research. (6) Administering Gene Therapy Policy Conferences as deemed appropriate by the NIH Director. (7) Reviewing and approving experiments in conjunction with *ad hoc* experts involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an LD₅₀ of less than or equal to 100 nanograms per kilogram body weight in organisms other than *Escherichia coli* K-12. (8) Serving as the executive secretary of the RAC. (9) Reviewing and

approving the membership of Institutional Biosafety Committees. (10) Changing containment levels for experiments that are specified in Section III, Experiments Covered by the NIH Guidelines (except when a Major Action is involved). (11) Assigning containment levels for experiments not explicitly considered in the NIH Guidelines. (12) Interpreting the NIH Guidelines for experiments to which the NIH Guidelines do not specifically assign containment levels. (13) Approving minor modifications and decertifying host-vector systems. (14) Preparing minutes of RAC meetings and gene therapy policy conferences.

III-E. Local Institutions

The roles and responsibilities of local institutions, Institutional Biosafety Committees, Biosafety Officers, Principal Investigators, Animal Facility Directors, and Greenhouse Supervisors relevant to recombinant DNA research conducted in compliance with the NIH Guidelines, remains unchanged.

IV. Proposed Actions

The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

[Note: Editorial changes and updating of references are proposed to clarify the document in addition to the Proposed Actions regarding the Notice of Intent.]

IV-A. Proposed Amendments to Section I, Scope of the NIH Guidelines

Section I is proposed to be amended to read:

"Section I. Scope of the NIH Guidelines"

"Section I-A. Purpose"

[This section remains unchanged.]

"Section I-A-1. Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approvals, or other applicable clearances, have been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval. (See exception in Section I-A-1-a regarding requirement for human gene transfer protocol registration.)

"Section I-A-1-a. In the interest of maximizing the resources of both the NIH and the Food and Drug Administration (FDA) and simplifying the method and period for review, research proposals involving the

deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) will be considered through a consolidated submission process involving both the NIH and the FDA. An investigator shall simultaneously submit a human gene transfer experiment to both the NIH and the FDA in a single submission format. This format shall include (but is not limited to) the documentation described in Appendices M-I through M-V, of the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider). Submission to the NIH Office of Recombinant DNA Activities (ORDA) shall be for registration purposes and will ensure continued public access to relevant human gene transfer information conducted in compliance with the NIH Guidelines. The RAC will receive periodic updates regarding recent submissions to NIH/ORDA. If a determination is made that an experiment will undergo full RAC discussion, NIH/ORDA will immediately notify the Principal Investigator. RAC members may forward individual requests for additional information relevant to a specific protocol through NIH/ORDA to the Principal Investigator. In making a determination whether an experiment is novel, and thus deserving of full RAC discussion, reviewers will examine the scientific rationale, scientific context (relative to other proposals reviewed by the RAC), whether the preliminary *in vitro* and *in vivo* data were obtained in appropriate models and are sufficient, and whether questions related to safety, efficacy, and social/ethical context have been resolved. RAC recommendations on a specific human gene transfer experiment will be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and, as appropriate, to other Department of Health and Human Services (DHHS) components.

"Section I-B. Definition of Recombinant DNA Molecules"

[This section remains unchanged.]

"Section I-C. General Applicability"

"Section I-C-1. The NIH Guidelines are applicable to:

"Section I-C-1-a. All recombinant DNA research within the United States (U.S.) or its territories that is within the category of research described in either Section I-C-1-a-(1) or Section I-C-1-a-(2).

"Section I-C-1-a-(1). Research that is conducted at or sponsored by an

institution that receives any support for recombinant DNA research from the NIH, including research performed directly by the NIH. An individual who receives support for research involving recombinant DNA must be associated with or sponsored by an institution that assumes the responsibilities assigned in the NIH Guidelines.

"Section I-C-1-a-(2). Research that involves testing in humans of materials containing recombinant DNA developed with NIH funds, if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, not mere provision of research materials.

"Section I-C-1-b. All recombinant DNA research performed abroad that is within the category of research described in either Section I-C-1-b-(1) or Section I-C-1-b-(2).

"Section I-C-1-b-(1). Research supported by NIH funds.

"Section I-C-1-b-(2). Research that involves testing in humans of materials containing recombinant DNA developed with NIH funds, if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, not mere provision of research materials.

"Section I-C-1-b-(3). If the host country has established rules for the conduct of recombinant DNA research, then the research must be in compliance with those rules. If the host country does not have such rules, the proposed research must be reviewed and approved by an NIH-approved Institutional Biosafety Committee or equivalent review body and accepted in writing by an appropriate national governmental authority of the host country. The safety practices that are employed abroad must be reasonably consistent with the NIH Guidelines.

"Section I-D. Compliance With the NIH Guidelines"

"As a condition for NIH funding of recombinant DNA research, institutions shall ensure that such research conducted at or sponsored by the institution, irrespective of the source of funding, shall comply with the NIH Guidelines. The policies on noncompliance are as follows:

"Section I-D-1. All NIH-funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Non-compliance may result in: (i) Suspension, limitation, or termination of financial assistance for the noncompliant NIH-funded research

project and of NIH funds for other recombinant DNA research at the institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the institution.

"Section I-D-2. All non-NIH funded projects involving recombinant DNA techniques conducted at or sponsored by an institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in: (i) Suspension, limitation, or termination of NIH funds for recombinant DNA research at the institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the institution.

"Information concerning noncompliance with the NIH Guidelines may be brought forward by any person. It should be delivered to both NIH/ORDA and the relevant institution. The institution, generally through the Institutional Biosafety Committee, shall take appropriate action. The institution shall forward a complete report of the incident recommending any further action to the Office of Recombinant DNA Activities, National Institutes of Health/MSB 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-8838.

"In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the NIH Guidelines, applicable DHHS and Public Health Service procedures shall govern."

IV-B. Proposed Amendments to Section II, Safety Considerations

The second paragraph of Section II-A-3 is proposed to be amended to read:

"Section II-A-3. Comprehensive Risk Assessment"

"... A final assessment of risk based on these considerations is then used to set the appropriate containment conditions for the experiment (see Section II-B, Containment). The containment level required may be equivalent to the Risk Group classification of the agent or it may be raised or lowered as a result of the above considerations. The Institutional Biosafety Committee must approve the risk assessment and the biosafety containment level for recombinant DNA experiments described in Sections III-A, Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation, and III-D, Experiments that Require Institutional Biosafety Committee Approval Before Initiation * * *

Before Initiation, III-B, Experiments that Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation, III-C, Experiments that Require Institutional Biosafety Committee and Institutional Review Board Approvals and NIH/ORDA Registration Before Initiation, and III-D, Experiments that Require Institutional Biosafety Committee Approval Before Initiation * * *

IV-C. Proposed Amendments to Section III, Experiments Covered by the NIH Guidelines

Section III is proposed to be amended to read:

"Section III. Experiments Covered by the NIH Guidelines"

"This section describes six categories of experiments involving recombinant DNA: (i) Those that require Institutional Biosafety Committee (IBC) approval, RAC review, and NIH Director approval before initiation (see Section III-A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see Section III-B), (iii) those that require Institutional Biosafety Committee and Institutional Review Board approvals and NIH/ORDA registration before initiation (see Section III-C), (iv) those that require Institutional Biosafety Committee approval before initiation (see Section III-D), (v) those that require Institutional Biosafety Committee notification simultaneous with initiation (see Section III-E), and (vi) those that are exempt from the NIH Guidelines (see Section III-F).

"Note: If an experiment falls into Sections III-A, III-B, or III-C and one of the other sections, the rules pertaining to Sections III-A, III-B, or III-C shall be followed. If an experiment falls into Section III-F and into either Sections III-D or III-E as well, the experiment is considered exempt from the NIH Guidelines.

"Any change in containment level, which is different from those specified in the NIH Guidelines, may not be initiated without the expressed approval of NIH/ORDA (see Section IV-C-1-b-(2) and its subsections, Minor Actions).

"Section III-A. Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation (See Section IV-C-1-b-(1), Major Actions).

"Section III-A-1. Major Actions Under the NIH Guidelines"

"Experiments considered as Major Actions under the NIH Guidelines cannot be initiated without submission of relevant information on the proposed

experiment to the Office of Recombinant DNA Activities, National Institutes of Health/MSK 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838, the publication of the proposal in the Federal Register for 15 days of comment, review by the RAC, and specific approval by the NIH. The containment conditions or stipulation requirements for such experiments will be recommended by the RAC and set by the NIH at the time of approval. Such experiments require Institutional Biosafety Committee approval before initiation. Specific experiments already approved are included in Appendix D, Major Actions Taken under the NIH Guidelines, which may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health/MSK 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010 (301) 496-9838.

"Section III-A-1-a. The deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire the trait naturally (see Section V-B, Footnotes and References of Sections I-IV), if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture, will be reviewed by the RAC.

"Section III-B. Experiments That Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation"

"Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH/ORDA. The containment conditions for such experiments will be determined by NIH/ORDA in consultation with *ad hoc* experts. Such experiments require Institutional Biosafety Committee approval before initiation (see Section IV-B-2-b-(1), Institutional Biosafety Committee).

"Section III-B-1. Experiments Involving the Cloning of Toxin Molecules With LD₅₀ of Less Than 100 Nanograms per Kilogram Body Weight"

"Deliberate formation of recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD₅₀ of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, and *Shigella dysenteriae* neurotoxin). Specific approval has been given for the cloning in *Escherichia coli* K-12 of DNA containing genes coding for the biosynthesis of toxic molecules which

are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Specific experiments already approved under this section may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health/MSK 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838.

"Section III-C. Experiments That Require Institutional Biosafety Committee and Institutional Review Board Approvals and NIH/ORDA Registration Before Initiation"

"Experiments in this category cannot be initiated without simultaneous submission of relevant information on the proposed experiment to both NIH/ORDA and the FDA in a single submission format. This format shall include (but is not limited to) the documentation described in Appendices M-I through M-V, of the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider). Prior to initiation of a human gene transfer experiment, the Principal Investigator must obtain both Institutional Biosafety Committee and Institutional Review Board approvals. These local committee approvals and relevant protocol documentation shall be submitted to NIH/ORDA for registration purposes and determination regarding the necessity of full RAC discussion. The RAC prefers that information provided in response to Appendix M, Points to Consider, contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public. Full RAC review of an individual human gene transfer experiment can be recommended by: (i) A majority of the RAC, (ii) other Federal agencies, (iii) the Principal Investigator, or (iv) the sponsoring institution. An individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. Recommendations for full RAC review of individual human gene transfer experiments will be transmitted to the NIH Director, who will determine whether an individual human gene transfer experiment shall be discussed by the full RAC and determine the priority of the discussions if more than one experiment is awaiting discussion. RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and, as appropriate, other

Department of Health and Human Services (DHHS) components.

"Institutional Biosafety Committee approval must be obtained from any institution responsible for constructing or handling the recombinant DNA material to be used in the experiments. Specifically: (1) any institution involved in the production of the vectors for human application, (2) any institution at which there is *ex vivo* transduction of the recombinant DNA material into target cells for human application, and (3) any institution at which the recombinant DNA material will be directly administered to human subjects.

"Section III-C-1. Experiments Involving the Deliberate Transfer of Recombinant DNA or DNA or RNA Derived From Recombinant DNA Into Human Subjects"

"Submission to NIH/ORDA shall be for registration purposes and will ensure continued public access to relevant human gene transfer information conducted in compliance with the NIH Guidelines. Following receipt by NIH/ORDA, relevant information shall be entered into the NIH human gene transfer database for registration purposes. Summary information pertaining to the human gene transfer protocol will be forwarded to RAC members. The NIH/ORDA summary information shall include comparisons to previously registered protocols. Specific items of similarity to previous experiments include (but are not limited to): (i) Gene delivery vehicle, (ii) functional gene, (iii) marker gene, (iv) packaging cell (if applicable), (v) disease application, (vi) route of administration, and (vii) patient selection criteria.

"RAC members shall notify NIH/ORDA within 15 working days if the protocol has been determined to represent novel characteristics requiring further public discussion. Full RAC review of an individual human gene transfer experiment can be recommended by: (i) a majority of the RAC, (ii) other Federal agencies, (iii) the Principal Investigator, or (iv) the sponsoring institution. An individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. Recommendations for full RAC review of individual human gene transfer experiments will be transmitted to the NIH Director, who will determine whether an individual human gene transfer experiment shall be discussed by the full RAC and determine the priority of the discussions if more than one experiment is awaiting discussion.

If a determination is made that an experiment shall undergo discussion by the full RAC, NIH/ORDA will immediately notify the Principal Investigator. RAC members may forward individual requests for additional information relevant to a specific protocol through NIH/ORDA to the Principal Investigator. Relevant documentation will be included in the material for the RAC meeting at which the experiment is scheduled to be discussed. RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and, as appropriate, other Department of Health and Human Services (DHHS) components.

Note: For specific directives concerning the use of retroviral vectors for gene delivery, consult Appendix B-V-1, Murine Retroviral Vectors.

"Section III-D. Experiments That Require Institutional Biosafety Committee Approval Before Initiation"

[This section remains unchanged except for renumbering and reference changes due to renumbering.]

"Section III-E. Experiments That Require Institutional Biosafety Committee Notice Simultaneous With Initiation"

[This section remains unchanged except for renumbering and reference changes due to renumbering.]

"Section III-F. Exempt Experiments"

[This section remains unchanged except for renumbering and reference changes due to renumbering.]

IV-D. Proposed Amendments to Section IV, Roles and Responsibilities

Section IV is proposed to be amended to read:

"Section IV. Roles and Responsibilities"

"Section IV-A. Policy"

"The safe conduct of experiments involving recombinant DNA depends on the individual conducting such activities. The NIH Guidelines cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment. The NIH Guidelines are intended to assist the institution, Institutional Biosafety Committee, Biological Safety Officer, and Principal Investigator in determining safeguards that should be implemented. The NIH Guidelines will never be complete or final since all conceivable experiments involving recombinant DNA cannot be foreseen.

Therefore, it is the responsibility of the institution and those associated with it to adhere to the intent of the NIH Guidelines as well as to their specifics. Each institution (and the Institutional Biosafety Committee acting on its behalf) is responsible for ensuring that all recombinant DNA research conducted at or sponsored by that institution is conducted in compliance with the NIH Guidelines. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level. The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by the NIH as necessary.

"Section IV-B. Responsibilities of the Institution"

"Section IV-B-1. General Information"

"Each institution conducting or sponsoring recombinant DNA research which is covered by the NIH Guidelines is responsible for ensuring that the research is conducted in full conformity with the provisions of the NIH Guidelines. In order to fulfill this responsibility, the institution shall:

"Section IV-B-1-a. Establish and implement policies that provide for the safe conduct of recombinant DNA research and that ensure compliance with the NIH Guidelines. As part of its general responsibilities for implementing the NIH Guidelines, the institution may establish additional procedures, as deemed necessary, to govern the institution and its components in the discharge of its responsibilities under the NIH Guidelines. Such procedures may include: (i) Statements formulated by the institution for the general implementation of the NIH Guidelines, and (ii) any additional precautionary steps the institution deems appropriate.

"Section IV-B-1-b. Establish an Institutional Biosafety Committee that meets the requirements set forth in Section IV-B-2-a and carries out the functions detailed in Section IV-B-2-b.

"Section IV-B-1-c. Appoint a Biological Safety Officer (who is also a member of the Institutional Biosafety Committee) if the institution: (i) conducts recombinant DNA research at Biosafety Level (BL) 3 or BL4, or (ii) engages in large scale (greater than 10 liters) research. The Biological Safety Officer carries out the duties specified in Section IV-B-3.

"Section IV-B-1-d. Appoint at least one individual with expertise in plant, plant pathogen, or plant pest containment principles (who is also a member of the Institutional Biosafety Committee) if the institution conducts recombinant DNA research that requires Institutional Biosafety Committee approval in accordance with Appendix P, Physical and Biological Containment for Recombinant DNA Research Involving Plants.

"Section IV-B-1-e. Appoint at least one individual with expertise in animal containment principles (who is also a member of the Institutional Biosafety Committee) if the institution conducts recombinant DNA research that requires Institutional Biosafety Committee approval in accordance with Appendix Q, Physical and Biological Containment for Recombinant DNA Research Involving Animals.

"Section IV-B-1-f. Assist and ensure compliance with the NIH Guidelines by Principal Investigators conducting research at the institution as specified in Section IV-B-4.

"Section IV-B-1-g. Ensure appropriate training for the Institutional Biosafety Committee Chair and members, Biological Safety Officer and other containment experts (when applicable), Principal Investigators, and laboratory staff regarding laboratory safety and implementation of the NIH Guidelines. The Institutional Biosafety Committee Chair is responsible for ensuring that Institutional Biosafety Committee members are appropriately trained. The Principal Investigator is responsible for ensuring that laboratory staff are appropriately trained. The institution is responsible for ensuring that the Principal Investigator has sufficient training; however, this responsibility may be delegated to the Institutional Biosafety Committee.

Note: When the institution participates in or sponsors recombinant DNA research involving human subjects, the institution must ensure that: (i) The Institutional Biosafety Committee has adequate expertise and training (using *ad hoc* consultants as deemed necessary) and (ii) all aspects of Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider), have been appropriately addressed by the Principal Investigator prior to submission to NIH/ORDA. Institutional Biosafety Committee approval must be obtained from each institution that will handle recombinant DNA material that is to be administered to human subjects.

"Section IV-B-1-h. Determine the necessity for health surveillance of personnel involved in connection with individual recombinant DNA projects;

and if appropriate, conduct a health surveillance program for such projects. The institution shall establish and maintain a health surveillance program for personnel engaged in large scale research or production activities involving viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory scale. The institution shall establish and maintain a health surveillance program for personnel engaged in animal research involving viable recombinant DNA-containing microorganisms that require BL3 or greater containment in the laboratory. The Laboratory Safety Monograph discusses various components of such a program (e.g., records of agents handled, active investigation of relevant illnesses, and the maintenance of serial serum samples for monitoring serologic changes that may result from the employees' work experience). Certain medical conditions may place a laboratory worker at increased risk in any endeavor where infectious agents are handled. Examples cited in the Laboratory Safety Monograph include gastrointestinal disorders and treatment with steroids, immunosuppressive drugs, or antibiotics. Workers with such disorders or treatment should be evaluated to determine whether they should be engaged in research with potentially hazardous organisms during their treatment or illness. Copies of the Laboratory Safety Monograph are available from the Office of Recombinant DNA Activities, National Institutes of Health/MSF 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838.

"Section IV-B-1-i. Report any significant problems, violations of the NIH Guidelines, or any significant research-related accidents and illnesses to NIH/ORDA within thirty days, unless the institution determines that a report has already been filed by the Principal Investigator or Institutional Biosafety Committee. Reports shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/MSF 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838.

"Section IV-B-2. Institutional Biosafety Committee (IBC)

"The institution shall establish an Institutional Biosafety Committee whose responsibilities need not be restricted to recombinant DNA. The Institutional Biosafety Committee shall meet the following requirements:

"Section IV-B-2-a. Membership and Procedures

"Section IV-B-2-a-(1). The Institutional Biosafety Committee must be comprised of no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research and to identify any potential risk to public health or the environment. At least two members shall not be affiliated with the institution (apart from their membership on the Institutional Biosafety Committee) and who represent the interest of the surrounding community with respect to health and protection of the environment (e.g., officials of state or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community). The Institutional Biosafety Committee shall include at least one individual with expertise in plant, plant pathogen, or plant pest containment principles when experiments utilizing Appendix P, Physical and Biological Containment for Recombinant DNA Research Involving Plants, require prior approval by the Institutional Biosafety Committee. The Institutional Biosafety Committee shall include at least one scientist with expertise in animal containment principles when experiments utilizing Appendix Q, Physical and Biological Containment for Recombinant DNA Research Involving Animals, require Institutional Biosafety Committee prior approval. When the institution conducts recombinant DNA research at BL3, BL4, or Large Scale (greater than 10 liters), a Biological Safety Officer is mandatory and shall be a member of the Institutional Biosafety Committee (see Section IV-B-3, Biological Safety Officer).

"Note: Individuals, corporations, and institutions not otherwise covered by the NIH Guidelines, are encouraged to adhere to the standards and procedures set forth in Sections I through IV (see Section IV-E, Voluntary Compliance. The policy and procedures for establishing an Institutional Biosafety Committee under Voluntary Compliance, are specified in Section IV-B-2, Institutional Biosafety Committee Approval).

"Section IV-B-2-a-(2). In order to ensure the competence necessary to review and approve recombinant DNA activities, it is recommended that the Institutional Biosafety Committee: (i) Include persons with expertise in recombinant DNA technology, biological safety, and physical

containment; (ii) include or have available as consultants persons knowledgeable in institutional commitments and policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment, and (iii) include at least one member representing the laboratory technical staff.

"Note: When the institution participates in or sponsors recombinant DNA research involving human subjects, the institution must ensure that: (i) The Institutional Biosafety Committee has adequate expertise and training (using ad hoc consultants as deemed necessary) and (ii) all aspects of Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider), have been appropriately addressed by the Principal Investigator prior to submission to NIH/ORDA. Institutional Biosafety Committee approval must be obtained from each institution that will handle recombinant DNA material that will be administered to human subjects.

"Section IV-B-2-a-(3). The institution shall file an annual report with NIH/ORDA which includes: (i) A roster of all Institutional Biosafety Committee members clearly indicating the Chair, contact person, Biological Safety Officer (if applicable), plant expert (if applicable), and animal expert (if applicable); and (ii) biographical sketches of all Institutional Biosafety Committee members (including community members).

"Section IV-B-2-a-(4). No member of an Institutional Biosafety Committee may be involved (except to provide information requested by the Institutional Biosafety Committee) in the review or approval of a project in which he/she has been or expects to be engaged or has a direct financial interest.

"Section IV-B-2-a-(5). The institution, that is ultimately responsible for the effectiveness of the Institutional Biosafety Committee, may establish procedures that the Institutional Biosafety Committee shall follow in its initial and continuing review and approval of applications, proposals, and activities.

"Section IV-B-2-a-(6). When possible and consistent with protection of privacy and proprietary interests, the institution is encouraged to open its Institutional Biosafety Committee meetings to the public.

"Section IV-B-2-a-(7). Upon request, the institution shall make available to the public all Institutional Biosafety Committee meeting minutes and any documents submitted to or received from funding agencies which the latter are required to make available to the

public. If public comments are made on Institutional Biosafety Committee actions, the institution shall forward both the public comments and the Institutional Biosafety Committee's response to the Office of Recombinant DNA Activities, National Institutes of Health/MSF 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838.

"Section IV-B-2-b. Functions

"On behalf of the institution, the Institutional Biosafety Committee is responsible for:

"Section IV-B-2-b-(1). Reviewing recombinant DNA research conducted at or sponsored by the institution for compliance with the NIH Guidelines as specified in Section III, Experiments Covered by the NIH Guidelines, and approving those research projects that are found to conform with the NIH Guidelines. This review shall include: (i) Independent assessment of the containment levels required by the NIH Guidelines for the proposed research; (ii) assessment of the facilities, procedures, practices, and training and expertise of personnel involved in recombinant DNA research; and (iii) ensuring compliance with all surveillance, data reporting, and adverse event reporting requirements required by the NIH Guidelines.

"Section IV-B-2-b-(2). Notifying the Principal Investigator of the results of the Institutional Biosafety Committee's review and approval.

"Section IV-B-2-b-(3). Lowering containment levels for certain experiments as specified in Section III-C-2-a, Experiments in which DNA from Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents is Cloned into Nonpathogenic Prokaryotic or Low or Eukaryotic Host-Vector Systems.

"Section IV-B-2-b-(4). Setting containment levels as specified in Sections III-C-4-b, Experiments Involving Whole Animals, and III-C-5, Experiments Involving Whole Plants.

"Section IV-B-2-b-(5). Periodically reviewing recombinant DNA research conducted at the institution to ensure compliance with the NIH Guidelines.

"Section IV-B-2-b-(6). Adopting emergency plans covering accidental spills and personnel contamination resulting from recombinant DNA research.

"Note: The Laboratory Safety Monograph describes basic elements for developing specific procedures dealing with major spills of potentially hazardous materials in the laboratory, including information and references about decontamination and emergency plans. The NIH and the Centers

for Disease Control and Prevention are available to provide consultation and direct assistance, if necessary, as posted in the Laboratory Safety Monograph. The institution shall cooperate with the state and local public health departments by reporting any significant research-related illness or accident that may be hazardous to the public health.

"Section IV-B-2-b-(7). Reporting any significant problems with or violations of the NIH Guidelines and any significant research-related accidents or illnesses to the appropriate institutional official and NIH/ORDA within 30 days, unless the Institutional Biosafety Committee determines that a report has already been filed by the Principal Investigator. Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/MSF 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838.

"Section IV-B-2-b-(8). The Institutional Biosafety Committee may not authorize initiation of experiments which are not explicitly covered by the NIH Guidelines until NIH (with the advice of the RAC when required) establishes the containment requirement.

"Section IV-B-2-b-(9). Performing such other functions as may be delegated to the Institutional Biosafety Committee under Section IV-B-2, Institutional Biosafety Committee.

"Section IV-B-3. Biological Safety Officer (BSO)

"Section IV-B-3-a. The institution shall appoint a Biological Safety Officer if it engages in large scale research or production activities involving viable organisms containing recombinant DNA molecules.

"Section IV-B-3-b. The institution shall appoint a Biological Safety Officer if it engages in recombinant DNA research at BL3 or BL4. The Biological Safety Officer shall be a member of the Institutional Biosafety Committee.

"Section IV-B-3-c. The Biological Safety Officer's duties include, but are not be limited to:

"Section IV-B-3-c-(1). Periodic inspections to ensure that laboratory standards are rigorously followed;

"Section IV-B-3-c-(2). Reporting to the Institutional Biosafety Committee and the institution any significant problems, violations of the NIH Guidelines, and any significant research-related accidents or illnesses of which the Biological Safety Officer becomes aware unless the Biological Safety Officer determines that a report has already been filed by the Principal Investigator;

"Section IV-B-3-c-(3). Developing emergency plans for handling accidental spills and personnel contamination and investigating laboratory accidents involving recombinant DNA research;

"Section IV-B-3-c-(4). Providing advice on laboratory security;

"Section IV-B-3-c-(5). Providing technical advice to Principal Investigators and the Institutional Biosafety Committee on research safety procedures.

"Note: See the Laboratory Safety Monograph for additional information on the duties of the Biological Safety Officer.

"Section IV-B-4. Plant, Plant Pathogen, or Plant Pest Containment Expert

"When the institution conducts recombinant DNA research that requires Institutional Biosafety Committee approval in accordance with Appendix P, Physical and Biological Containment for Recombinant DNA Research Involving Plants, the institution shall appoint at least one individual with expertise in plant, plant pathogen, or plant pest containment principles (who is also a member of the Institutional Biosafety Committee).

"Section IV-B-5. Animal Containment Expert

"When the institution conducts recombinant DNA research that requires Institutional Biosafety Committee approval in accordance with Appendix Q, Physical and Biological Containment for Recombinant DNA Research Involving Animals, the institution shall appoint at least one individual with expertise in animal containment principles (who is also a member of the Institutional Biosafety Committee).

"Section IV-B-6. Human Gene Therapy Expertise

"When the institution participates in or sponsors recombinant DNA research involving human subjects, the institution must ensure that: (i) The Institutional Biosafety Committee has adequate expertise and training (using ad hoc consultants as deemed necessary) and (ii) all aspects of Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider), have been appropriately addressed by the Principal Investigator prior to submission to NIH/ORDA. Institutional Biosafety Committee approval must be obtained from each institution that will handle recombinant DNA material that is to be administered to human subjects.

"Section IV-B-7. Principal Investigator (PI)

"On behalf of the institution, the Principal Investigator is responsible for full compliance with the NIH Guidelines in the conduct of recombinant DNA research.

"Section IV-B-7-a. General Responsibilities

"As part of this general responsibility, the Principal Investigator shall:

"Section IV-B-7-a-(1). Initiate or modify no recombinant DNA research which requires Institutional Biosafety Committee approval prior to initiation (see Sections III-A, III-B, III-C, and III-D, Experiments Covered by the NIH Guidelines) until that research or the proposed modification thereof has been approved by the Institutional Biosafety Committee and has met all other requirements of the NIH Guidelines;

"Section IV-B-7-a-(2). Determine whether experiments are covered by Section III-D, Experiments that Require Institutional Biosafety Committee Notice Simultaneous with Initiation, and that the appropriate procedures are followed;

"Section IV-B-7-a-(3). Report any significant problems, violations of the NIH Guidelines, or any significant research-related accidents and illnesses to the Biological Safety Officer (where applicable), Greenhouse/Animal Facility Director (where applicable), Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable) within 30 days. Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/ MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838;

"Section IV-B-7-a-(4). Report any new information bearing on the NIH Guidelines to the Institutional Biosafety Committee and to NIH/ORDA (reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/ MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838;

"Section IV-B-7-a-(5). Be adequately trained in good microbiological techniques;

"Section IV-B-7-a-(6). Adhere to Institutional Biosafety Committee-approved emergency plans for handling accidental spills and personnel contamination; and

"Section IV-B-7-a-(7). Comply with shipping requirements for recombinant DNA molecules (see Appendix H, Shipment, for shipping requirements

and the Laboratory Safety Monograph for technical recommendations).

"Section IV-B-7-b. Submissions by the Principal Investigator to the NIH/ORDA

"The Principal Investigator shall:

"Section IV-B-7-b-(1). Submit information to NIH/ORDA for certification of new host-vector systems;

"Section IV-B-7-b-(2). Petition NIH/ORDA, with notice to the Institutional Biosafety Committee, for proposed exemptions to the NIH Guidelines;

"Section IV-B-7-b-(3). Petition NIH/ORDA, with concurrence of the Institutional Biosafety Committee, for approval to conduct experiments specified in Sections III-A-1, Major Actions Under the NIH Guidelines, and III-B, Experiments that Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation;

"Section IV-B-7-b-(4). Petition NIH/ORDA for determination of containment for experiments requiring case-by-case review; and

"Section IV-B-7-b-(5). Petition NIH/ORDA for determination of containment for experiments not covered by the NIH Guidelines.

"Section IV-B-7-b-(6). Ensure that all aspects of Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects, have been appropriately addressed prior to submission of human gene therapy experiments to NIH/ORDA.

"Section IV-B-7-c. Submissions by the Principal Investigator to the Institutional Biosafety Committee

"The Principal Investigator shall:

"Section IV-B-7-c-(1). Make an initial determination of the required levels of physical and biological containment in accordance with the NIH Guidelines;

"Section IV-B-7-c-(2). Select appropriate microbiological practices and laboratory techniques to be used for the research;

"Section IV-B-7-c-(3). Submit the initial research protocol and any subsequent changes (e.g., changes in the source of DNA or host-vector system), if covered under Sections III-A, III-B, III-C, or III-D (Experiments Covered by the NIH Guidelines), to the Institutional Biosafety Committee for review and approval or disapproval; and

"Section IV-B-7-c-(4). Remain in communication with the Institutional Biosafety Committee throughout the conduct of the project.

"Section IV-B-7-d. Responsibilities of the Principal Investigator Prior to Initiating Research

"The Principal Investigator shall:

"Section IV-B-7-d-(1). Make available to all laboratory staff the protocols that describe the potential biohazards and the precautions to be taken;

"Section IV-B-7-d-(2). Instruct and train laboratory staff in: (i) the practices and techniques required to ensure safety, and (ii) the procedures for dealing with accidents; and

"Section IV-B-7-d-(3). Inform the laboratory staff of the reasons and provisions for any precautionary medical practices advised or requested (e.g., vaccinations or serum collection).

"Section IV-B-7-e. Responsibilities of the Principal Investigator During the Conduct of the Research

"The Principal Investigator shall:

"Section IV-B-7-e-(1). Supervise the safety performance of the laboratory staff to ensure that the required safety practices and techniques are employed;

"Section IV-B-7-e-(2). Investigate and report any significant problems pertaining to the operation and implementation of containment practices and procedures in writing to the Biological Safety Officer (where applicable), Greenhouse/Animal Facility Director (where applicable), the Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable) (reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/ MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838);

"Section IV-B-7-e-(3). Correct work errors and conditions that may result in the release of recombinant DNA materials; and

"Section IV-B-7-e-(4). Ensure the integrity of the physical containment (e.g., biological safety cabinets) and the biological containment (e.g., purity and genotypic and phenotypic characteristics).

"Section IV-B-7-e-(5). Comply with annual data reporting and adverse event reporting requirements for human gene transfer experiments (see Appendix M-VII, Reporting Requirements—Human Gene Transfer Protocols).

"Section IV-C. Responsibilities of the National Institutes of Health (NIH)**"Section IV-C-1. NIH Director**

"The NIH Director is responsible for: (i) Establishing the NIH Guidelines, (ii) overseeing their implementation, and (iii) their final interpretation. The NIH Director has responsibilities under the NIH Guidelines that involve ORDA and

the RAC. ORDA's responsibilities under the NIH Guidelines are administrative. Advice from the RAC is primarily scientific, technical, and ethical. In certain circumstances, there is specific opportunity for public comment with published response prior to final action.

"Section IV-C-1-a. General Responsibilities

"The NIH Director is responsible for:

"Section IV-C-1-a-(1). Promulgating requirements as necessary to implement the NIH Guidelines;

"Section IV-C-1-a-(2). Establishing and maintaining the RAC to carry out the responsibilities set forth in Section IV-C-2, Recombinant DNA Advisory Committee (RAC membership is specified in its charter and in Section IV-C-2);

"Section IV-C-1-a-(3). Establishing and maintaining ORDA to carry out the responsibilities defined in Section IV-C-3, Office of Recombinant DNA Activities;

"Section IV-C-1-a-(4). Conducting and supporting training programs in laboratory safety for Institutional Biosafety Committee members, Biological Safety Officers and other containment experts (if applicable), Principal Investigators, and laboratory staff.

"Section IV-C-1-a-(5). Establishing and convening Gene Therapy Policy Conferences as described in Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects.

"Section IV-C-1-b. Specific Responsibilities

"In carrying out the responsibilities set forth in this section, the NIH Director, or a designee shall weigh each proposed action through appropriate analysis and consultation to determine whether it complies with the NIH Guidelines and presents no significant risk to health or the environment.

"Section IV-C-1-b-(1). Major Actions

"To execute Major Actions, the NIH Director shall seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the Notice of Meeting and Proposed Actions shall be published in the Federal Register at least 15 days before the RAC meeting. The NIH Director's decision/recommendation (at his/her discretion) may be published in the Federal Register for 15 days of comment before final action is taken. The NIH Director's final decision/recommendation, along with responses to public comments, shall be published

in the Federal Register. The RAC and Institutional Biosafety Committee Chairs shall be notified of the following decisions:

"Section IV-C-1-b-(1)-(a). Changing containment levels for types of experiments that are specified in the NIH Guidelines when a Major Action is involved;

"Section IV-C-1-b-(1)-(b). Assigning containment levels for types of experiments that are not explicitly considered in the NIH Guidelines when a Major Action is involved;

"Section IV-C-1-b-(1)-(c). Promulgating and amending a list of classes of recombinant DNA molecules to be exempt from the NIH Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes or otherwise do not present a significant risk to health or the environment;

"Section IV-C-1-b-(1)-(d). Permitting experiments specified by Section III-A, Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation;

"Section IV-C-1-b-(1)-(e). Certifying new host-vector systems with the exception of minor modifications of already certified systems (the standards and procedures for certification are described in Appendix I-II, Certification of Host-Vector Systems). Minor modifications constitute (e.g., those of minimal or no consequence to the properties relevant to containment); and

"Section IV-C-1-b-(1)-(f). Adopting other changes in the NIH Guidelines.

"Section IV-C-1-b-(2). Minor Actions

"NIH/ORDA shall carry out certain functions as delegated to it by the NIH Director (see Section IV-C-3, Office of Recombinant DNA Activities). Minor Actions (as determined by NIH/ORDA in consultation with the RAC Chair and one or more RAC members, as necessary) will be transmitted to the RAC and Institutional Biosafety Committee Chairs:

"Section IV-C-1-b-(2)-(a). Changing containment levels for experiments that are specified in Section III, Experiments Covered by the NIH Guidelines (except when a Major Action is involved);

"Section IV-C-1-b-(2)-(b). Assigning containment levels for experiments not explicitly considered in the NIH Guidelines;

"Section IV-C-1-b-(2)-(c). Revising the Classification of Etiologic Agents for the purpose of these NIH Guidelines (see Section V-A, Footnotes and References of Sections I-IV).

"Section IV-C-1-b-(2)-(d). Interpreting the NIH Guidelines for

experiments to which the NIH Guidelines do not specifically assign containment levels;

"Section IV-C-1-b-(2)-(e). Setting containment under Sections III-C-1-d, Experiments Using Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents as Host-Vector Systems, and III-C-2-b, Experiments in which DNA from Risk Group 2, Risk Group 3, Risk Group 4, or Restricted Agents is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems;

"Section IV-C-1-b-(2)-(f). Approving minor modifications of already certified host-vector systems (the standards and procedures for such modifications are described in Appendix I-II, Certification of Host-Vector Systems);

"Section IV-C-1-b-(2)-(g). Decertifying already certified host-vector systems;

"Section IV-C-1-b-(2)-(h). Adding new entries to the list of molecules toxic for vertebrates (see Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates); and

"Section IV-C-1-b-(2)-(i).

Determining appropriate containment conditions for experiments according to case precedents developed under Section IV-C-1-b-(2)-(e).

"Section IV-C-2. Recombinant DNA Advisory Committee (RAC)

"The RAC is responsible for carrying out specified functions cited below as well as others assigned under its charter or by the DHHS Secretary and the NIH Director. The RAC consists of 15 members including the Chair, appointed by the DHHS Secretary or his/her designee, at least 8 of whom are selected from authorities knowledgeable in the fields of molecular genetics, molecular biology, recombinant DNA research, or other scientific fields. At least 4 members of the RAC shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as non-voting members. Nominations for the RAC may be submitted to the Office of Recombinant DNA Activities, National Institutes of Health/ MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-9838.

"All meetings of the RAC shall be announced in the Federal Register, including tentative agenda items, 15 days before the meeting. Final agendas, if modified, shall be available at least 72 hours before the meeting. No item defined as a Major Action under Section

IV-C-1-b-(1) may be added to an agenda following Federal Register publication.

"The RAC shall be responsible for:

"Section IV-C-2-a. Advising the NIH Director on the actions listed in Sections IV-C-1-b, NIH Director—Specific Responsibility:

"Section IV-C-2-b. Identifying novel human gene transfer experiments deserving of public discussion by the full RAC;

"Section IV-C-2-c. Transmitting specific comments/recommendations about: (i) a specific human gene transfer experiment, or (ii) a category of human gene transfer experiments, to the NIH Director;

"Section IV-C-2-d. Publicly reviewing human gene transfer clinical trial data and relevant information evaluated and summarized by NIH/ORDA in accordance with the annual data reporting requirements; and

"Section IV-C-2-e. Identifying broad scientific and ethical/social issues relevant to gene therapy research as potential Gene Therapy Policy Conference topics.

"Section IV-C-3. Office of Recombinant DNA Activities (ORDA)

"ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH including institutions, Biological Safety Officers, Principal Investigators, Federal agencies, state and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the NIH Director. ORDA's responsibilities include (but are not limited to) the following:

"Section IV-C-3-a. Serving as the focal point for public access to summary information pertaining to human gene transfer experiments;

"Section IV-C-3-b. Serving as the focal point for data management of human gene transfer experiments;

"Section IV-C-3-c. Administering the annual data reporting requirements (and subsequent review) for human gene transfer experiments (see Appendix M-VII, Reporting Requirements—Human Gene Transfer Protocols);

"Section IV-C-3-d. Transmitting comments/recommendations arising from public RAC discussion of a novel human gene transfer experiment to the NIH Director. RAC recommendations shall be forwarded to the Principal Investigator, the sponsoring institution, and, as appropriate, other Department of Health and Human Services (DHHS) components.

"Section IV-C-3-e. Collaborating with Principal Investigators, Institutional Biosafety Committees, Institutional Review Boards, and other DHHS components (including the FDA and Office for Protection from Research Risks); to ensure human gene transfer experiment registration compliance in accordance with Appendix M-I, Submission Requirements, Human Gene Transfer Experiments;

"Section IV-C-3-f. Administering Gene Therapy Policy Conferences as deemed appropriate by the NIH Director;

"Section IV-C-3-g. Reviewing and approving experiments in conjunction with *ad hoc* experts involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an LD₅₀ of less than or equal to 100 nanograms per kilogram body weight in organisms other than *Escherichia coli* K-12 (see Section III-B-1, Experiments Involving the Cloning of Toxin Molecules with LD₅₀ of Less than 100 Nanograms Per Kilogram Body Weight, Appendix F-I, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates—General Information, and Appendix F-II, Cloning of Toxin Molecules Genes in *Escherichia coli* K-12);

"Section IV-C-3-h. Serving as the executive secretary of the RAC;

"Section IV-C-3-i. Publishing in the Federal Register:

"Section IV-C-3-i-(1). Announcements of RAC meetings and tentative agendas at least 15 days in advance (Note—If the agenda for a RAC meeting is modified, ORDA shall make the revised agenda available to anyone upon request in advance of the meeting);

"Section IV-C-3-i-(2). Announcements of Gene Therapy Policy Conferences and tentative agendas at least 15 days in advance;

"Section IV-C-3-i-(3). Proposed Major Actions (see Section IV-C-1-b-(1), Major Actions) at least 15 days prior to the RAC meeting; and

"Section IV-C-3-j. Reviewing and approving the membership of an institution's Institutional Biosafety Committee, and where it finds the Institutional Biosafety Committee meets the requirements set forth in Section IV-B-2, Institutional Biosafety Committee (IBC), giving its approval to the Institutional Biosafety Committee membership;

"Section IV-C-4. Other NIH Components

"Other NIH components shall be responsible for certifying maximum

containment (BL4) facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary.

"Section IV-D. Voluntary Compliance

"Section IV-D-1. Basic Policy—Voluntary Compliance

"Individuals, corporations, and institutions not otherwise covered by the NIH Guidelines are encouraged to do so by following the standards and procedures set forth in Sections I through IV. In order to simplify discussion, references hereafter to 'institutions' are intended to encompass corporations and individuals who have no organizational affiliation. For purposes of complying with the NIH Guidelines, an individual intending to carry out research involving recombinant DNA is encouraged to affiliate with an institution that has an Institutional Biosafety Committee approved under the NIH Guidelines.

"Since commercial organizations have special concerns, such as protection of proprietary data, some modifications and explanations of the procedures are provided in Sections IV-E-2 through IV-E-5-b, Voluntary Compliance, in order to address these concerns.

"Section IV-D-2. Institutional Biosafety Committee Approval—Voluntary Compliance

"It should be emphasized that employment of an Institutional Biosafety Committee member solely for purposes of membership on the Institutional Biosafety Committee does not itself make the member an institutionally affiliated member. Except for the unaffiliated members, a member of an Institutional Biosafety Committee for an institution not otherwise covered by the NIH Guidelines may participate in the review and approval of a project in which the member has a direct financial interest so long as the member has not been, and does not expect to be, engaged in the project. Section IV-B-2-a-(4), Institutional Biosafety Committee, is modified to that extent for purposes of these institutions.

"Section IV-D-3. Certification of Host-Vector Systems—Voluntary Compliance

"A host-vector system may be proposed for certification by the NIH Director in accordance with the procedures set forth in Appendix I-II, Certification of Host-Vector Systems. In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section IV-D, Voluntary Compliance, will be issued

only after consultation with the institution as to the content of the notice.

"Section IV-D-4. Requests for Exemptions and Approvals—Voluntary Compliance

"Requests for exemptions or other approvals as required by the NIH Guidelines should be submitted based on the procedures set forth in Sections I through IV. In order to ensure protection for proprietary data, any public notice regarding a request for an exemption or other approval which is designated by the institution as proprietary under Section IV-E-5-a, Voluntary Compliance, will be issued only after consultation with the institution as to the content of the notice.

"Section IV-D-5. Protection of Proprietary Data—Voluntary Compliance

"Section IV-D-5-a. General

"In general, the Freedom of Information Act requires Federal agencies to make their records available to the public upon request. However, this requirement does not apply to, among other things, 'trade secrets and commercial or financial information that is obtained from a person and that is privileged or confidential.' Under 18 U.S.C. 1905, it is a criminal offense for an officer or employee of the U.S. or any Federal department or agency to publish, divulge, disclose, or make known 'in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, (or) processes * * * of any person, firm, partnership, corporation, or association.' This provision applies to all employees of the Federal Government, including special Government employees. Members of the RAC are 'special Government employees.'

"In submitting to NIH for purposes of voluntary compliance with the NIH Guidelines, an institution may designate those items of information which the institution believes constitute trade secrets, privileged, confidential, commercial, or financial information. If NIH receives a request under the Freedom of Information Act for information so designated, NIH will promptly contact the institution to secure its views as to whether the

information (or some portion) should be released. If the NIH decides to release this information (or some portion) in response to a Freedom of Information request or otherwise, the institution will be advised and the actual release will be delayed in accordance with 45 Code of Federal Regulations, section 5.65 (d) and (e).

"Section IV-D-5-b. Presubmission Review

"Any institution not otherwise covered by the NIH Guidelines, which is considering submission of data or information voluntarily to NIH, may request presubmission review of the records involved to determine if NIH will make all or part of the records available upon request under the Freedom of Information Act.

"A request for presubmission review should be submitted to NIH/ORDA along with the records involved to the Office of Recombinant DNA Activities, National Institutes of Health/MSB 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 496-8838. These records shall be clearly marked as being the property of the institution on loan to NIH solely for the purpose of making a determination under the Freedom of Information Act. NIH/ORDA will seek a determination from the responsible official under DHHS regulations (45 Code of Federal Regulations, Part 5) as to whether the records involved; (or some portion) will be made available to members of the public under the Freedom of Information Act. Pending such a determination, the records will be kept separate from NIH/ORDA files, will be considered records of the institution and not NIH/ORDA, and will not be received as part of NIH/ORDA files. No copies will be made of such records.

"NIH/ORDA will inform the institution of the DHHS Freedom of Information Officer's determination and follow the institution's instructions as to whether some or all of the records involved are to be returned to the institution or to become a part of NIH/ORDA files. If the institution instructs NIH/ORDA to return the records, no copies or summaries of the records will be made or retained by DHHS, NIH, or ORDA. The DHHS Freedom of Information Officer's determination will represent that official's judgment at the time of the determination as to whether the records involved (or some portion) would be exempt from disclosure under the Freedom of Information Act if at the time of the determination the records were in NIH/ORDA files and a request was received for such files under the Freedom of Information Act."

IV-E. Proposed Amendments to Appendix A, Exemptions Under Section III-E-5—Sublists of Natural Exchanges

Appendix A, first paragraph, is proposed to be amended to reflect renumbering of a previous section.

IV-F. Proposed Amendments to Appendix C, Exemptions Under Section III-E-6

Appendix C is proposed to be amended to reflect renumbering of a previous section.

IV-G. Proposed Amendments to Appendix I, Biological Containment

After the first paragraph in Section I-II-A, Responsibility, the following Note is proposed to be added:

"Note. A host-vector system may be proposed for certification by the NIH Director in accordance with the procedures set forth in Appendix I-II, Certification of Host-Vector Systems. In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section IV-D, Voluntary Compliance, will be issued only after consultation with the institution as to the content of the notice (see Section IV-D-3, Certification of Host-Vector Systems—Voluntary Compliance)."

IV-H. Proposed Amendments to Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into One or More Human Subjects

Appendix M is proposed to be amended to read:

"Appendix M. The Points To Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into One or More Human Subjects (Points To Consider)

"Appendix M applies to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the NIH. Researchers not covered by the NIH Guidelines are encouraged to use Appendix M (see Section I-C, General Applicability).

"The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. In November 1982, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research published a report, *Splicing Life*, which resulted from a two-year process of public deliberation and hearings. Upon release of that report, a U.S. House of Representatives subcommittee held three days of public hearings with

witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1994, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded: civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies. In light of this public support, the Recombinant DNA Advisory Committee (RAC) is prepared to consider proposals for somatic cell gene transfer.

"The RAC will not at present entertain proposals for germ line alterations but will consider proposals involving somatic cell gene transfer. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into the subject's somatic cells. Germ line alteration involves a specific attempt to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring."

"In the interest of maximizing the resources of both the NIH and the Food and Drug Administration (FDA) and simplifying the method and period for review, research proposals involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects (human gene transfer) will be considered through a consolidated review process involving both the NIH and the FDA. Investigators shall simultaneously submit their human gene transfer proposal to both the NIH and the FDA. Submissions shall include (but are not limited to) the documentation described in Appendices M-I through M-V of the Points to Consider."

"Factors that may contribute to public discussion of a human gene transfer experiment by the RAC include: (i) New vectors/new gene delivery systems, (ii) new diseases, (iii) unique applications of gene transfer, and (iv) other issues considered to require further public discussion. Among the experiments that may be considered exempt from RAC discussion are those determined not to represent possible risk to human health or the environment. Full RAC review of an individual human gene transfer experiment can be recommended by: (i) A majority of the RAC, (ii) other Federal agencies, (iii) the Principal Investigator, or (iv) the sponsoring institution. An

individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. Recommendations for full RAC review of individual human gene transfer experiments will be transmitted to the NIH Director. The NIH Director will determine whether an individual human gene transfer experiment shall be discussed by the full RAC and will determine the priority of the discussions if more than one experiment is awaiting discussion. Relevant documentation will be included in the material for the RAC meeting at which the experiment is scheduled to be discussed. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed (see Section IV-D-5, Protection of Proprietary Data). The RAC prefers that information provided in response to Appendix M contain no proprietary data or trade secrets, enabling all aspects of the review to be open to the public.

"Note: Any application submitted to NIH/ORDA should not be designated as 'confidential' in its entirety. In the event that a sponsor determines that specific responses to one or more of the items described in Appendix M should be considered as proprietary or trade secret, each item should be clearly identified as such. The cover letter (attached to the submitted material) should: (1) Clearly indicate that select portions of the application contain information considered as proprietary or trade secret, (2) a brief explanation as to the reason that each of these items is determined proprietary or trade secret."

"Public discussion of human gene transfer experiments (and access to relevant information) shall serve to inform the public about the technical aspects of the proposals, the meaning and significance of the research, significant safety issues, and ethical/societal implications of the research. RAC discussion is intended to ensure safe and ethical conduct of gene therapy experiments and facilitate public understanding of this novel area of biomedical research."

"RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and, as appropriate, other Department of Health and Human Services (DHHS) components. In its evaluation of human gene transfer proposals, the RAC will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical

investigation, namely, to protect the health and well being of human subjects being treated while at the same time gathering generalizable knowledge. Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (i) Vertical transmission of genetic changes from an individual to his/her offspring, or (ii) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, Appendices M-I through M-V requests information that will enable the RAC, NIH/ORDA, and the FDA, to assess the possibility that the proposed experiment(s) will inadvertently affect reproductive cells or lead to infection of other people (e.g., medical personnel or relatives).

"In recognition of the social concern that surrounds the subject of human gene transfer, the RAC, NIH/ORDA, and the FDA, will cooperate with other groups in assessing the possible long-term consequences of the proposal and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology."

"In order to enhance the depth and value of public discussion relevant to scientific, safety, and ethical/societal implications of gene therapy research, the NIH Director will convene Gene Therapy Policy Conferences (GTPC) as deemed appropriate. GTPC will be administered by the NIH/ORDA. These conferences will offer the unique advantage of assembling numerous participants who possess significant scientific, ethical, and legal expertise and/or interest that is directly applicable to a specific gene therapy research issue. GTPC topics for discussion may be submitted by a member of the RAC, other Federal agencies, Principal Investigators, industry representatives, patient advocacy groups, or individuals who represent the general public interest through NIH/ORDA to the NIH Director. GTPC topics may include areas such as basic research on the use of novel gene delivery vehicles, novel applications of gene transfer, and relevant ethical/societal implications of a particular application of gene transfer technology. The findings of the GTPC will be transmitted to the NIH Director and will be made publicly available. The NIH Director anticipates that this public policy forum will serve as a model for interagency communications and collaboration, concentrated expert discussion of novel scientific issues and their potential societal implications, and enhanced opportunity for public discussion of specific issues and

potential impact of such applications on human health and the environment.

"Appendix M will be considered for revisions as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed."

"Appendix M-I. Submission Requirements—Human Gene Transfer Experiments"

"Investigators must simultaneously submit the following material to both: (1) The Office of Recombinant DNA Activities, National Institutes of Health/ MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 498-9838 (see exemption in Appendix M-VIII-A, Footnotes of Appendix M); and (2) the Division of Congressional and Public Affairs, Document Control Center, HPM-99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852-1448. Proposals will be submitted in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Institutional Biosafety Committee and Institutional Review Board approvals and their deliberations pertaining to your protocol; (4) Responses to Appendix M-II through M-V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues; (5) clinical protocol (as approved by the local Institutional Biosafety Committee and Institutional Review Board); (6) Informed Consent document—approved by the Institutional Review Board (see Appendix M-III, Informed Consent); (7) appendices (including tables, figures, and manuscripts); (8) curricula vitae—2 pages for each key professional person in biographical sketch format; and (9) two 3 1/2 inch diskettes with the complete vector nucleotide sequence in ASCII format."

"Appendix M-II. Description of the Proposal"

[This section remains unchanged.]

"Appendix M-III. Informed Consent"

[This section remains unchanged.]

"Appendix M-IV. Privacy and Confidentiality"

[This section remains unchanged.]

"Appendix M-V. Special Issues"

[This section remains unchanged.]

"Appendix M-VI. RAC Review—Human Gene Transfer Experiments"

"In order to maintain public access to information regarding human gene

transfer protocols, NIH/ORDA will maintain the documentation described in Appendices M-I through M-V (including protocols that are not reviewed by the RAC). The RAC prefers that information provided in response to Appendix M, Points to Consider, contain no proprietary data or trade secrets, enabling all aspects of the discussion to be open to the public."

"Appendix M-VI-A. RAC Members' Written Comments"

"Following receipt by NIH/ORDA, summary information on each human gene transfer protocol will be forwarded to RAC members. Each RAC member shall notify NIH/ORDA within 15 working days regarding the necessity for full RAC discussion. Full RAC review of an individual human gene transfer experiment can be recommended by: (i) A majority of the RAC, (ii) other Federal agencies, (iii) the Principal Investigator, or (iv) the sponsoring institution. An individual human gene transfer experiment that is recommended for full RAC review should represent novel characteristics deserving of public discussion. If the Director, NIH, determines that an experiment will undergo full RAC discussion, NIH/ORDA will immediately notify the Principal Investigator. RAC members may forward individual requests for additional information relevant to a specific protocol through NIH/ORDA to the Principal Investigator. In making a determination whether an experiment is novel, and thus deserving of full RAC discussion, reviewers will examine the scientific rationale, scientific context (relative to other proposals reviewed by the RAC), whether the preliminary *in vitro* and *in vivo* data were obtained in appropriate models and are sufficient, and whether questions related to safety, efficacy, and social/ethical context have been resolved. RAC recommendations on a specific human gene transfer experiment shall be forwarded to the NIH Director, the Principal Investigator, the sponsoring institution, and, as appropriate, other Department of Health and Human Services (DHHS) components."

"Appendix M-VII. Reporting Requirements—Human Gene Transfer Protocols"

"Appendix M-VII-A. Annual Data Reporting"

"Investigators shall comply with the annual data reporting requirements. Annual Data Report forms will be forwarded by NIH/ORDA to investigators. Data submitted in these reports will be evaluated by the RAC

and NIH/ORDA, and reviewed at a future RAC meeting."

"Appendix M-VII-B. Adverse Event Reporting"

"Investigators who have received approval from the FDA to initiate a human gene transfer protocol must report any serious adverse event immediately to the local Institutional Review Board, Institutional Biosafety Committee, Office for Protection from Research Risks (if applicable), NIH/ORDA, and FDA, followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health/ MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, (301) 498-9838."

"Appendix M-VIII. Footnotes of Appendix M"

"Appendix M-VIII-A. Human studies in which the induction or enhancement of an immune response to a vector-encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector-encoded immunogen is not expected, are exempt from Appendix M-I, Submission Requirements, and Appendix M-VIII, Reporting Requirements—Human Gene Transfer Experiments."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in

the Catalog of Federal Domestic Assistance are affected.

Dated: November 15, 1996.

Harold Varma,

Director National Institutes of Health.

[FR Doc. 96-29891 Filed 11-21-96; 8:45 am]

BILLING CODE 4140-01-P

Federal Register

Friday
November 22, 1996

Part IV

Environmental Protection Agency

Certain Chemicals; Premanufacture
Notices

ENVIRONMENTAL PROTECTION
AGENCY

[OPPTS-51848; FRL-5874-3]

Certain Chemicals; Premanufacture
NoticesAGENCY: Environmental Protection
Agency (EPA).
ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the Federal Register each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from December 16, 1995 to February 29, 1996.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51848]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETC-099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS-51848]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION" of this document. **FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS-51848]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at: opptncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive

notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the Federal Register reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260-1532, TDD (202) 554-0551, for generic use information; health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0556 P-95-0357 P-95-0358	01/11/96 01/11/96 01/11/96	04/10/96 04/10/96 04/10/96	Bozell, Inc. CBI Ciba-Geigy Corporation, Textile Products Division	(G) Open, non-dispersive (S) Flexographic printing plates (G) Textile ultra-violet absorber	(G) Polyurethane (G) Carboxylic polybutadiene (G) Chloro, sulfonyl, ethyl sulfonylphenyl, substituted triazinyl aminophenyl oxepoxylamino substituted benzene sulfonic acid derivative (G) Aliphatic isocyanate prepolymer
P-95-0359	01/11/96	04/10/96	Fiber-Resins Corporation	(S) Castable urethane	(G) Aromatic isocyanate prepolymer
P-95-0860	01/11/96	04/10/96	Fiber-Resins Corporation	(S) Casting compound, part A	(G) Oil free terephthalic polyester
P-95-0361	01/11/96	04/10/96	CBI	(G) Resin for printing inks and coatings	(G) Hydrophobically modified acrylate copolymer, sodium salt
P-95-0362	01/11/96	04/10/96	CBI	(G) Thickening compound for aqueous systems	(G) Organo modified heptamethyltrisiloxane
P-95-0363	01/11/96	04/10/96	CBI	(S) Adjuvant for agrochemicals (nonionic surfactant)	(G) Pentaerythritol tetraester with mixed fatty acids
P-95-0364	01/11/96	04/10/96	CBI	(G) Synthetic high temperature lubricant base stock	(G) Aromatic isocyanate prepolymer
P-95-0365	01/11/96	04/10/96	Fiber-Resins Corporation	(S) Reverse osmosis filter adhesive; casting compound	(S) Ethanedione, bis(4-fluorophenyl)-
P-95-0366	01/16/96	04/15/96	Aldrich Chemical Company, Inc.	(G) Destructive use	(G) Di-T-amine amide
P-95-0367	01/16/96	04/15/96	CBI	(S) Urethane foam catalyst	(G) Olefins
P-95-0368	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0369	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0370	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0371	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0372	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0373	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0374	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0375	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0376	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0377	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0378	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0379	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0380	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0381	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0382	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0383	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0384	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0385	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0386	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0387	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0388	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0389	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0390	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0391	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0392	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0393	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0394	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0395	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0396	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0397	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0398	01/16/96	04/15/96	CBI	(G) Destructive use	(G) Olefins
P-95-0399	01/16/96	04/15/96	CBI	(G) Site-limited intermediate	(G) Alkyl nitrile
P-95-0400	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0401	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0402	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol ester
P-95-0403	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol ester
P-95-0404	01/16/96	04/15/96	CBI	(S) Industrial lubricant and fuel additive	(G) Fatty alcohol esters
P-95-0405	01/16/96	04/15/96	CBI	(G) Open, dispersive use	(G) Alkyl diamine
P-95-0406	01/16/96	04/15/96	CBI	(G) Open, dispersive use	(G) Alkyl triamine
P-95-0407	01/16/96	04/15/96	CBI	(G) Open, dispersive use	(G) Alkyl tetramine

I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96—Continued

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I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0550	01/22/96	04/21/96	CBI	(G) Dye for printing material	(G) Metallic, dihydro hydroxy, hydroxyethylsulfonate, alkyl ether, azo, sulfo, polycarboxylic, substituted heterocycle, carboxylate, salt.
P-95-0551	01/22/96	04/21/96	Eastman Chemical Company	(S) Chemical intermediate for surface-active product	(S) Hexanoic acid, 6-[(1-oxonyl) amino]-
P-95-0552	01/18/96	04/18/96	CBI	(S) Resin for pigment	(S) Benzenesulfonamide, ar-methyl, polymer with formaldehyde and urea
P-95-0553	01/22/96	04/18/96	Eastman Kodak Company	(G) Chemical intermediate	(G) Substituted naphthalene carboxamide
P-95-0554	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0555	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0556	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0557	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0558	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0559	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0560	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0561	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0562	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0563	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0564	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0565	01/16/96	04/15/96	CBI	(S) Site-limited production intermediate	(G) Fatty alcohol esters
P-95-0566	01/16/96	04/17/96	CBI	(G) Polymer intermediate for open non-dispersive use	(G) Polyester resin
P-95-0567	01/16/96	04/17/96	CBI	(G) Open, non-dispersive coating additive	(G) Polyester resin
P-95-0568	01/16/96	04/17/96	CBI	(S) Coil coating for appliances	(G) Polyester containing neopentyl glycol
P-95-0569	01/16/96	04/17/96	Fiber-Resins Corporation	(S) Potting compound	(G) Aromatic isocyanate prepolymer
P-95-0570	01/16/96	04/17/96	CBI	(G) Component of dispersively applied coating	(G) Polyester polyol
P-95-0571	01/16/96	04/17/96	CBI	(G) Raw material for coatings for plastics	(G) Polyurethane resin
P-95-0572	01/16/96	04/17/96	CBI	(G) Destructive use	(G) Aromatic boron complex
P-95-0573	01/16/96	04/17/96	CBI	(G) Open, dispersive use	(G) Ethoxylated alkyl quaternary ammonium compound
P-95-0574	01/16/96	04/17/96	Aldrich Chemical Company, Inc.	(G) Destructive use	(S) Benzaldehyde, 2,3,5 trichloro
P-95-0575	01/23/96	04/17/96	CBI	(G) Industrial coating binder component	(G) Polymer of hydroxy polyester acrylate with phthalate ester of alkyl diglycidyl ether
P-95-0576	01/16/96	04/17/96	CBI	(G) Light duty detergent	(G) Polyoxyethylene alkyl citrate sulfosuccinate
P-95-0577	01/16/96	04/17/96	CBI	(G) Light duty detergent	(G) Polyoxyethylene alkyl citrate sulfosuccinate
P-95-0578	01/16/96	04/17/96	CBI	(G) Light duty detergent	(G) Polyoxyethylene alkyl citrate sulfosuccinate
P-95-0579	01/16/96	04/17/96	CBI	(G) Light duty detergent	(G) Polyoxyethylene alkyl citrate sulfosuccinate
P-95-0580	01/16/96	04/17/96	CBI	(G) Light duty detergent	(G) Polyoxyethylene alkyl citrate sulfosuccinate
P-95-0581	01/16/96	04/17/96	CBI	(G) Light duty detergent	(G) Polyoxyethylene alkyl citrate sulfosuccinate
P-95-0582	01/24/96	04/17/96	CBI	(S) Spray applied coatings	(G) Amine salt of polyurethane resin
P-95-0583	01/25/96	04/17/96	CBI	(G) Chemical process aid	(G) Alkyl n-heterocycle

I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0584	01/24/96	04/17/96	CBI	(G) Open, non-dispersive	(G) Organo acid salt
P-95-0585	01/24/96	04/17/96	CBI	(G) Processing aid	(G) Salt of a substituted polyalkylenepolyamine
P-95-0586	01/24/96	04/17/96	Goldschmidt Chemical Corporation	(G) Open, non dispersive use	(G) Acrylmodified polysiloxane
P-95-0587	01/23/96	04/17/96	CBI	(S) Castable urethane part A	(G) Aromatic isocyanate prepolymer
P-95-0588	01/16/96	04/15/96	Ciba-Geigy Corporation	(G) Textile dye	(G) Substituted naphthalenesulfonic acid azo naphthalenyl amino triazinyl substituted alkane
P-95-0589	01/26/96	04/25/96	CBI	(G) Thickening compound for aqueous systems	(G) N,N-dimethyl amino ethyl methacrylate-ethyl acrylate copolymer
P-95-0590	01/30/96	04/24/96	Cytec Industries	(G) Resin for on-dispersive use	(G) Substituted polyimide resin
P-95-0591	01/25/96	04/24/96	Fiber-Resins Corporation	(S) Coating urethane part a	(G) Aliphatic isocyanate terminated prepolymer
P-95-0592	01/30/96	04/29/96	CBI	(G) Coating material	(G) Polycarbonate based polyurethanes
P-95-0593	01/26/96	04/25/96	CBI	(G) Lubricant additive	(G) Alkyl substituted phenyl glycidyl ether
P-95-0594	01/30/96	04/29/96	Cytec Industries	(G) Captive intermediate	(G) Substituted aromatic imide
P-95-0595	01/24/96	04/23/96	CBI	(S) Coatings	(G) Polyurethane basecoat resin
P-95-0596	01/24/96	04/23/96	CBI	(S) Coatings	(G) Polyurethane basecoat resin
P-95-0597	01/24/96	04/23/96	CBI	(S) Coatings	(G) Polyurethane basecoat resin
P-95-0598	01/24/96	04/23/96	CBI	(S) Coatings	(G) Polyurethane basecoat resin
P-95-0599	01/26/96	04/25/96	E. I. DuPont - Agricultural Products	(S) Industrial intermediate	(G) 5-substituted hexanamide
P-95-0600	01/31/96	04/30/96	Ausimont USA, Inc.	(S) High performance fluid for electronics; heat transfer fluid; cleaning	(G) Poly(perfluoropropylene oxide)
P-95-0601	01/26/96	04/25/96	Aldrich Chemical Company, Inc.	(G) Destructive use	(S) 8-Azabicyclo[3.2.1]octan-3-one, 8-methyl
P-95-0602	01/29/96	04/28/96	The Dow Chemical Company	(G) General metal coatings	(S) 2-propenoic acid, 2-methyl-, 2-[(aminocarbonyl)oxy]ethyl ester
P-95-0603	01/31/96	04/30/96	CBI	(S) Adhesion promoter for adhesives and sealants; crosslinker for industrial coating	(G) Organofunctional silane ester
P-95-0604	01/31/96	04/30/96	Spies Hecker, Inc.	(S) Binder for paints (esp. clear coats)	(S) 2-methyl-2-propenoic acid butyl ester, polymer with ethenyl methyl benzene and methyl 2-methyl-2-propenoate
P-95-0605	01/31/96	04/30/96	W. R. Grace	(G) Mineral processing additive	(G) Ethanolamine acetate ethyleneamine acetate solution
P-95-0606	01/31/96	04/30/96	CBI	(G) Site limited intermediate	(G) Amino-benzothiazolyl substituted phenol phosphoric acid salt
P-95-0607	01/31/96	04/30/96	Spies Hecker, Inc.	(S) Wire enamels	(S) 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,3-dihydro-1,3-dioxo-6-isobenzofurancarboxylic acid, 1,2-ethanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 4,4'-methylenebis(benzanamine) and 1,2,3-propanetriol
P-95-0608	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0609	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0610	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0611	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0612	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0613	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0614	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0615	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0616	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0617	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin

I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0618	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0619	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0620	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0621	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0622	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0623	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0624	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0625	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0626	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0627	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0628	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0629	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0630	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0631	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0632	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0633	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0634	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0635	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0636	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0637	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Neutralized polyacrylic resin
P-95-0638	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0639	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0640	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0641	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0642	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0643	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0644	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0645	01/31/96	04/30/96	CBI	(G) Component of coating with open use	(G) Amine functional polyoxypropylene polyurethane
P-95-0646	01/31/96	04/30/96	CBI	(S) Coatings	(G) Urethane modified polyester
P-95-0647	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0648	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0649	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0650	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0651	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0652	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0653	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0654	02/06/96	04/05/96	CBI	(G) Destructive use	(G) Alkyl phenol
P-95-0655	02/02/96	04/01/96	CBI	(G) Destructive use	(G) Branched hydrocarbon
P-95-0656	02/05/96	04/05/96	Dow Corning Company	(S) Silicone fabric softener	(G) Amino-functional polydimethylsiloxane

I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0657	02/05/96	04/05/96	NAA Industries, Inc.	(S) Curing agent for epoxy resins	(S) 2-propenoic acid, 2-methyl, methyl ester, polymer with aziridine, butyl 2-propenoate, ethenylbenzene and 2-propenoic acid, graft
P-95-0658	02/05/96	04/25/96	Dystar L.P.	(S) Dyeing of polyester fiber	(G) Tri-substituted acetanilide
P-95-0659	02/06/96	05/06/96	E. I. DuPont - Agricultural Products	(S) Industrial intermediate	(G) Carbomethoxy imino heteromonocycle hydrochloride
P-95-0660	02/06/96	05/06/96	E. I. DuPont-Agricultural Products	(S) Industrial intermediate	(G) N-carbomethoxy-5-substituted-pentanamine
P-95-0661	02/06/96	05/06/96	AKZO Nobel Resins	(S) Resin used to manufacturing industrial cigs.	(G) Hydroxy acrylic resin
P-95-0662	02/06/96	05/06/96	AKZO Nobel Resins	(S) Resin used to mfg. industrial cigs.	(G) Hydroxy acrylic resin
P-95-0663	02/06/96	05/06/96	AKZO Nobel Resins	(S) Resin used to mfg. industrial cigs.	(G) Hydroxy acrylic resin
P-95-0664	02/06/96	05/06/96	Dystar L. P.	(S) Reactive dye for cellulose powder formulation; reactive dye for cellulose liquid formulation	(G) Tri-substituted naphthalene disulfonic acid salt
P-95-0665	02/06/96	05/06/96	Dystar L. P.	(S) Reactive dye for cellulose powder formulation; reaction dye for cellulose liquid formulation	(G) Tri-substituted naphthalene disulfonic acid salt
P-95-0666	02/01/96	05/01/96	Cerdec Corporation;	(G) Glass enamel additive	(S) Bismuth oxide silicate (bi 2 O(SiO4))
P-95-0667	02/01/96	05/01/96	Cerdec Corporation	(G) Glass enamel additive	(S) Silicate acid (H4SiO4), bismuth (3+) salt (34)
P-95-0668	02/01/96	05/01/96	Cerdec Corporation	(G) Glass enamel additive	(S) Bismuth oxide silicate (bi 12 o 16(SiO4))
P-95-0669	02/06/96	05/06/96	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use.	(G) Acrylic emulsion polymer
P-95-0670	02/06/96	05/06/96	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive use.	(G) Acrylic emulsion polymer
P-95-0671	02/06/96	05/06/96	Dalcolor-Pope, Inc.	(G) This substance is added during pigment manufacture. the resulting treated pigment has superior properties.	(G) Copper phthalocyanine, alkylaminomethyl derivative
P-95-0672	02/06/96	05/06/96	Stamford Chemicals Corporation	(G) Polymeric thickener	(G) Aqueous copolymer
P-95-0673	02/07/96	05/07/96	CBI	(G) Additive, open, non-dispersive use	(G) Siloxanes and silicones, di-me, polyether polyester modified
P-95-0674	02/07/96	05/07/96	E. I. DuPont de Nemours & Company	(S) Additive for fibers to provide water and oil repellancy	(G) Partially fluorinated aliphatic ester
P-95-0675	02/07/96	05/07/96	E. I. DuPont de Nemours & Company	(S) Isolated intermediate for final PMN product	(G) Partially fluorinated alkylcarboxylic acid
P-95-0676	02/07/96	05/07/96	Eastman Kodak Company	(G) Chemical intermediate	(G) Halo amino benzoic acid derivative
P-95-0677	02/09/96	05/09/96	3M Company	(G) Coating	(G) 2-propenoic acid copolymer
P-95-0678	02/09/96	05/09/96	CBI	(G) Open, non-dispersive	(G) Potassium aspartate
P-95-0679	02/12/96	05/12/96	Henkel Corporation	(G) Energy curable compounds	(S) Poly oxy-1,2-ethanediyl, (bis x,x'-1,6-hexanediyl bis (w-(1-oxo-2-propenyl)oxy hydroxy-
P-95-0680	02/12/96	05/12/96	Henkel Corporation	(G) Energy curable compounds	(S) Poly oxy-1,2-ethanediyl, (bis x,x'-1,6-hexanediyl bis (w-(1-oxo-2-propenyl)oxy hydroxy-
P-95-0681	02/12/96	05/12/96	Henkel Corporation	(S) Intermediate	(S) Poly oxy-1,2-ethanediyl, (bis x,x'-1,6-hexanediyl bis (w-(1-oxo-2-propenyl)oxy hydroxy-
P-95-0682	02/12/96	05/12/96	Henkel Corporation	(S) Intermediate	(S) Poly oxy-1,2-ethanediyl, (bis x,x'-1,6-hexanediyl bis (w-(1-oxo-2-propenyl)oxy hydroxy-
P-95-0683	02/12/96	05/12/96	CBI	(G) Bis phenyl substituted urea	(S) Carbon black, carboxy-modified, sodium salts
P-95-0684	02/12/96	05/12/96	Orient Chemical Corporation	(S) Printing ink	(G) C5 oligomers and naphtha steam cracked reaction overheads
P-95-0685	02/14/96	04/30/96	Westvaco Corporation	(G) Coupler/carrier for corrosion inhibitors	(G) Hack oligomers and naphtha steam cracked reaction overheads
P-95-0686	02/14/96	04/30/96	Westvaco Corporation	(G) Coupler/carrier for corrosion inhibitors	(G) C5 oligomers and naphtha steam cracked reaction overheads
P-95-0687	02/14/96	04/30/96	Westvaco Corporation	(G) Coupler/carrier for corrosion inhibitors	(G) C5 oligomers and naphtha steam cracked reaction overheads
P-95-0688	02/14/96	04/30/96	Westvaco Corporation	(G) Coupler/carrier for corrosion inhibitors	(G) C5 oligomers and naphtha steam cracked reaction overheads

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Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0689	02/12/96	05/12/96	Ciba-Geigy Corporation	(G) Textile dye	(G) Substituted phenyl azo substituted naphthalenyl amino triazinyl substituted alkyl compound
P-95-0690	02/13/96	05/13/96	CBI	(G) Component in polyurethane adhesive	(G) Polyurethane prepolymer
P-95-0691	02/13/96	05/13/96	Mona Industries, Inc.	(S) Cleaners: specialty cleaners exempt personal care cleaners	(G) Potassium alkanoate
P-95-0692	02/13/96	05/13/96	R. T. Vanderbilt	(S) Neoprene curing agent	(G) 1,3,4-thiadiazole derivative
P-95-0693	02/14/96	05/14/96	CBI	(G) Additive for oil well cement	(S) Phosphonic acid, [1,2-ethanedithiol] [nitrilobis (methyl-)] tetrakis-, pentasodium salt
P-95-0694	02/14/96	05/14/96	Fiber-Resins Corporation	(S) Adhesive; casting compounds	(G) Aromatic isocyanate prepolymer
P-95-0695	02/16/96	05/16/96	Dow Corning	(S) Silicone adhesion promoter	(G) Silylated polyglycol
P-95-0696	02/20/96	05/20/96	The Dow Chemical Company	(S) Latex binder for paper coating application	(G) Carboxylated styrene-butadiene polymer
P-95-0697	02/20/96	05/20/96	The Dow Chemical Company	(S) Latex binder for paper coating application	(G) Carboxylated styrene-butadiene polymer
P-95-0698	02/20/96	05/20/96	The Dow Chemical Company	(S) Latex binder for paper coating application	(G) Carboxylated styrene-butadiene polymer
P-95-0699	02/14/96	05/14/96	Hercules Incorporated	(G) Papermaking production aid	(G) Epichlorohydrin modified polyamide polyvinyl alcohol
P-95-0700	02/18/96	05/18/96	CBI	(G) Paint	(G) Polyurethane resin, N,N-dimethylmethanamine salt
P-95-0701	02/20/96	05/20/96	CBI	(G) Petroleum hydrocarbon additive	(S) Fatty acids, C ₁₂ -unsaturated, dimers, compds. with *1-hexanamine
P-95-0702	02/20/96	05/20/96	CBI	(G) Open, nondispersive use	(G) Substituted phenyl azo substituted sulfo carbopolycycle
P-95-0703	02/20/96	05/20/96	Ciba-Geigy Corporation	(S) Extrudable master model paste hardener	(S) Formaldehyde, polymer with alpha-(2-aminomethyl)ethyl-omega-(2-aminomethyl)ethoxy(methyl-1,2-ethanedithiol), (chloromethyl)oxirane and phenol
P-95-0704	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housings.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, a dibasic acid, diamines and a mono-basic acid
P-95-0705	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housing.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, tail-oil fatty acids, a dibasic acid and diamines
P-95-0706	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housing.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, tail-oil fatty acids, a dibasic acid, and diamines
P-95-0707	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housing.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, a dibasic acid, diamines and a mono-basic acid
P-95-0708	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housing.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, a dibasic acid, diamines and a mono-basic acid
P-95-0709	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housing.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, tail-oil fatty acids a dibasic acid and diamines
P-95-0710	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housing.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, a dibasic acid and a diamine
P-95-0711	02/20/96	05/20/96	CBI	(S) As a hot melt adhesive to bond copper wire coils to noryl plastic television deflection yoke housing.	(G) Fatty acids, C ₁₂ -unsaturated, dimers, polymers with ethylenediamine, a dibasic acid and a diamine
P-95-0712	02/21/96	05/21/96	CBI	(G) Chemical intermediate	(G) Macrocyclic hydroperoxide
P-95-0713	02/21/96	05/21/96	CBI	(G) Pressure-sensitive adhesive	(G) Hydrogenated petroleum resin
P-95-0714	02/21/96	05/21/96	Bostik, Inc.	(G) Open-non dispersive use	(G) Polyurethane

I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0715	02/22/96	05/22/96	Worthen Industries, Inc.	(S) Primer for thermoplastic polyolefin in automotive applications	(S) Propionic acid, 3-hydroxy-3-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatocyclohexane], 2-oxepanone and 2,2'-oxybis[ethanol], compound with N,N-diethylmethanamine
P-95-0716	02/23/96	05/23/96	E. I. DuPont de Nemours & Co.	(G) Film additive	(G) Substituted biphenol
P-95-0717	02/23/96	05/23/96	CBI	(S) Hardener for architectural coatings hardener for metal primers for maintenance coatings	(G) 4,4'-(methylenebis[phenyl])bisphenol, polymer with (chloromethyl)oxirane, reaction products with alkylglycidyl ethers and triethylenetetramine
P-95-0718	02/23/96	05/23/96	E. I. DuPont de Nemours & Co.	(G) Synthetic intermediate, totally consumed	(G) Substituted biphenol
P-95-0719	02/26/96	05/26/96	CBI	(G) Lubrication oil additives	(G) Alkylbenzene sulfonic acid, calcium salt
P-95-0720	02/26/96	05/26/96	CBI	(G) Lubrication oil additives	(G) Alkylbenzene sulfonic acid, barium salt
P-95-0721	02/26/96	05/26/96	CBI	(G) Lubrication oil additives	(G) Alkylbenzene sulfonic acid, calcium salt
P-95-0722	02/26/96	05/26/96	CBI	(G) Lubrication oil additives	(G) Alkylbenzene sulfonic acid
P-95-0723	02/26/96	05/26/96	CBI	(G) Soluble oil additives	(G) Alkylbenzene sulfonic acid, sodium salt
P-95-0724	02/26/96	05/26/96	Uniroyal Chemical Company	(S) Rubber crosslinking accelerator	(S) 2-benzothiazole-sulfenamide, N-(2-benzothiazolylthio)-N-cyclohexyl
P-95-0725	02/23/96	05/23/96	Dow Corning	(S) Chemical intermediate	(S) M-(diacetoxy)iodotoluene
P-95-0726	02/23/96	05/23/96	Dow Corning	(G) Catalyst in a coating formulation	(S) Iodulin, (3-methylphenyl)phenyl-, ar-C ₁₂₋₁₈ -alkyl deriva., salts with trifluoromethanesulfonic acid (1:1)
P-95-0727	02/27/96	05/13/96	I C & S Distributing Company	(S) An ingredient of a wood coating	(S) Polymer of: ethanol, 2,2'-oxybis, 1,2-propanediol; 2-butanediol; 1,3-isobenzofuranone, 3a,4,7,7a-tetrahydro-, 1-butanol, 2,2-bis(2-propenyloxy)methyl-
P-95-0728	02/27/96	05/13/96	I C & S Distributing Company	(S) An ingredient of a wood coating	(S) Polymer of: 1,2-ethanediol; ethanol, 2,2'-oxybis; 2-butanediol; 1-butanol, 2,2-bis(2-propenyloxy)methyl-
P-95-0729	02/23/96	05/23/96	CBI	(G) Additive precursor	(G) Substituted alkylenepolyamine
P-95-0730	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0731	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0732	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0733	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0734	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0735	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0736	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0737	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted alkylenepolyamine
P-95-0738	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted ethylenepolyamine
P-95-0739	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted ethylenepolyamine
P-95-0740	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted ethylenepolyamine
P-95-0741	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted ethylenepolyamine
P-95-0742	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted ethylenepolyamine
P-95-0743	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted ethylenepolyamine
P-95-0744	02/23/96	05/23/96	CBI	(G) Specialty additive	(G) Salt of a substituted ethylenepolyamine

I. 401 Premanufacture Notices Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-95-0745	02/26/96	05/26/96	CBI	(G) Petroleum hydrocarbon process aid	(G) Alkyl-substituted-N-heterocycle
P-95-0746	02/26/96	05/26/96	Engelhard Corporation	(S) As a organic pigment in plastics and coatings and inks	(G) Organic orange pigment
P-95-0747	02/27/96	05/27/96	Huls America Inc.	(S) Pigment dispersant for waterborne industrial coatings	(S) 2,5-furandione, polymer with ethenylbenzene, propyl ester, compd. with 2-amino-2-methyl-1-propanol
P-95-0748	02/27/96	05/27/96	CBI	(G) Polyurethane adhesive component	(G) Polyurethane prepolymer
P-95-0749	02/27/96	05/27/96	Globe-Geigy Corporation, Textile Products Division	(G) Textile dye	(G) Substituted phenyl azo substituted phenyl aminotriazinyl substituted phenyl substituted naphthalenesulfonic acid
P-95-0750	02/27/96	05/27/96	CBI	(G) Coloring material for printing ink	(G) Tetraazo-naphthalene sulfonic dye
P-95-0751	02/27/96	05/27/96	R.T. Vanderbilt	(S) Friction modifier for engine oil	(G) Organomolybdenum complex of organic amide
P-95-0754	02/28/96	05/28/96	E. I. DuPont - agricultural products	(S) Industrial intermediate	(G) 2-substituted-1-ol benzene sulfonate
P-95-0755	02/27/96	05/27/96	CBI	(G) Modified epoxy used in a structural composite matrix	(G) Modified epoxy resin
P-95-0756	02/28/96	05/28/96	E. I. DuPont - Agricultural Products	(S) Industrial intermediate	(G) 1-Piperidinecarboxylic acid, 2-(dichloro-hydroxy-carbomono-cyclo-hydrazono)-methyl ester
P-95-0757	02/28/96	05/28/96	E. I. DuPont - Agricultural Products	(S) Industrial intermediate	(G) Dichloro, hydroxy, hydrazino-carbomono-cyclo-
P-95-0758	02/28/96	05/28/96	E. I. DuPont - Agricultural Products	(S) Industrial intermediate	(G) Dichloro, hydroxy, hydrazino-carbomono-cyclo-mono-hydrochloride

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Case No.	Received Date	Commencement/Import Date	Chemical
P-95-1559	08/10/95	01/16/96	(G) Polymer of aliphatic diisocyanate and a diol
P-95-2247	08/29/95	11/01/96	(G) Sulfonated polyacrylate mixed ammonium sodium salt; sulfonated polyacrylate ammonium salt
P-95-0538	03/27/95	02/22/96	(G) Aliphatic diene
P-95-1835	04/23/95	01/30/96	(G) alkylphenylene
P-95-0303	02/14/96	04/15/92	(G) Diquaternary polydimethylsiloxane
P-95-0782	02/21/96	01/28/96	(G) Crosslinked acrylic polymer
P-95-0694	05/15/96	02/29/96	(G) High heat polyurethane
P-95-1317	01/30/96	12/29/95	(S) Benzene-propanol, beta-pentyl-
P-95-0010	02/28/96	02/07/96	(G) N,N-dimethylethanamine salted, acid functional, styrenated acrylic polymer
P-95-0311	01/23/96	01/03/96	(G) Organofunctional silica
P-95-0347	12/30/96	02/29/96	(S) Ethylene carbonmonoxide copolymer oxygen
P-95-0453	01/21/93	02/28/96	(S) Titanium IV tetrakis tridecanolate, adduct 2 moles of tris tridecyl phosphate
P-95-0454	01/21/93	02/28/96	(S) Titanium IV tetrakis tridecanolate, adduct 2 moles of tris tridecyl phosphate
P-95-0562	01/21/96	12/21/95	(S) Phosphonic acid, ethenylidene bis-, tetrakis(1-methylethyl)ester
P-95-0591	02/26/96	11/01/95	(S) Zirconium iv bis-hydrogen, tris (bis tridecyl) diphosphato-o bis N,N-dimethylamino propyl methacrylamide salt
P-95-0592	02/22/93	02/28/96	(G) Oxy bis titanium IV (tridecyl) phosphate-o
P-95-0593	02/29/96	11/01/95	(S) Oxy bis zirconium IV tris (tridecyl) phosphato-o
P-95-0594	02/28/96	11/01/95	(S) Oxy bis titanium IV tris (ethoxylated butyl) phosphato-o
P-95-0595	02/28/96	11/01/95	(S) Oxy bis zirconium IV tris (ethoxylated butyl) phosphato-o
P-95-0620	02/21/96	01/30/96	(G) Aryl, cyano, phosphorus ester based olefin polymer
P-95-0633	02/06/96	01/10/96	(G) Aliphatic ester
P-95-0676	02/21/96	02/08/96	(G) Aryl, cyano, phosphorus ester based olefin polymer, sulfonated and hydrolyzed
P-95-0678	02/21/96	02/08/96	(G) Aryl, cyano, phosphorus ester based olefin polymer, sulfonated and hydrolyzed, alkali salt
P-95-0937	02/28/96	11/01/95	(S) Butanolate oligo oxyethylene hydroxy acetate
P-95-1693	01/11/96	12/08/95	(G) Modified olefinic hydrocarbon resin
P-95-0612	01/11/96	05/17/94	(G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, trimethylhexamethylenediamine, alkanediol, hexanediol acid, dimethylalkanedioic acid and polypropyleneglycol
P-95-0819	01/18/96	01/05/96	(G) Polymeric colorant

II. 144 Notices of Commencement Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P-95-0671	02/20/96	01/30/96	(G) Aminoalkyl-alkoxysilane
P-95-1017	01/25/96	01/09/96	(G) Substituted urea
P-95-1018	02/21/96	02/05/96	(G) Substituted guanidine
P-95-1019	02/21/96	02/08/96	(G) Quaternary ammonium halide
P-95-1117	01/31/96	01/23/96	(G) Roanin, maleated, polymer with an alkylphenol, carboxylic acids, formaldehyde and a polyol
P-95-1126	01/30/96	12/29/95	(G) Water polyurethane dispersions
P-95-1416	01/31/96	01/15/96	(G) Poly hydroxy poly amino resin
P-95-1476	02/14/96	09/23/94	(G) Modified silicone resin
P-95-1521	01/23/96	01/05/96	(G) Adipic acid, polymer with diols and a monohydric alcohol
P-95-1743	01/11/96	12/09/95	(G) Isophorone diisocyanate neopentyl glycol adipate polyurethane prepolymer
P-95-1843	01/16/96	12/08/95	(G) Polyaromatic polymer
P-95-1891	01/11/96	11/13/95	(G) Perfluoroalkylethyl acrylate copolymer
P-95-1926	02/06/96	01/08/96	(G) Copolyester
P-95-1960	02/29/96	01/30/96	(G) Ethylene interpolymer
P-95-2061	01/11/96	11/22/95	(G) Benzotriazole derivative
P-95-2237	01/11/96	12/15/95	(G) Diol ethoxylated
P-95-0014	02/01/96	01/11/96	(G) Roanin, maleated polymer, with substituted phenols, paraformaldehyde and pentaerythritol
P-95-0194	01/29/96	01/02/96	(G) Perfluoropolyether diol
P-95-0241	01/11/96	11/13/95	(G) Perfluoroalkylethyl acrylate copolymer
P-95-0243	01/16/96	12/20/95	(G) Poly alkylphenol
P-95-0248	01/30/96	01/04/96	(G) Aminofunctional silicone
P-95-0422	01/31/96	12/28/95	(G) Substituted cyclopentadienyl metal complex
P-95-0514	02/20/96	02/07/96	(G) Substituted diphenyl azo dye
P-95-0535	02/15/96	02/08/96	(G) Reaction products of formalin (37%) with amine C ₁₂ [the fractional formalin-diethylene glycol and ammonia]
P-95-0536	01/11/96	11/30/95	(G) Sodium group Iva metal hydroxysilicates
P-95-0576	02/13/96	02/04/96	(G) Acrylate/acrylonitrile copolymer
P-95-0800	01/23/96	01/11/96	(G) Alkoxysilane-isocyanate terminated polyether based urethane prepolymer
P-95-0840	02/23/96	02/05/96	(G) Epoxy ester polymer
P-95-0725	01/22/96	12/29/95	(G) PEG polymer with mono-and di-functional hydroxy-and amino-alkanes, silanolic acid and alkanediolic acid
P-95-0726	01/22/96	12/29/95	(G) PEG polymer with mono-and di-functional hydroxy-and amino-alkanes, silanolic acid and alkanediolic acid
P-95-0732	01/11/96	12/23/95	(G) Silyloxy organolithium
P-95-0750	02/27/96	02/08/96	(G) Polyamide resin
P-95-0866	01/11/96	12/01/95	(G) Acrylic resin salt
P-95-0868	02/06/96	01/05/96	(G) Acrylic resin salt
P-95-0875	01/30/96	01/28/96	(G) Aluminum organometallic compound
P-95-1197	01/11/96	12/05/95	(G) Modified epoxy resin
P-95-1198	01/11/96	12/05/95	(G) Acrylic resin salt
P-95-1201	01/11/96	11/29/95	(G) Acrylate polymer
P-95-1220	02/26/96	02/05/96	(G) Fatty acid diamide
P-95-1327	02/05/96	10/06/95	(G) Polyhydroxyester of epoxidized soybean oil with aryl-aryl sulfonic acids
P-95-1331	01/16/96	01/10/96	(G) Substituted phenyl azo substituted naphthalenesulfonic acid azo phenyl amino substituted naphthalenesulfonic acid derivative
P-95-1333	01/11/96	12/14/95	(S) A mixture of potassium fluorosulfonate known as fl-7 containing 15-25% dipotassium pentafluoroaluminate monohydrate and 75-85% potassium aluminum fluoride
P-95-1350	02/07/96	01/18/96	(G) Heterocyclic aromatic ester
P-95-1361	01/16/96	12/11/95	(S) Benzoic acid, 2-[(2-hydroxy-3,6-disulfo-1-naphthyl) azo]-aluminum salt(1:1)
P-95-1397	02/15/96	01/25/96	(G) Amine sulfonate monomer
P-95-1398	02/28/96	02/09/96	(G) Vinyl chloride, polymer with vinyl acetate and amine sulfonate monomer
P-95-1399	02/28/96	02/09/96	(G) Vinyl chloride, polymer with vinyl acetate and amine sulfonate monomer
P-95-1411	01/11/96	12/27/95	(G) Substituted malonic acid, bis (substituted monoheterocycle) ester
P-95-1421	01/31/96	01/11/96	(G) Polyhydroxy polyphosphate ester salt
P-95-1439	01/23/96	12/27/95	(G) Hydroxy functional acrylic
P-95-1467	01/22/96	01/04/96	(G) Substituted aromatic aldoxime
P-95-1471	02/20/96	01/10/96	(G) Epoxy amine adduct
P-95-1472	02/14/96	01/10/96	(G) Component in an epoxy curative
P-95-1508	02/01/96	01/08/96	(G) Acid functional acrylic latex
P-95-1531	01/30/96	11/30/95	(G) Water-borne polyurethane dispersion
P-95-1589	01/11/96	12/21/95	(G) Silyloxy organochloride
P-95-1591	06/27/95	02/29/96	(G) Thermoplastic MDI based polyurethane resin
P-95-1672	01/11/96	11/29/95	(G) Aromatic polycarbodiimide
P-95-1696	01/11/96	12/04/95	(G) Isocyanate-terminated polycarbonate polyurethane prepolymer
P-95-1707	01/22/96	12/14/95	(G) Metal salt of aromatic sulfo carboxylate
P-95-1708	01/18/96	10/31/95	(G) High molecular weight unsaturated carboxylic acid
P-95-1711	01/11/96	11/28/95	(S) 2,5-furandione, dihydro-, monopolyisobutylene derivative, reaction products with 1-(dimethylamino)-2-propanol and 4(or 5)-methyl-1H-benzotriazole

II. 144 Notices of Commencement Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Commence- ment/Import Date	Chemical
P-95-1715	02/05/96	01/25/96	(G) Olefin modified hydrocarbon resin
P-95-1729	02/13/96	02/04/96	(G) Olefin modified hydrocarbon resin
P-95-1735	02/27/96	02/01/96	(G) Starch, 2-carboxy-2-substituted-ether
P-95-1749	01/24/96	10/23/95	(G) Substituted pyridinedicarboxylic ester
P-95-1759	02/13/96	02/08/96	(G) Acid functional polyester resin
P-95-1767	01/29/96	01/12/96	(G) Dialkylheterocyclic amine
P-95-1772	02/27/96	02/07/96	(G) Polyalkyl phosphate
P-95-1822	01/11/96	11/29/95	(S) Butanedioic acid, octadecenyl-, mixed esters with diethylene glycol and (tetrapropenyl) butanedioic acid
P-95-1823	01/11/96	11/15/95	(S) Butanedioic acid, octadecenyl-, mixed esters with diethylene glycol and (tetrapropenyl) butanedioic acid, compounds, with triethanolamine
P-95-1824	01/11/96	12/12/95	(S) Butanedioic acid, octadecenyl-, mixed esters with diethylene glycol and (tetrapropenyl) butanedioic acid, compounds, with branched 3-(tridecyloxy)-1-propanamine, ethanolamine and triethanolamine
P-95-1827	02/05/96	02/01/96	(S) Benzoic acid, 4-hydroxy-, 2-hydroxy-3-((1-oxonodecyl)propyl ester
P-95-1828	01/23/96	12/28/95	(G) Styryl pyridinium derivative
P-95-1838	01/25/96	01/04/96	(S) Naptha (petroleum), isomerization, C ₆ -fraction
P-95-1839	01/11/96	12/08/95	(G) High solids polyester
P-95-1857	01/16/96	01/07/96	(G) Substituted phenyl substituted thiomorpholine
P-95-1864	01/23/96	01/17/96	(S) Silicic acid (HSiO ₃), strontium salt (1:1)
P-95-1865	02/23/96	02/05/96	(S) Phenethyl diisopropyl chlorosilane (mixture 2-phenylethylchlorosilane 1-phenyl ethyl diisopropyl chlorosilane
P-95-1867	02/28/96	02/12/96	(G) Alkanolic acid, trisubstituted-phenylalkyl-disubstituted-phenyl ester
P-95-1868	01/16/96	12/30/95	(G) Substituted alkyl ester
P-95-1872	01/11/96	12/27/95	(G) Styrene-maleic anhydride copolymer, compd. with alkanolamine
P-95-1876	01/11/96	11/30/95	(G) Cycloaliphatic acrylic polyol
P-95-1884	01/11/96	12/14/95	(G) Carboxy alcohol reaction product
P-95-1885	01/24/96	01/11/96	(G) Modified vinyl polymer
P-95-1886	01/24/96	01/11/96	(G) Modified biopolymer
P-95-1895	01/11/96	12/02/95	(S) 2-ethyl-1,3-propanediol
P-95-1896	01/16/96	12/12/95	(G) Acrylic copolymer modified with fatty acids and olefins
P-95-1897	01/16/96	12/12/95	(G) Fatty acid modified polymer, free of solvents and volatile amines
P-95-1898	01/16/96	12/12/95	(G) Acrylic copolymer modified with fatty acids and olefins
P-95-1899	01/30/96	01/19/96	(S) Bicyclo[2.2.1]heptan-2-one, 1,7,7-trimethyl-3-((4-methylphenyl)methylene)-, (+)
P-95-1900	01/11/96	12/27/95	(G) Methacrylic acid ester, homopolymer
P-95-1901	01/11/96	12/27/95	(G) Phosphoric acid ester, metal salt
P-95-1903	01/23/96	01/03/96	(G) Polymer of isophorone diisocyanate and aliphatic diol/aliphatic dicarboxylic acid
P-95-1943	01/22/96	12/26/95	(G) Dialkyl pyridine
P-95-1944	02/09/96	01/10/96	(G) Acrylic polymer
P-95-1953	02/05/96	01/09/96	(S) Hexanoic acid, 6-amino-, monosodium salt
P-95-1964	02/13/96	02/02/96	(G) Amine salt of polyurethane resin
P-95-1966	01/29/96	01/10/96	(G) Starch, 2-((substituted)methylamino)-2-oxoethyl 2-hydroxy-3-(trimethylammonio)propylether, chloride, hydrochloride
P-95-1969	01/16/96	12/22/95	(G) Bis(dimethylamino)substituted carbomonocycle
P-95-1971	01/11/96	12/12/95	(G) Modified melamine, formaldehyde, urea polymer
P-95-2000	01/22/96	12/17/95	(G) Polyiminoamide salt
P-95-2029	01/11/96	12/13/95	(G) Alicyclic diester
P-95-2031	02/28/96	02/01/96	(G) Amide-functional polydimethylsiloxane
P-95-2034	02/13/96	01/26/96	(G) Melamine, polymer with formaldehyde, methylated, hydrochloride
P-95-2038	01/11/96	12/13/95	(G) Saturated polyester resin
P-95-2058	02/09/96	01/29/96	(G) Acrylate copolymer
P-95-2062	01/31/96	01/11/96	(G) Diketo-pyrrolopyrrole
P-95-2068	01/25/96	01/08/96	(G) Polyester
P-95-2096	02/21/96	02/05/96	(G) Water thinnable fatty acid modified polyurethane resin
P-95-2104	01/29/96	01/05/96	(G) Starch, 2-hydroxy-3-(trimethylammonio)propyl 2-(methyl (2-substituted) amino)-2-substituted ether, chloride
P-95-2105	01/16/96	01/04/96	(G) Modified polyester resin
P-95-2106	01/29/96	01/24/96	(G) Organosilicone copolymer
P-95-2108	01/26/96	01/24/96	(S) Beta-alanine, N-[2-[[[2-(trimethoxysilyl)ethyl]phenyl]methyl]amino]ethyl]-3-(trimethoxysilyl)propyl ester; .beta.-alanine, N-(2-aminoethyl)-N-[[[2-(trimethoxysilyl)ethyl]phenyl]methyl]-3-(trimethoxysilyl)propyl ester
P-95-2109	01/25/96	01/24/96	(S) Polymer of siloxanes and silicones, di-me, 3-hydroxypropyl, group-terminated, ethoxylated; cyclotrisiloxane, di-me; cyclotetrasiloxane, octaphenyl-
P-95-2111	02/21/96	01/24/96	(G) Polyurethane
P-95-0005	02/06/96	01/04/96	(G) Polystyrene terephthalate copolymer containing lithium sulfo isophthalate
P-95-0013	02/13/96	01/25/96	(G) Polyurethane prepolymer
P-95-0014	02/21/96	01/23/96	(S) Neodecanoic acid, ethenyl ester, polymer with butyl 2-methyl-2-propenoate, cyclohexyl 2-methyl-2-propenoate, 1,1-dimethylethyl 2-propenoate, 2-hydroxyethyl 2-methyl-2-propenoate, 2-methylpropyl 2-methyl-2-propenoate, 1,2-propanediol mono (2-methyl-2-propenoate) and 2-propenoic acid

II. 144 Notices of Commencement Received From: 12/16/95 to 02/29/96—Continued

Case No.	Received Date	Commence- ment/Import Date	Chemical
P-96-0015	02/13/96	02/11/96	(G) Naphthalene sulfonic acid azo substituted naphthalene
P-96-0023	02/21/96	02/13/96	(G) Alkyne
P-96-0040	02/22/96	02/15/96	(G) Styrene-maleic anhydride copolymer, reaction products with alcoholic compounds, salt with alkanolamine
P-96-0154	02/15/96	02/05/96	(S) 2-(3 hept)-N-butyl-1,3-oxazoline
P-96-0161	02/15/96	02/05/96	(S) Hexanedioic acid, polymer with 1,4-butanediol, 2,2 dimethyl-1,3-propanediol, 1,2-ethanediamine, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, compound with ethanamine, N,N-diethyl-
Y-91-0129	04/04/91	01/14/96	(G) Norbornene polymer derivative
Y-92-0192	08/24/92	01/14/96	(G) Water emulsion at different concentrations of polypropylene modified with a carboxylic groups insertion and emulsified with surfactants not ionic, such as etho-nonyl phenols.
Y-94-0050	05/31/94	11/30/95	(G) Unsaturated urethane acrylate
Y-94-0115	05/31/94	11/30/95	(G) Saturated polyester

List of Subjects

Environmental protection,
Premanufacture notices.

Dated: November 18, 1996.

George A. Benina,

Acting Director, Information Management
Division, Office of Pollution Prevention and
Toxics.

[FR Doc. 96-29931 Filed 11-21-96; 8:45 am]

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federal register

Friday
November 22, 1996

Part V

Department of Agriculture

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1806, et al.

**Reengineering and Reinvention of the
Direct Section 502 and 504 Single Family
Housing (SFH) Programs; Interim Final
Rule**

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1806, 1910, 1922, 1944, 1951, 1955, 1966, 1968, and 3550

RIN 0675-A999

Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing (SFH) Programs

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Interim final rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCD), a successor Agency to the Farmers Home Administration (FmHA), is streamlining and reengineering its regulations and will be utilizing private sector processes and techniques in the administration of its direct SFH portfolio. This action is taken to reduce unnecessary federal regulations, improve customer service, and improve the agency's ability to achieve greater efficiency, flexibility and effectiveness in managing its SFH portfolio. The intended effect of this action is to improve service to rural America and comply with the National Performance Review's (NPR's) goal of reducing unnecessary federal regulations.

DATES: The effective date of this interim final rule is December 26, 1996.

Written comments are requested on §§ 3550.53(g), 3550.57(a), 3550.63, and 3550.68. Comments are due on or before December 26, 1996.

ADDRESSES: Submit written comments in duplicate to the Director, Regulations and Paperwork Management Division, Rural Housing Service, U.S. Department of Agriculture, Stop 6348, 1400 Independence Ave., SW, Washington, D.C. 20250-6348. Comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "DLOS" in the Subject. All comments made pursuant to this notice will be made available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Special Assistant to the Administrator for Regulatory and Policy Development, Rural Housing Service, U.S. Department of Agriculture, Stop 0781, 1400 Independence Ave., S.W.,

Washington, D.C. 20250-0781, telephone (202) 720-1628.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant, but not economically significant, and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Congressional Review

In accordance with section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), this rule was determined to be a major rule by OMB and has been submitted to Congress and the Comptroller General. The aforementioned Act stipulates that a major rule may not take effect until the later of: submission of a report to Congress on the rule; or 60 days after publication in the *Federal Register* unless the Agency finds good cause that such timeframe is impracticable, unnecessary, or contrary to the public interest.

As discussed in this rule, this regulatory action is taken to consolidate, streamline and simplify existing regulations, make them clearer and easier to understand, improve the delivery of service to our customers, and save the Government \$250 million over the next five years. A delay in implementing these regulations would forestall these savings to the public. For these reasons, RHS has determined that delaying implementation of these regulations is impracticable and contrary to the public interest.

It should also be noted that, in accordance with section 534(b) of the Housing Act of 1949, as amended, these regulations cannot take effect until 30 days after publication in the *Federal Register*. Further, section 534(b) requires that copies of the rule be sent to Chairman and Ranking Member of the Committee on Banking Housing and Urban Affairs of the Senate and the Chairman and Ranking Member of the Committee on Banking, Finance and Urban Affairs of the House before being published in the *Federal Register*. Copies were submitted to these members on August 29, 1996.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575-0166, in accordance with the Paperwork Reduction Act (PRA) of 1995. No

comments were received with regard to the proposed information collection requirements during the 60-day comment period under PRA and this rule does not impose any new information collection requirements from those previously approved by OMB. The only change RHS has made to the proposed information collection package is to change the acronym before the form number. The proposed rule was developed when the RHS was known as the RHCD and was part of the Rural Economic and Community Development (RECD) mission area within the USDA. The name of the RECD mission area has been changed to Rural Development. The proposed rule included the use of the acronym "RECD" before the form number. RHS has changed the acronym from "RECD" to "RHS" for forms used strictly in RHS, or "RD" for forms which may be used by other services within the Rural Development mission area or the Farm Service Agency (FSA).

The information collection requirements for the Handbooks which accompany this regulation were published in the *Federal Register* for a 60-day comment period on July 18, 1996 (61 FR 37440). No comments were received on this information collection package which is currently under review by OMB. RHS is proposing an overall 11 percent reduction in information collection hours and 20 percent reduction in information collection costs.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number as assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

Civil Justice Reform

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings must be exhausted before bringing suit in court challenging action taken under this rule in accordance with subtitle H of title II of Pub. L. 103-354.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for

Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken as part of the National Performance Review (NPR) program to reduce or eliminate unnecessary regulations and improve those that remain in force. Currently, the administration of the SFH program is guided by 18 separate regulations totaling 290 pages in the CFR.

RHS has purchased a commercial-off-the-shelf Dedicated Loan Origination and Servicing System (DLOS) which includes escrow capability to improve program performance and efficiency to its customers. RHS intends to adopt processes and techniques currently utilized by the private sector including centralized servicing and automation of many forms and processes. The system is being customized to provide the additional features and servicing benefits available to RHS customers to assist them in becoming successful homeowners.

Rather than modify the current 18 regulations to implement DLOS, RHS committed itself to meet the true spirit and intent of the NPR. RHS has undertaken a massive effort to completely reinvent and reengineer its regulatory process. RHS is combining the guidance provided in all 18 regulations into one consolidated rule. Administrative matters have been eliminated, remaining text has been completely revised to be consistent, simple, and clear. RHS estimates the final rule, after DLOS is fully implemented, will cover approximately 30 pages in the CFR, for a 90%

reduction in regulations. This regulatory initiative follows our final rule of October 27, 1995, in which the cost of the direct section 502 program was reduced by 30%.

Programs Affected

These programs are listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very-Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans) and 10.417 Very-Low Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants).

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, these programs are not subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Background Information

An Overview

The RHS is completing the final steps to the reengineering and reinvention of the manner in which direct loans and grants under sections 502 and 504 of the Housing Act of 1949 are made and serviced. This follows our October 27, 1995, final rule in which the cost of our direct single family housing low income loan program under section 502 of the Housing Act of 1949 was reduced by 30%. The regulations which follow are a significant departure from business practices of the former FmHA. As part of the USDA reorganization, RHS made a commitment to make its programs more customer friendly, to streamline processes, reduce costs to the taxpayer, and increase our level of customer

service. These regulations will accomplish these goals within our SFH program and set the standard for future regulatory actions within RHS.

RHS has approximately 700,000 direct Section 502 and 504 loans with approximately 600,000 customers in its portfolio. With our Fiscal Year (FY) 1996 direct section 502 and 504 loan appropriation, the Agency expects to make approximately 35,000 new direct SFH loans during this FY. The accounting system established by FmHA in the 1970's to maintain its vast farm, housing, community and business loan programs is severely outdated and is not capable of expansion to keep pace with an ever increasingly automated society. FmHA was not able to provide the same level of customer service provided by commercial lenders such as the escrow of real estate taxes and insurance for its customers and toll free telephone numbers to contact a servicing representative. These features are critical for RHS to provide prudent supervised credit to its very-low and low income customers and assist these families in becoming successful homeowners.

Additionally, RHS is aggressively meeting the Administration's goal of reducing staff through reorganization and streamlining of processes. National and field staffs are being reduced and many offices will be consolidated. This, coupled with our outdated accounting system, made the accomplishment of our Agency goals more challenging.

In May 1995, the RHS awarded a contract to Fiserv, Inc. and its subsidiary, Data-Link systems for the purchase of a commercial-off-the-shelf Dedicated Loan Origination and Servicing System (DLOS) which includes escrow capability. This system will replace the Agency's current Program Loan Accounting System (PLAS) and the Management Records System (MRS) and will provide agency personnel with the tools to deliver high quality customer service to its customers. RHS has adopted processes and techniques currently utilized by the private sector including centralized servicing and automation of many forms and processes. The system has been customized to provide the additional features and servicing benefits available to RHS customers to assist them in becoming successful homeowners. The Agency implemented this system on October 1, 1996 in two pilot states. Other states will be phased into the DLOS system through FY 1997 with full implementation anticipated by September 30, 1997. Further information on the implementation of the system follows.

The centralized servicing unit is located in St. Louis, Missouri, and will assume primary responsibility for the functions associated with servicing and managing the loan portfolio such as collection of loan payments, day to day loan servicing, escrowing, and accounting in a focused effort to monitor and reduce loan defaults thereby achieving our goal of having successful homeowners that can eventually refinance to commercial credit. The centralized unit is staffed with many existing RHS employees.

The objectives of DLOS are to:

- Establish an escrow system for real estate taxes and insurance
- Facilitate the centralization of RHS SFH loan servicing
- Reduce the foreclosure rate through early and consistent intervention with customers having trouble making payments
- Reduce costs by reducing delinquency rates, loan losses and operating costs
- Account for direct SFH loans on an amortized rather than simple interest rate
- Improve efficiency and service to our customers
- Develop clear, concise and easy-to-read regulations and handbooks
- Reduce burden on our customers

This initiative has been highlighted in the NPR and will streamline and improve the delivery of program assistance to customers. There are anticipated savings to the Government of \$250 million over a five year period.

The Regulations

RHS has completed a major redevelopment and consolidation of FmHA regulations affecting the direct Section 502 and 504 programs. Prior to this rule becoming effective, direct SFH customers were affected, in part, by the following regulations:

- 7 CFR part 1806, subpart A—Real Property Insurance
- 7 CFR part 1910, subpart A—Receiving and Processing Applications
- 7 CFR part 1922, subpart C—Appraisal of Single Family Residential Property
- 7 CFR part 1944, subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations
- 7 CFR part 1944, subpart J—Section 504 Rural Housing Loans and Grants
- 7 CFR part 1951, subpart C—Offsets of Federal Payments to FmHA or its successor agency under Public Law 103-354 Borrowers
- 7 CFR part 1951, subpart D—Final Payment on Loans

- 7 CFR part 1951, subpart F—Analyzing Credit Needs and Graduation of Borrowers
- 7 CFR part 1951, subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

- 7 CFR part 1951, subpart I—Recapture of Section 502 Rural Housing Subsidy
- 7 CFR part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans

- 7 CFR part 1951, subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

- 7 CFR part 1955, subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

- 7 CFR part 1955, subpart B—Management of Property
- 7 CFR part 1955, subpart C—Disposal of Inventory Property

- 7 CFR part 1956, subpart B—Debt Settlement—Farmer Programs and Housing

- 7 CFR part 1965, subpart C—Security Servicing for Single Family Rural Housing Loans

- Some of the above mentioned regulations involve only SFH loans, while others are combined with regulatory provisions of other programs of the former FmHA such as farm loans, business and industrial loans, community facilities and multi-family housing. RHS has consolidated all regulatory actions in the above mentioned regulations which affect direct SFH loans into one new regulation—7 CFR part 3550. This consolidated regulation will make it easier for RHS field staff, and most importantly, our customers, to understand how to obtain program benefits.

- Additionally, RHS has removed all administrative processes from the regulations, leaving only regulatory actions which impact the public in the CFR. This streamlining makes the regulation more concise and much easier to read and understand. The Agency has developed two Handbooks which cover administrative matters such as what forms must be filed and where to submit loan requests and the agency's internal processing procedures. The first Handbook will be used in Rural Development field offices and deals primarily with loan originations and property management. The second Handbook will be used in the Centralized Servicing Center in St. Louis, MO., and deals primarily with loan servicing, liquidation and debt settlement. These Handbooks will not

be published in the Federal Register but will be available upon request to the public at no cost.

Implementation Proposal

As previously mentioned, the DLOS system is being implemented over a one year period. Two pilot states started the process and other states will be added to DLOS over the next 12 months. In addition, field offices within a state may be phased onto the DLOS system over a several week period. The 12 month phased implementation period is critical to ensure for the orderly transfer of account information on 700,000 loans to the new DLOS system. This implementation period presents administrative challenges to the Agency as states will be operating under different computer systems with significantly different capabilities. As discussed in our Proposed Rule, RHS is removing the following regulations from the CFR:

- 7 CFR part 1922, subpart C—Appraisal of Single Family Housing Residential Property

- 7 CFR part 1944, subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

- 7 CFR part 1944, subpart J—Section 504 Rural Housing Loans and Grants

- 7 CFR part 1951, subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

- 7 CFR part 1951, subpart I—Recapture of Section 502 Rural Housing Subsidy

- 7 CFR part 1951, subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

- 7 CFR part 1965, subpart C—Security Servicing for Single Family Rural Housing Loans

- 7 CFR part 1922, subpart C was not mentioned in the Proposed Rule; however, it is included in this Interim Final Rule as it contains administrative guidance on appraising SFH properties. The above mentioned regulations dealt strictly with the direct SFH programs of the RHS. The following regulations will remain in the CFR as they contain provisions relating to other program areas. These regulations are being amended as part of this final rule to clearly indicate that they no longer apply to the direct SFH loans and grants:

- 7 CFR part 1806, subpart A—Real Property Insurance

- 7 CFR part 1910, subpart A—Receiving and Processing Applications

- 7 CFR part 1922, subpart C—Appraisal of Single Family Residential Property

- 7 CFR part 1944, subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

- 7 CFR part 1944, subpart J—Section 504 Rural Housing Loans and Grants

- 7 CFR part 1951, subpart C—Offsets of Federal Payments to FmHA or its successor agency under Public Law 103-354 Borrowers

- 7 CFR part 1951, subpart D—Final Payment on Loans

- 7 CFR part 1944, subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

- 7 CFR part 1951, subpart C—Offsets of Federal Payments to FmHA or its successor agency under Public Law 103-354 Borrowers

- 7 CFR part 1951, subpart D—Final Payment on Loans

- 7 CFR part 1951, subpart F—Analyzing Credit Needs and Graduation of Borrowers

- 7 CFR part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans

- 7 CFR part 1955, subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

- 7 CFR part 1955, subpart B—Management of Property

- 7 CFR part 1955, subpart C—Disposal of Inventory Property

- 7 CFR part 1956, subpart B—Debt Settlement—Farmer Programs and Housing

- 7 CFR part 1944, subpart D was added to the above list since our Proposed Rule. In making amendments to 7 CFR part 1910, subpart A to exclude the direct SFH program, it was noted that the only Rural Development program that would remain in 7 CFR part 1910, subpart A would be the Farm Labor Housing Programs. To make it clearer for USDA field staff and the public, RHS took the administrative guidance contained in 7 CFR part 1910, subpart A which related to Farm Labor Housing loans and added it to the Farm Labor Housing regulations—7 CFR part 1944, subpart D. Through this effort, 7 CFR part 1944, subpart D is more complete, and 7 CFR part 1910, subpart A only impacts the Farm Credit Programs of the FSA. 7 CFR part 1910, subpart A has been amended to reflect this change.

- After the effective date of this rule, the direct SFH program will be guided by 7 CFR part 3550 and the accompanying Handbooks. This method will ensure that all customers have access to the same program benefits. However, some changes contained in 7 CFR part 3550, which cannot be implemented under the PLAS computer system, will be applicable to customers only in states under the DLOS computer system. For example, the regulation imposes a late fee on payments which are more than 15 days delinquent. The DLOS computer system can handle such a charge, whereas the current PLAS computer system cannot. Therefore, customers in states under DLOS will be subject to a late fee. Customers in states under the PLAS system will not be subject to a late fee until they are put under the DLOS system. Another

example is the ability to escrow for taxes and insurance. Existing customers in states under DLOS may escrow; however, customers in states not under DLOS cannot escrow because the PLAS system does not have escrow capability. These differences are unavoidable due to the shortcomings of the current PLAS computer system and the massive effort the Agency will be undertaking to convert all 700,000 loans to the new system.

Discussion of Comments

The proposed rule was published in the Federal Register on April 8, 1996 (61 FR 15395), with a 60-day comment period that ended June 7, 1996. Thirty-five comments were received from Rural Development personnel, housing advocacy groups, developers, builders, attorneys, housing authorities, private lenders, housing organizations, a member of congress, and others with an interest in our housing programs.

Many of the comments focused on areas currently published in the Code of Federal Regulations (CFR) which were not a part of the proposed rule. As discussed, part of the intent behind the reengineering and reinvention of these regulations was to remove much of the administrative guidance from the CFR and include this administrative material in handbooks which would not be published in the CFR. The handbooks provide more flexibility for RHS and its customers. For example, RHS did not publish the actual amount of the downpayment required for Nonprogram (NP) purchasers of real estate owned (REO) by the government or RHS financed property. This is an administrative determination and included in the handbooks. In this manner, RHS can adjust the amount of the downpayment to more quickly react to changes in the marketplace.

In our responses to many of the comments, we have indicated that the guidance requested by a commenter is administrative and contained in the applicable handbooks. RHS sincerely appreciates the time and effort of all the commenters. Comments, by section number from the proposed rule are discussed below:

Section 3550.4(b). Non-appealable decisions. One comment was received on this section which expressed concern that language contained in 7 CFR part 1900, subpart B, which provided that program administrative decisions based upon such clear and objective statutory or regulatory requirements were not appealable was omitted. The commenter felt that this language was critical to ensure that all parties understand appealable decisions and to avoid

unnecessary work on the part of appellants, U.S. Department of Agriculture National Appeals Division (NAD), and RHS. NAD determines if an Agency decision is appealable; therefore, we cannot adopt this comment. We have also made other amendments to this section consistent with the statutes governing appeals and reviews.

Section 3550.6. State law or state supplement. Two comments were received which recommended that this title be broadened to include local and Indian tribal laws. RHS agrees and has adopted this comment.

Section 3550.8. Exception authority. Two comments were received on this section. The commenters recommended that RHS customers be provided the authority to initiate requests for exceptions rather than just the State Director. RHS considered these comments; however, RHS believes that the rules and regulations are necessary to ensure fairness and consistency to all customers. Providing anyone with the opportunity to request an exception creates an administrative burden on RHS and undermines the need for regulations. We continue to support our policy that only State Directors may request an exception to the regulations. Exceptions are rare and only used in individual cases. We believe the regulatory process, which provides for public comment, provides ample opportunity for public input and our regulations provide sufficient flexibility to provide assistance to our clients. Customers are also provided review and appeal rights, and are not prohibited from contacting or writing USDA officials with regard to concerns over regulatory issues.

Section 3550.9. Conflict of interest. Two comments were received on this section which recommended that the language be expanded to include Rural Development employees instead of just Rural Housing Service employees. RHS agrees and has added a definition of "RHS employee," to include Rural Development employees involved with the direct SFH programs. RHS also amended the section with regard to "loan closing agents." This section prohibited loan closing agents from purchasing property which was security for an RHS loan. This prohibition was included in the regulations when the Agency "designated" attorneys and required that an applicant select a designated attorney to perform loan closing functions. Since RHS no longer designates attorneys, only loan closing agents who performed legal work on a particular security property should be prohibited to purchase said property

due to the potential for a conflict of interest.

Section 3550.10. Definitions—Cost appraisals. Two commenters recommended a definition of cost appraisals for properties located in remote areas or on tribal lands. RHS agrees that additional guidance on such appraisals is necessary and will include these in the Handbooks.

Deferred mortgage payments. One commentator requested that we clarify that deferred amounts are subject to recapture on sale. RHS agrees and has amended the definition to provide that deferred amounts are due on sale or nonoccupancy.

Deficient housing. One commentator recommended we expand the definition to include housing that is uninhabitable, unsafe, or poses a health or environmental threat to the occupant or others. RHS agrees and has made this change.

Existing dwelling or unit. Several commenters noted that the definition included an inadvertent "not" with regard to dwellings covered by an approved 10-year warranty plan and that the definition of "New dwelling" was missing the term "not." RHS appreciates these comments and has rewritten both definitions for clarity.

False information. One commentator recommended that the definition be expanded to include information deliberately omitted for the purpose of receiving or continuing to receive assistance for which they were not eligible to receive. We agree and have clarified and expanded the definition accordingly.

Legal alien. One commentator did not feel the definition provided sufficient information. RHS believes this definition is sufficient; and will provide additional information on how to verify alien status in the handbooks.

Market value. One commentator recommended that the definition be expanded to include a "Broker Price Opinion," (BPO) where authorized. A BPO is a quick and inexpensive tool which helps determine the value of a house based upon recent sales in the area. RHS agrees that a BPO would be beneficial for certain servicing, but not loan origination purposes. In addition, it is less costly to the government and RHS customers. As such, we have adopted this comment.

Moderate income. Two comments were received indicating the definition of moderate income for direct SFH assistance (for which RHS had proposed no change) is different than the definition of moderate income for the guaranteed SFH program. RHS recognizes that the definitions are

different. The direct SFH programs are aimed at assisting lower income families, that even with a potential loan guarantee, could not obtain financing for housing. The guarantee program is aimed at assisting higher income families who could not obtain housing without a guarantee. The moderate income level is set higher in the guarantee program to assist a wider spectrum of low and moderate income families to obtain housing.

Modest housing. Two commenters felt that our definition of modest housing, which relies upon the section 203 (b) limits established by the National Housing Act, often times resulted in the Agency financing homes which were not actually modest in rural areas, especially in terms of size. RHS shares these concerns.

For this reason, as discussed elsewhere in this rule, we are reopening the comment period regarding this issue.

One commentator felt that RHS should not prohibit the financing of houses with in-ground swimming pools. The commentator stated that RHS has financed homes where an in-ground pool existed but was removed so the property could be financed by RHS. RHS agrees that physically removing an in-ground swimming pool so that RHS will finance a property is impractical; however, RHS is providing subsidized credit to families with limited incomes. In-ground pools are expensive to own and operate, and are viewed as an above-modest feature. It does not serve the best interests of the overall program by financing homes with in-ground pools. Further, the cost of maintaining such a feature is generally beyond the financial capability of our clientele.

Modular home. One commentator noted we had included a definition of "manufactured home," but did not include a definition of modular home. We regret the oversight and have included a definition.

New dwelling. See comments under "Existing dwelling."

Person with disability. One commentator thought the definition was cumbersome, and noted that Social Security no longer considers drug addiction and alcoholism a disability. RHS agrees that the definition was long and has streamlined it. With regard to the Social Security Administration (SSA) no longer considering drug addiction or alcoholism a disability, this is a determination made by SSA for their program eligibility. RHS does not consider an applicant's disability, in itself, for determining eligibility for housing assistance. Disability of an

applicant is used in determining adjusted income.

Recapture amount. One commentator recommended an expansion of the definition to cover exceptional cases such as nonoccupancy beyond the customer's control or when in the best interests of the government. RHS believes the definition is sufficient, and such exceptional cases handled on a case-by-case basis under the exception authority. It should be noted that section 521(a)(1)(D)(i) of the Housing Act of 1949, as amended, requires the Secretary to provide for recapture upon the disposition or nonoccupancy of the property by the borrower.

Repayment income. Two commenters did not like this term and felt "gross income" was more appropriate. Gross income is the basis for calculating adjusted income and is not the same income from which a customer could "repay" their loan. RHS believes the term "repayment income" is more appropriate in describing the use of this income.

Rural area. One commentator felt that the reference to "rural in character" was misplaced in the definition. This portion of definition came directly from section 520 of the Housing Act of 1949, as amended, and is correct.

Scheduled payment. One commentator recommended that the definition be expanded to include protective advances. We agree and have included this language in the definition.

Total Debt Ratio. One commentator recommended that this definition include a clarification on whether baby-sitting expenses are included in total debts. We disagree. This is a brief definition and does not include guidance on all the aspects of what is included or not included in total debt ratio. Baby-sitting expenses are not considered a debt and this guidance is contained in the handbooks.

Value appreciation. One commentator felt the definition did not give the homeowner credit for home improvements and for principal paid. RHS agrees and has clarified the definition.

Other amendments to "Definitions." RHS has added definitions of Household, Nonprogram (NP) interest rate, Principal reduction attributed to subsidy (PRAS), Recipient, RHS employee, Subsidy, U.S. citizen, and USDA and provided to make it easier for our customers and staff to understand these terms used throughout 7 CFR part 3550. RHS has also clarified the definitions of Interest credit, Net family assets, and Payment assistance, and provided legal citations for the Housing Act of 1949. The definition of Veterans

preference was also expanded to include the Persian Gulf War.

Section 3550.51. Program objectives. Several comments were received regarding RHS's encouragement of applicants to seek other sources of funding in conjunction with their single family housing loan. Several commenters recommended that due to limited funding and the tremendous need for affordable housing, that RHS should require leveraging, where feasible, to ensure that limited resources serve the maximum number of families. RHS agrees and has adopted this recommendation. One commentator suggested the proposed reference to "if possible" be replaced with "where the income required for eligibility is not greater than that for a loan funded by Section 502 alone." RHS disagrees. The language in this paragraph only requires an applicant to seek other funds, where feasible. Since most lenders do not use income limits, but rather debt ratios to determine an applicant's eligibility, the second comment is not applicable. In addition, we do not believe that participation loans result in our program serving higher income families since many of the participation funds come from other loan and grant programs aimed at assisting very-low income families. We believe the language, as modified, is appropriate.

Section 3550.52. Loan purposes. One commentator recommended that conditional commitment fees and credit report fees be included as an eligible cost for loan making purposes. A conditional commitment fee is paid by a builder to RHS as partial reimbursement to RHS for the administrative costs of appraising and inspecting a property. This is a builder's cost of doing business and not an eligible loan purpose for an applicant. In most cases, this is generally included in the commitment price, so as a practical matter, the conditional commitment fee is included in the amount financed. Credit report fees are small and should be paid by the applicant.

Another commentator felt that RHS should allow packaging fees in connection with the sale of Real Estate Owned (REO) by RHS. REO properties are generally sold by real estate brokers under an exclusive or open-listing arrangement with RHS. RHS pays a typical brokers commission and expects that the selling agent, to facilitate the sale of the REO, will package the loan application if the purchaser is applying for a loan from RHS. Authorizing a packaging fee would increase costs to the government.

Section 3550.52(b). Refinancing non-RHS debts. Two commenters felt that RHS inadvertently forgot to include its ability to refinance debts incurred for necessary repair and rehabilitation work. The regulation provides that funds for refinancing can cover costs for "eligible loan purposes." Since necessary repairs and rehabilitation is an eligible loan purpose, this section is correct.

Section 3550.53(a). Income eligibility. One commentator suggested that we include a reference to moderate income families for renewal of payment subsidies. Since this section deals with an applicant's eligibility for a loan, and not a borrower's eligibility for continued subsidy, the comment is not applicable.

Section 3550.53(g). Repayment ability. Seventeen comments were received on this section, most recommending that the debt ratios for principal, interest, taxes and insurance (PITI), and maximum debt limits should be consistent for very-low and low income applicants, and consistent with our guaranteed SFH program. Currently, the PITI ratio is 29% for very-low income applicants and 33% for low income applicants; and the maximum debt limit is 36% for all applicants. Most argued convincingly that the PITI ratios for very-low and low income applicants should be the same. Some felt the ratios were prudent loan underwriting and should remain as is. Some argued that the ratios should remain the same with the State Director having a broader exception authority. Some argued for higher ratios, but still with a difference between very-low and low income applicants. RHS believes that the different ratios for applicant types and programs is confusing to both Rural Development staff and the public. RHS also agrees that the maximum debt limit should be increased. RHS has retained the limits of 29% for PITI for very-low and 33% for PITI for low income applicants, and modified the total debt ratio to 41%. RHS is still fully analyzing all comments regarding this section and has reopened the comment period on this section to solicit further public input.

Section 3550.53(h). Credit qualifications. Thirteen comments were received on this section, most expressing concern that certain conditions which indicated an acceptable or unacceptable credit history were missing from the proposed rule that are currently contained in 7 CFR part 1944, subpart A.

RHS intent in developing this rule was to remove administrative decisions from the CFR and include these in the Handbooks which will accompany the

regulations. The sections which were left out of the proposed rule dealt strictly with administrative waivers or other conditions which the Agency may consider in determining the creditworthiness of applicants. As these are administrative decisions, these areas are included in the Handbooks and in much greater detail.

One commentator felt RHS should waive instances of poor credit if the applicant was unaware of a collection account. RHS disagrees. It would be difficult to document whether an applicant was unaware of the collection. Further, an applicant must demonstrate that they have a credit history which demonstrates a reasonable ability and willingness to meet debt obligations. Being unaware of a debt and a resulting collection account does not demonstrate a reasonable credit history.

One commentator felt RHS was too liberal in its credit policy by allowing 2 late payments in the past 12 months and by not including a requirement that rent payments over the previous 24 months had to be paid on a timely basis. Low income families are impacted to a greater degree than higher income families with unforeseen changes in their financial situation. A car repair or medical bill could cause a low income family to miss a due date for a short timeframe. These instances of late payments do not necessarily reflect an unwillingness or inability to meet future obligations. We believe this recommendation is too rigid for very-low and low income families.

One commentator felt that RHS was confusing credit history with repayment ability. The commentator felt that someone delinquent on rent payments did not demonstrate a favorable credit history. The concern expressed was over the provision that permits such unfavorable credit to be waived if the proposed PITI under the loan is less than the present rent payment. The commentator felt that comparing rent to PITI was a repayment ability consideration. Credit history and repayment ability are linked in that lessening a family's shelter costs would likely enhance their ability to meet the obligation when due. Therefore, we believe the provision for considering extenuating circumstances, such as this example, is appropriate. The commentator also felt that RHS made an error in explaining the difference between evaluating the rental history of applicants. The proposed regulation could be read to imply that an applicant could be two or more payments late on their rent if their other credit history was satisfactory. We have clarified this to provide that if an applicant's other

credit history is satisfactory, only one year of rental history will be evaluated.

Another commentator recommended that where an applicant had a non-RHS write-off, and subsequently paid off the debt at least 12 months ago, we not count this negative credit reference against the applicant. RHS agrees and has modified the regulation accordingly.

RHS has also clarified that a delinquency on a federal debt and foreclosure in the past 36 months are indicators of unacceptable credit.

One commentator felt that a lack of credit history should not automatically be considered acceptable credit. They explained convincingly that the first credit experience for a family should not be their largest financial obligation. A recent study by Chase Manhattan indicated that the highest delinquency rate in the first year of RHS homeownership was attributed to customers who had no credit history prior to obtaining their RHS loan. This was particularly evident in customers who had resided with family and had no credit experience on their own. This policy has been in effect for many years and was established, in part, to recognize the lack of credit in rural areas. However, as the commentator indicated, non-real estate related credit in one form or another is now readily available even in rural areas, and it is not possible for a prudent loan underwriter to document that someone who has never had any financial obligations demonstrates a reasonable ability and willingness to meet debt obligations. RHS agrees and has removed this criteria from the regulation. Additional guidance in evaluating applications where the applicant may lack a credit history is provided in the Handbooks.

Section 3550.54 Calculation of income and assets. Several comments were received regarding this section asking that RHS further simplify and clarify how to calculate the various types of income and assets. RHS agrees that this section was cumbersome. As such, RHS has clarified this entire section to make it easier to understand repayment, annual and adjusted incomes, and net family assets.

Section 3550.54(a) Annual income. Three comments were received. One commentator recommended that the paragraph be revised because annual income and repayment income are sometimes different. Annual income and repayment income are different. As mentioned in this section, annual income is the base from which repayment income is calculated.

One commentator recommended that the regulation provide guidance on

verifying alimony or child support for separated or divorced persons who cannot afford legal costs, or the action has not proceeded far enough for executed papers to confirm payment amount. Verifying income is an administrative function and guidance on such cases is provided in the handbooks.

One commentator recommended that the Equivalent Interest Rate be based upon the applicant's income only and not the total family income. The commentator felt the extra income that may be included in the total family income may not be readily available in the future and may jeopardize the customer's repayment ability. RHS understands the comment; however, the income of all persons living in the household must be used to determine monthly payments. Should the income of the household change, the customer may qualify for increased payment assistance or other servicing options.

Section 3550.54(b) Adjusted income. One commentator mentioned that the regulation does not include the actual dollar amount for allowable deductions. These deductions are set by law (see section 501 (b)(5) of the Housing Act, as amended) and need not be repeated in the regulation. They are included in the Handbooks.

One commentator recommended all medical expenses of a disabled family member should be deductible. Section 501(b) of the Housing Act of 1949, as amended, requires that the definition of income and adjusted income for RHS programs have the meanings given section 3(b)(5) of the Housing Act of 1937. The current regulation is not the appropriate forum for the suggested change to be made, but the change will be considered in a revision of the definition of income under section 3(b)(4) which must be jointly made with the Secretary of HUD.

One commentator was unclear as to whether eligible deductions for an elderly family includes all expenses or just those expenses in excess of three percent of income. RHS has clarified the regulation to be clear that it is only expenses in excess of three percent.

One commentator recommended that long-term debts that will be paid in full within 12 months should not be considered in the total debt ratio for self-help applicants because the time between application, construction, and first payment is generally one year. RHS agrees that the time between application and closing for a self-help applicant is generally longer, however, RHS believes that all applicants must be treated consistently. To provide self-help applicants with this flexibility would

not be consistent with our treatment of other applicants. Generally, RHS does not know the length of time between application and closing when it receives an application. This is influenced by many factors including the availability of funding, the applicant's decision to build or purchase an existing home, the time it takes for the applicant to execute the necessary documents to purchase or build a home, and other influences outside the control of RHS or the applicant. While the comment has merit, the inconsistent manner in which applicants would obtain our services outweighs its advantages.

Section 3550.54(d) Income exclusions. Two comments were received stating that RHS may have inadvertently omitted a list of income that is included in repayment income. This paragraph deals with income exclusions. The information mentioned is correctly included in 3550.54(c).

Section 3550.54(e) Net family assets. Two comments were received. One commentator recommended that the cash value of life insurance not be considered an asset from which an imputed income is calculated since the applicant cannot obtain access to its value. RHS must be consistent with the manner in which HUD handles net family assets. HUD considers the cash value of life insurance an asset from which imputed income is calculated, and therefore RHS, through this rulemaking document, cannot adopt this comment.

Another commentator recommended that for self-employed applicants, RHS allow depreciation reported to the Internal Revenue Service (IRS) to be added to income for repayment income and then deducted from income for determining loan payments. RHS disagrees. The Agency has always utilized the net income of such applicants, and used such income consistently throughout the underwriting process. We believe this is more reflective of the income from which self-employed applicants can reasonably depend upon to afford the costs of homeownership.

Section 3550.55(b) Agency processing of applications. One commentator felt that returning incomplete applications is burdensome on both the applicant and RHS. It is policy to return incomplete applications to ensure consistent handling; however, the Handbooks contain administrative provisions for handling minor omissions in the package which would not require returning the complete package to the applicant.

Two commentators felt that RHS should include a specific timeframe for an

applicant to respond to RHS's inquiry as to their continued interest in the program. RHS believes this is an administrative function, and as such, is included in the Handbooks.

Section 3550.55(c) Funding priorities. Seven comments were received. One commentator fully supported the priorities as proposed. The other commentators felt that the priorities should be rearranged consistent with the statute which requires that priority to be given to applicants with the greatest need. Unfortunately, what each commentator felt was the greatest need differed depending upon their own perspective and interests. RHS developed the list taking into consideration the intent of the authorizing statute and prior comments from Rural Development field staff and the public. As evidenced by the comments, "need" is subjective. RHS continues its policy that existing RHS customers with the need for a repair loan to correct health and safety hazards will have the greatest priority. These loans are generally of a smaller amount (compared to an initial loan) and RHS can assist many needy families through this priority. Second priority is for the sale of Real Estate Owned (REO) and for the transfer of existing RHS loans. These priorities ensure that RHS' existing portfolio is adequately managed, and these currently held resources assist as many families as possible. RHS agrees with the majority of other commentators that hardship circumstances should be considered a higher priority than participation loans and self-help housing loans, and has made hardships third priority. The aforementioned areas are considered equally as fourth priority, and all other loans are fifth priority.

In addition, RHS retitled this section to "Selection for Processing," to better reflect the intent of the paragraph. Loans are selected for processing in the order outlined in this section. After selection for processing, loans are funded on first come, first served basis.

Section 3550.56(b) Site standards. Four comments were received. Three favored our proposed removal of the one-acre lot restriction provided the lot could not be subdivided into more than one parcel. One commentator stated that there is no zoning in many rural areas and therefore no documentation could be obtained that the lot could not be subdivided. This and another commentator recommended that the value of the lot should not exceed 30% of the total market value of the proposal. RHS agrees and has modified the language accordingly.

One commentator recommended that RHS provide additional guidance on how to review sites. This information is included in the handbooks.

Section 3550.57(a) Modest dwelling. Five comments were received. The majority supported RHS's current policy that the property must not exceed the limits established under 203(b) of the National Housing Act. However, several questioned what is considered "modest" and several thought the 203(b) limits provided above modest housing in many rural communities. RHS agrees that the housing must be modest, and is aware of cases where the 203(b) limits allow for the financing of homes which are excessive in size and cost. The government should not be providing subsidized credit to anyone to purchase above modest housing. RHS will continue with the 203(b) limits being the maximum loan amount and is reopening the comment period on this section to solicit comments on how the Agency can best address the concerns raised in this area.

Section 3550.57(c) Existing dwellings. One commentator felt RHS should provide more administrative guidance, or a checklist in the regulation on how to determine if a house is structurally sound, functionally adequate, in good repair or to be placed in good repair. RHS disagrees that such guidance is necessary in the regulation, and has included this administrative guidance in the Handbooks.

Section 3550.58(b) Secure leasehold interest. Two commentators recommended that the term of an acceptable lease be increased from 15 to 25 years. RHS agrees and has adopted this comment.

Section 3550.59. Security requirements. Five comments were received. Two commentators recommended that RHS accept a junior lien position if the senior lien is an affordable mortgage and the RHS loan is for necessary repairs. RHS agrees and has adopted this recommendation. Two commentators recommended that when RHS accepts a junior lien position, the total secured debt must be less than or equal to market value. The commentators recommended expansion to include the words "equal to." RHS again agrees and has adopted this comment. One commentator recommended that we allow junior liens to RHS to exceed the market value when the purpose of the junior lien is to secure other financing for a downpayment or closing costs. RHS disagrees, especially since RHS does not require a downpayment, and closing costs may be included in the RHS loan.

Section 3550.60. Escrow account. Eight comments were received on this

section, and all supported the escrow of taxes and insurance to assist our customers in becoming successful homeowners. One commentator felt the language requiring "customers to deposit funds sufficient to pay taxes and insurance premiums applicable to the mortgage for the period since the last payments were made" to be too restrictive. The commentator suggested that RHS consider requiring funds for only the initial year of escrow. We intended this language to cover existing customers who may be delinquent in taxes at the time they go on escrow. Since RHS will consider paying the customer's delinquent taxes, charging them to the customer's account, and then reamortizing the loan, the proposed language would not be too restrictive. It is RHS's intent to assist existing customers to every extent possible to establish an escrow account.

One commentator questioned the timing for escrow accounts. All new loans which are originated or closed under DLOS will have an escrow account automatically established. All customers who received loans since October 27, 1995, have been specifically advised that RHS was in the process of implementing an escrow system and they would be required to escrow when the system became operational. RHS may require these customers to convert to escrow shortly after their state comes under the DLOS system. All other customers will be asked to voluntarily convert to escrow when their state comes under DLOS.

One commentator questioned payments to escrow if a customer is on a moratorium. If a borrower cannot pay their escrow payments during a moratorium, a negative balance may occur in their escrow account. In these cases, RHS will pay the customer's taxes as if the escrow payments had been made. The negative balance, or delinquency created in the escrow account, will be handled at the conclusion of the moratorium period either through repayment or reamortization.

One commentator recommended that the cost of the tax service fee should not be paid entirely by the customer, but shared between RHS and its customer since the benefits of the escrow are shared. RHS understands the comment, but does not agree that the fee to obtain tax service should be split. The small one-time fee is the cost for the customer to ensure that taxes and assessments are paid when due. These are services which directly benefit the customer, and should be paid for by the customer. As previously mentioned, this fee can be included in the loan. For existing

customers, the fee may be charged to their account.

Section 3550.61. Insurance. Two comments were received. One commentator recommended that RHS secure the services of a vendor and have the ability to "force-place" insurance. This was always RHS's intent, and is being administratively secured. This guidance is contained in the Handbooks.

Another commentator recommended that RHS require a "loss payable clause," in all insurance policies to ensure enforceability. The Handbooks contain such language, however, we agree that it should be specifically mentioned in the regulation. The commentator further recommended that insurance be based on the unpaid loan balance and not the depreciated replacement value. This is because the depreciated replacement value is costly to determine, and for existing dwellings, generally more expensive for the client. RHS agrees and has modified the insurance sections to require insurance to cover the entire secured debt. RHS also amended this section to allow excess insurance proceeds, following a loss, to be released to the borrower provided the RHS debt is adequately secured. The previous language required that the borrower had to have at least 20 percent equity in the property before excess proceeds would be released.

Section 3550.62. Appraisals. Two commentators recommended that RHS include a provision that when a participating lender, in a leveraging situation, secures an appraisal acceptable to RHS, that no appraisal fee be charged. RHS agrees and has revised this section accordingly.

Two commentators recommended that a new paragraph be added to this section to provide guidance on appraisals on Indian Trust lands. RHS agrees that guidance is needed, however, this is an administrative matter which will be included in the Handbooks.

One commentator recommended the language for additional security be removed because it is not often used and is confusing. RHS agrees that additional security is rarely taken; however, in those cases where it is taken, we believe the guidance is necessary. Since this passage is not used often, we moved the language to the end of the paragraph.

Section 3550.63. Maximum loan amount. Five comments were received. One commentator felt the limits were too low in rural areas of their state, because many low-end existing property sales brought the median sales price below the average new construction house. Some felt the limits were too high. As

mentioned, RHS shares these concerns and is reopening the comment period on this section.

Section 3550.64. Down payment. One commentator recommended that RHS authorize an exception to allow applicants not to liquidate assets which could be difficult or expensive to liquidate. RHS provides subsidized credit to facilitate the purchase of a home by very-low and low income families. If this family has assets by which to reduce the amount of the loan, they should liquidate those assets. The overall interests of the program are not served when the Government provides subsidized credit to persons with assets that can be liquidated to reduce their loan amounts.

Section 3550.65. Loan to value ratio. In reviewing comments to §§ 3550.63 and 3550.65, RHS recognized that the two sections were interrelated. For clarity, RHS has combined this guidance into one consolidated section—§ 3550.63. The comments discussed below correspond to the numbering in the Proposed Rule.

Section 3550.65(b). Loans limited to 90% of Market Value. Five comments were received. The commentators recommended that we expand our list of allowable inspection sources. RHS agrees and has modified the regulations to provide for other approved inspection sources. The Handbooks will contain a list of such sources.

Section 3550.65(c). Loans in excess of market value. One commentator recommended that we allow junior liens to exceed the market value when the purpose of the junior lien is to secure other financing for downpayments or closing costs. RHS disagrees, especially since RHS does not require a downpayment, and closing costs may be included in the loan.

Section 3550.67. Repayment period. RHS amended this section for clarity and included guidance on manufactured homes.

Section 3550.68. Payment subsidies. The comments under this section were essentially identical to those found in §§ 3550.53(g), 3550.57(a), and 3550.63. As discussed elsewhere in this rule, RHS is reopening the comment period on this section. See the aforementioned section numbers for a summary of the comments and the section in this rule called "Reopening of Comment Period For Selected Issues."

Section 3550.68(b). Conversion from interest credit to payment assistance. Two comments were received. One commentator thought that RHS should provide interest credit on any subsequent loan made to a customer that has an existing loan under interest

credit. This section provides for such authority. RHS customers who are currently on interest credit will continue to receive interest credit for as long as they remain eligible for this assistance. A subsequent loan or reamortization of the account has no impact on this policy.

One commentator felt that RHS administering two types of subsidies was confusing and administratively burdensome upon the Agency. RHS agrees that administering the two programs is administratively burdensome; however, feels that existing customers should be allowed to stay on interest credit until they no longer qualify for this assistance. The two programs are different. Existing customers who have had their loans serviced by the Agency for many years understand the interest credit program and how changes in income impact their payments. In brief, they handle their finances accordingly. Converting to payment assistance, in most cases, increases a customer's payments. And in some cases, some newer customers may not have been able to qualify for their loans if interest credit assistance were not available. RHS believes that it would not serve the public interest by jeopardizing the repayment ability of these existing customers.

One commentator felt that we should continue to extend interest credit to a customer who had once received it, later became ineligible for it, and subsequently needed it again. RHS disagrees. Most typically, a customer becomes ineligible for interest credit when their income increases to the above-moderate level. These customers are making payments at the full note rate and have established their finances accordingly. If they suffer a reduction in income, payment assistance can reduce their payments. In addition, the Agency can consider a moratorium or other servicing tool to assist them. We believe that customers on interest credit should continue to receive it as long as they so qualify; however, if they need a new payment subsidy, they should be treated consistently with new customers requesting a payment subsidy.

For clarity, RHS retitled this section to "Determining type of payment subsidy."

Section 3550.69. Deferred mortgage payments. Four comments were received. One commentator recommended removal of this section from the regulation since the program is not funded; although the regulation should continue to include administrative guidance of how to calculate and collect deferred payments. Administrative guidance is contained in the

Handbooks. Another commentator recommended that although the program is not funded, it remain in the regulations in case the program is ever again funded. Additionally, the commentator recommended the debt ratio be increased from 29% to a higher level. RHS will leave the provisions in the regulation since the program may again be funded. The debt ratio will remain as is for consistency throughout the program.

Two commentators recommended that if a customer who received a deferred mortgage no longer qualifies for the deferral, and at a later date, would benefit from this assistance, the Agency should again defer the loan. The deferred mortgage program is a loan underwriting tool. This is evidenced by the fact that appropriations are necessary to make a deferred loan. A deferral of payments is not a servicing option. In cases where a customer may suffer a reduction in income, they may qualify for an increased payment subsidy or a payment moratorium.

Section 3550.70. Conditional commitments. Three comments were received. One commentator felt that the builder should not have to own the site in order for RHS to provide a commitment and recommended a long term option be acceptable. The premise behind a conditional commitment is to allow a builder to construct a house knowing that RHS will inspect the property and will finance it to a qualified applicant. RHS does not feel it would be prudent for a builder to construct a house on land which it does not own and does not want to encourage such a practice.

One comment was received concerning packaged loans on presold houses. The existing regulation and proposed rule provided that RHS will not approve a conditional commitment until the loan has been approved. In these cases, the property is presold. We believe it prudent practice to ensure that the person holding a valid contract to purchase the property have an approvable loan before the commitment is approved.

Another commentator felt that we should refund the conditional commitment price if RHS does not finance the property. RHS disagrees. RHS incurred the expense of appraising and inspecting the property and is entitled to these fees for the services provided.

Section 3550.71. Special requirements for condominiums. Three comments were received. One felt the revised language would allow RHS to finance more condominiums. RHS agrees. Two commentators felt that RHS should relax

its requirements that at least 70 percent of the units had to be sold before it will consider financing units in the complex. We believe this a prudent underwriting practice and protects the best interests of our customers and the government.

RHS recently became aware that this section was preventing us from financing units in several states because our regulations were not consistent with state laws regarding homeowners association dues. For instance, current regulations provide that if RHS acquires title to a condominium, the Agency would not be liable for more than 3 months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition and the liens priority may not include costs of collecting unpaid dues. However, in Massachusetts, for example, state law provides that the lien of a homeowners association will have priority over a first mortgage for the six month period prior to filing action and such lien may include costs. Other lenders have modified their underwriting standards to be consistent with state laws. RHS has included these changes in the final rule.

Section 3550.72. Community land trusts. Two commentators objected to RHS's requirement that land trust restrictions must be able to be terminated should RHS acquire title to the property. RHS believes this is a prudent loan underwriting practice. Further, without this provision, the market value of the property at loan origination may be significantly lower because of the restrictions which may preclude the Agency from financing the property.

Section 3550.73. Manufactured homes. Four comments were received. One commentator pointed out a potential conflict between paragraphs 3550.73(a)(4) which authorizes a loan for repairs and 3550.73(b)(4) which excludes repairs after the initial loan is made. RHS has corrected the conflict to provide that the purchase loan may not include funds for alteration or remodeling. RHS has also amended this section for clarity.

One commentator felt that RHS should not have to approve dealer-contractors of manufactured homes. RHS disagrees. The Agency and its customer need reasonable assurances, which are provided through the approval process, that our best interests are protected.

Two commentators felt that the Agency should not require a Release of Claimants from all persons furnishing labor or materials. RHS disagrees. Again, these documents help ensure the Agency's, and its customers', interests are protected by verifying that all labor

and materials are paid for and there is no potential for mechanics liens.

Section 3550.74. Nonprogram (NP) loans. One commentator mentioned a conflict between the opening sentence which states that NP credit is available for the assumption of existing RHS loans and § 3550.74(a)(1) which states NP credit can be extended on Real Estate Owned (REO). We have clarified the opening sentence.

Two commentators expressed concern that RHS did not include the amount of the required downpayment in the regulation. NP credit is offered for RHS's convenience as a lender and when in the government's best financial interests. Since it is not a customer entitlement, but rather an administrative function, the downpayment amounts are contained in the Handbooks. The required downpayments are currently 2% for owner-occupants and 5% for investors.

Sections 3550.103 thru 3550.114 Section 504 Origination. These sections have to be reorganized and expanded to be consistent with the sections dealing with section 502 origination. This was done to ensure consistency, where appropriate, between the programs. The comments discussed below refer to the section number as provided in the Proposed Rule.

Section 3550.102. Grant and loan purposes. Two comments were received which requested a definition of "modest" housing for section 504 purposes. The definition of modest housing contained in § 3550.10 applies to both section 502 and 504 loans.

Section 3550.105(b). Age (grant applicants). One commentator recommended that we expand the definition of age for 504 grants to include persons with a disability of any age, especially for handicapped accessibility. Previous appropriations language has prevented RHS from making 504 grants available to persons who were not 62 years young. While we agree that some type of grant should be available for this purpose, the demand for section 504 grant funds far outweighs the available resources. Expanding the base for eligibility would only further delay approving these grants which are used to address critical health and safety needs for those 62 years of age or older. Therefore, we are not adopting this recommendation.

Section 3550.105(f). Credit qualifications. Four comments were received. One requested we clarify that the credit standards do not apply to 504 grants. This clarification has been made.

The other three commentators all strongly opposed the proposed change to the credit qualification standards.

RHS had proposed imposing the same standards on 504 recipients as 502 recipients. The commenters argued convincingly that the standards may be too rigid for such applicants who are generally of extremely low incomes with no alternatives to make necessary repairs and improvements to their homes. RHS agrees and has relaxed the standards for 504 participants; however, similar to the section 502 program, RHS has clarified that a delinquency on a federal debt or foreclosure within the past 36 months are indicators of unacceptable credit.

Section 3550.107(b). Secure leasehold interest. Two commenters recommended that a leasehold for mutual help housing financed by HUD, with no minimum lease term, constitute acceptable ownership for section 504 assistance. RHS agrees and has modified this section accordingly.

Section 3550.108. Loan rates and terms. One commentator recommended that when a combination loan and grant is made, that the loan term not be set at 20 years if the applicant can repay the loan sooner. RHS partially agrees, however grant funds are extremely limited and only provided when the applicant cannot afford repayment ability on a loan. If the loan period were shortened, the grant portion of the proposal may increase to ensure affordability. We believe the language is appropriate. Of course, a recipient of a combined loan and grant can prepay the loan prior to the 20 year term or may request an accelerated repayment schedule at any time he or she experiences an increase in repayment ability.

Section 3550.109. Security requirements (loans only). Two comments were received. One recommended the threshold for a loan which is required to be secured be increased from \$2,500 to \$4,000 to recognize the increase in costs since the regulations were developed. This amount is statutory and no change was made.

One commentator pointed out the different thresholds for security purposes. Loans over \$2,500 must have a mortgage, loans over \$7,500 must also have title clearance, and loans over \$15,000 must also have an appraisal. The commentator recommended more consistency. RHS needs to carefully balance the imposition of costs to a customer against protection of the government's best financial interest. While the aforementioned thresholds are different, we believe they are balanced consistent with the program's objectives and available resources.

Section 3550.110. Appraisals. One commentator recommended that we clarify that an appraisal is required if the total secured debt exceeds \$15,000 or just the section 504 debt exceeds \$15,000. An appraisal is required whenever the secured debts exceeds \$15,000. We have revised the regulations accordingly.

Another commentator recommended that RHS include guidance on appraisals on Indian Trust lands. As previously mentioned, this guidance will be provided in the Handbooks.

Section 3550.111. Escrow account. Four comments were received concerning RHS's proposal to escrow for section 504 customers. RHS agrees that not all section 504 loan recipients should be required to escrow, particularly when a senior lienholder may require an escrow. Section 504 customers have very low incomes and do not often have the resources to establish an escrow account. Based upon comments, any 504 loan recipient with an outstanding 504 indebtedness exceeding \$2,500 may voluntarily request to escrow. RHS will require an escrow on 504 loans where the total secured debt exceeds \$15,000 and there is no junior lienholder requiring an escrow, and in cases where the customer defaults on the terms of the promissory note and escrow is necessary to protect the best interests of the government.

Section 3550.112. Insurance (loans only). Again, comments were received opposing the requirement that all section 504 customers escrow for insurance of their property. These customers have extremely low incomes and in some cases, the home may be uninsurable. RHS will not require proof of insurance to obtain a section 504 loan of less than \$15,000. In all cases where the total secured indebtedness on the property exceeds \$15,000, the customer voluntarily elects to escrow, or when necessary to protect the government's financial interest, insurance will be required.

In accordance with the National Flood Insurance Reform Act of 1994 (Public Law 103-325), flood insurance is required on all section 504 loans when the security property is located in a Special Flood Hazard Area (SFHA) and 504 grants in excess of \$5,000 where the property being repaired is located in a SFHA. RHS has included the ability to include the cost of flood insurance in a loan or grant if necessary to provide section 504 assistance to the customer.

Section 3550.113. Repayment agreement (grants only). Two comments were received. One commentator recommended the elimination of the

repayment agreement since it is not enforceable. RHS disagrees. The agreement is enforceable, plus it provides a written verification to the grantee that the grant must be repaid if the property is sold.

Another commentator recommended that the term "grant closing" be removed since there is no real closing of a "grant similar" to a closing on an initial SFH loan. RHS agrees.

Section 3550.152(a). Payment terms. Two commenters strongly opposed RHS's requirement that a cash payment must be accompanied by an amount sufficient to cover the cost of a money order, stating that such a proposal was unfair to very low and low income families. This is not a change in policy; RHS has been collecting a money order fee with cash payment since March 25, 1991. RHS provides supervised credit. We encourage, like all lenders, customers to send payments by check, money order or bank draft. Cash payments in the local office are discouraged. Since RHS must obtain a money order in order to transmit the payment, the customer should pay that fee.

Section 3550.152(b). Application of Payments. Eight comments were received. Two commenters recommended that RHS should have all loan payments due on the first of each month because it would be easier for clients to remember and make loan servicing easier. RHS has long considered this policy, however, RHS believes its policy of staggering due dates is more customer-oriented. The due date is generally established by the loan closing date. In this manner, an applicant can select a closing date which corresponds to the date when they have funds available to make their mortgage payment. For example, a customer on a fixed income who receives a check at the beginning of each month would benefit from closing on their loan in the middle of the month so they have received their monthly check in time to make their mortgage payment. Having a due date consistent with the loan closing date also eliminates the need for the loan recipient from having to pay prepaid interest at the time of loan closing until the last day of the month. With regard to remembering a due date, we believe our clients do remember their due date. In addition, RHS will provide customers a monthly billing statement. From RHS's perspective, the staggered due-dates provide better customer service in that RHS work-flow is spread-out over the month rather than concentrated at the beginning of each month.

Two commenters also recommended that RHS permit electronic transfer of funds and biweekly loan payments. As mentioned in the proposed rule, RHS will now be encouraging its customers to establish automatic payments with their local banking institution. With regard to biweekly loan payments, RHS customers may contact the Centralized Servicing Center to make arrangement to make biweekly payment should they so desire.

Six commenters objected to RHS holding less than a full payment in suspense. RHS believes this section may have been misinterpreted. A customer with an active account will always be given credit for a partial payment. The distinction, however, is that the accounting system will reflect that the scheduled installment is not paid (is in suspense) until the full installment is made. For example, assume a customer's next scheduled payment of \$300 is due on October 5th. On October 5th, RHS receives a check for \$100, and on November 5th RHS receives a check for \$512. RHS records will indicate that this customer paid \$100 on October 5th. The customer will receive a past due notice and be charged a late fee of \$12 on October 20th. The system will credit the customer with the \$100 payment on October 5th, but will reflect that the October 5th installment has not been paid until the full installment has been received. The October 5th installment is "in suspense" until fully paid. When RHS receives the check of \$512 on November 5th, the October installment will no longer be in "suspense" because it has been fully paid.

It should be noted that RHS chose not to follow many mortgage lenders' practice with regard to partial payment. Many lenders return partial payments to the customer. RHS feels its policy is more advantageous to both the customer and Agency.

One commentator questioned the hierarchy of how payments are applied. This commentator, a large mortgage lender and servicer, stated that RHS's proposed method of applying principal and interest payments, prior to escrow, was not consistent with the private sector. RHS researched payment hierarchy with many private industry lenders. Our research indicated that most lenders apply payments in the manner RHS proposed. The accounting system which RHS recently purchased is a standard industry package used by many other lenders. All lenders using this system apply payments first to principal and interest and then to escrow. This payment hierarchy also benefits our customers by ensuring that something actually due is paid on time,

as opposed to an escrow which is accumulating funds to pay something that is due at a later time. We believe our proposal is more equitable to our clients.

Section 3550.152(d). Application of excess payment. Five comments were received on this section, all recommending that RHS allow its customers to make an extra payment that would relieve them of making the next scheduled payment rather than being applied as an extra payment. RHS agrees and has revised this section accordingly.

Section 3550.153. Fees. Five comments were received on this section. Several thought the tax service fee should be the same for existing customers as new customers. These fees, which are administrative and not included in the regulation, are estimated to be \$28 for existing clients and \$95 for new clients. The fees are set differently because the length of the service will be different for a new client who is just receiving a loan, and an existing client who has had the loan for many years.

Several commenters opposed RHS's proposal to charge late fees. RHS gave this proposal much thought before it was included in the proposed rule, and then again upon analyzing the comments. The negative comments centered around the fact that RHS's customers are very-low and low income families. RHS recognizes that fact; however, also recognizes its mission to provide supervised credit. Additionally, our credit is intended to be temporary with our customers required to refinance their RHS loan when they are capable. We believe a late fee will encourage our clients to make payments on a more timely basis. This not only improves their credit history, but furthers our objectives of making our clients successful homeowners. To minimize any negative impact on the repayment ability of our customers, the late fee is a percentage of the loan payments, therefore a lower income client will pay less than a higher income client with the same loan amount. Further, since RHS is converting customers on escrow to an amortized loan schedule rather than a daily simple interest loan in many cases, a late fee will actually be less costly to the customer. Under the daily simple interest method, the customer accrues additional interest for each day they are late with their payment. The late fee included in this rule will generally be less costly, and is more apparent to the borrower, if they become delinquent on payments. We believe this private sector standard, which many of our clients already pay if they are delinquent on car

payments or other private sector debt, will further our objectives in making our clients successful and able to refinance with private credit in the future.

Section 3550.157(a). Borrowers currently receiving payment subsidy. Four comments were received. One commentator supported our proposal to modify a payment subsidy only when there was a \$10 change in payments. Two commenters agreed that there needs to be a threshold, but recommended that the payment must change by 10% before the agreement is modified which will ensure clients are treated consistently whether their payments are \$60 or \$600 per month. RHS agrees that a percentage threshold better ensures consistency in the treatment of customers and has adopted this comment.

Comments were also received regarding the requirement that clients must notify RHS if they change or obtain employment. There was no indication that a customer must notify RHS if non employment income increases. RHS has clarified §§ 3550.68(e) and 3550.157(a)(3) to reflect that if nonemployment income increases by at least 10 percent, the borrower must notify RHS. RHS has also provided guidance on cancellation of payment subsidies.

Section 3550.158. Active military duty. One commentator recommended we expand the language which provides that participation in a military reserve or the National Guard does not entitle a customer to a 6 percent interest rate as provided under the Soldiers and Sailors Relief Act, unless they are called to active military duty. RHS has clarified this language.

One commentator appeared to be confused with this section with regard to payment subsidies and the 6% interest rate. If a customer enters active military duty, they are entitled to the 6% interest rate. If they also qualify for a payment subsidy, the payment subsidy would cover the difference in payment between the 6% and the amount of assistance for which the customer qualifies. This reduces the amount of subsidy and potential recapture this client would repay. For example, if a customer who entered active military duty had a note rate of 10 percent, and they now qualified for a payment subsidy which reduced their interest rate to 2%, they would receive the 6% rate and then an additional 4% subsidy. This is opposed to a non-active military customer with a note rate of 10%, who qualifies for a payment subsidy which reduces their payment to 2% who would be receiving an 8% subsidy. In the first case, the difference

between the 10 and 8 percent interest rates is not a subsidy which is subject to recapture.

Section 3550.159(a). Mineral leases. One commentor suggested that we change references from "value of the security property" to "value as a residence" in determining whether we should allow a customer to lease mineral rights. Since the value of the security property includes the "residence" we believe the proposed terminology is correct.

Section 3550.159(d). Lease of security property. One commentor recommended we remove the requirement that customers must notify RHS if they lease their property, and that the Agency may liquidate the account if the term of the lease is more than 3 years or includes an option to purchase. RHS disagrees. The purpose of the RHS loan program is to provide long term residence for our borrowers. If they no longer need the dwelling for a long term residence they should pay off the loan. RHS will consider the borrower for refinancing with other credit. In addition, the Agency may consider liquidation of the loan.

Section 3550.160(b). Criteria for refinancing with private credit. Two comments were received. One supported our proposed change of terminology from "graduation" to "refinancing with private credit." One commentor questioned the language which requires that the customer must refinance when RHS determines they have such ability. The commentor felt that RHS may be held accountable if the customer refinanced and then defaulted on their new loan. RHS determines, based upon objective criteria, whether a customer can refinance with private credit. If RHS determines the customer has the potential to secure other credit, they must seek refinancing. RHS does not make the underwriting decision for the other lender, nor is a private lender required to refinance the RHS debt. If the customer is unable to refinance for legitimate reasons, RHS will withdraw the refinancing request. If the customer does meet another lender's criteria, they are expected to refinance. However, as noted, that underwriting decision was made by the other lender. We appreciate the comment but feel that this policy does not impose any accountability concerns.

Section 3550.161(c). Written statements. Two commentors felt that the Agency should provide two written payoff statements within a 30 day period without charge. The proposed language already provides that RHS may charge a fee if more than 2 written payoff statements are requested.

Therefore, the recommendation was already included.

Section 3550.162. Recapture. Eight comments were received and all overwhelmingly supported our proposals to streamline and clarify subsidy recapture. One commentor summed it up best by replying, "I applaud recognition of the difficulties of the subsidy recapture program and encourage efforts to make this provision more understandable to applicants and customers and lessen its impact as a penalty to customers upon sale or refinancing of their properties."

One commentor recommended that principal reduction attributed to subsidy (PRAS) be included on annual statements to the customer. RHS agrees that some type of notice should be provided, however, disagrees that it should necessarily be done on an annual basis. RHS will notify all customers when PRAS is frozen and how it will be repaid. This commentor also recommended that PRAS be explained on Form RHS 3550-12, "Subsidy Repayment Agreement." Since there is no PRAS on loans originated after 1990, there is no need for mention of it on a form that only new customers execute.

One commentor felt that repayment of PRAS plus the lesser of subsidy received or 50% of value appreciation was a double hit to customers. As discussed in the proposed rule, PRAS is not subsidy. It was the accelerated principal reduction which a customer received because their loan was subsidized and repaid at a significantly lower interest rate. PRAS, as proposed, must be repaid. In addition, the customer must pay all or part of the subsidy they received back to the government. This is either the full subsidy or 50% of the value appreciation.

One commentor requested clarification on the opening sentence which provides that customers with loans approved on or after October 1, 1979, are subject to recapture. His comment was whether a loan which was approved before October 1, 1979, but assumed after that date is subject to recapture. Consistent with past policy, such a loan is subject to recapture. RHS has clarified this point.

Two commentors did not feel there was sufficient guidance to calculate recapture. We believe the regulation provides adequate policy guidance. The Handbooks contain the detailed administrative guidance on how to calculate recapture.

One commentor felt that we should forgive PRAS if the customer refinances and retains title to the property 10 years

after refinancing. The commentor felt this would be an incentive to a customer to retain ownership after refinancing. At the time of refinancing, a customer is given the opportunity to receive a discount if they repay recapture at that time. In addition, the government does not charge interest on the amount owed. We believe sufficient incentive is provided to the customer to repay recapture without forgiving the debt.

Section 3550.163. Transfer of security and assumption of indebtedness. Two comments were received. One commentor felt this section was confusing and needed more guidance. The Handbooks contain more administrative guidance on transfers. The commentor also objected to RHS's policy that if a customer transfers title to the property without RHS consent, RHS can liquidate the loan if the loan cannot be transferred. This policy is to ensure that program objectives are met and the government's financial interest is not adversely affected.

The other comment dealt with liquidating excess property to reduce the loan amount. As the commentor mentioned, this rarely occurs since RHS should not have initially financed excess land. However, if there is excess land, we believe it prudent policy to liquidate such excess property to reduce the amount of the subsidized credit provided to the new customer.

Section 3550.202. Past due accounts. Six comments were received on this section, and all centered on RHS charging a late fee. Comments were mixed with the commentors either strongly supporting or opposing the imposition of a late fee. As discussed under the comment to § 3550.153, RHS carefully weighed all comments and believes charging a late fee is in the government's and customer's best interests. RHS has also expanded this section to provide guidance on accounts with annual payments.

Section 3550.207. Payment moratorium. Two comments were received. One commentor recommended that the review period more accurately reflect the need of the customer, and not an arbitrary two-year period. In developing the regulation, RHS proposed that reviews would be done "periodically" rather than the current two year cycle. The proposed language accomplishes this objective while still leaving flexibility for periodic reviews.

One commentor had two concerns. One concern centered around one of the three criteria to qualify for a moratorium. Namely, for a moratorium to be based on a reduction of income, there must be at least a 20% reduction in income. RHS proposed no change to

this policy which has been in effect for many years. It is based upon the premise that for the Agency to completely stop requiring all payments from a customer for up to two years, a substantial reduction in income must have occurred. While it is true that our customers have very-low, low and moderate incomes, a homeowner should be able to adjust to small adjustments in income. Additionally, RHS can provide customers with additional payment subsidies, work-out agreements, etc., in an effort to assist them in working through difficult periods. We believe the 20% reduction is reasonable.

The other comment centered around the inability of a customer to qualify for a moratorium if their account has been accelerated. After an account is accelerated, all loan servicing ceases. RHS makes every effort possible to assist a customer before acceleration of the account. The customer is informed several times throughout the loan origination and servicing process of the moratorium program. Prior to acceleration all of the agency's servicing tools will be used to assist a customer, including the use of a moratorium for a customer who is having temporary financial difficulties for reasons beyond his or her control to keep their home. A loan will be accelerated for a customer in financial distress only if all the servicing authorities have been tried and cannot assist the borrower in retaining the house, possibly because the financial difficulties are not temporary or the borrower has been unresponsive or has failed to work with RHS. Once RHS has exhausted its servicing tools (and any appeals in conjunction with these tools) and accelerates the account, there can be no subsequent financial setback to the borrower which is relevant to the basis for the acceleration.

Section 3550.211. Liquidation. One commentor recommended adding guidance on how to service accounts where the customer has filed for bankruptcy. RHS, like all lenders, must follow bankruptcy laws on servicing such accounts and is providing such guidance in the Handbooks.

Section 3550.251. Property management and disposition. Two comments were received recommending that for-profit entities be provided the same incentives to lease or purchase Real Estate Owned (REO) property for transitional housing as nonprofit organizations. The preference for nonprofit organizations and public bodies is statutory. Section 1414 of the Housing and Community Development Act of 1992, Public Law 102-550, which amended the Stewart B. McKinney

Homeless Assistance Act, Public Law 100-77, provides the preference for nonprofit and public bodies. For-profit organizations can lease or purchase REO property, when available, for transitional housing; however, the incentives are not available for such organizations.

Section 3550.251(c)(2). Decent, safe, and sanitary. One comment was received recommending that RHS remove the energy efficiency requirements to the decent, safe and sanitary restrictions that apply to the sale of REO property not meeting RHS standards, DSS standards, including energy efficient standards, are statutory.

Section 3550.252. Debt settlement policies. Two comments were received. Both questioned guidance on charge-offs and cancellations. A customer can request a compromise or adjustment to their debt and as such, guidance is contained in the regulation. Charge-offs and cancellations are administrative actions and not a customer entitlement and are therefore only referenced in the Handbooks. Detailed guidance on all four options is contained in the Handbooks.

Other Comments

One comment was received regarding RHS's proposal to freeze PRAS for all existing customers and then reduce the "frozen" PRAS in years 15-33 by an equal amount. The commentor felt that RHS should not reduce PRAS. As previously mentioned, PRAS is the accelerated principal write-down certain customers received during the first half of their loan term due to subsidy. In approximately the 20th year, the trend towards accelerated principal writedown reverses itself to the point where subsidized customers pay less principal because of the subsidy. The result is that two customers, one with subsidy and one without would owe the same principal balance in their final year of payments. To not begin reducing PRAS in the second half of the loan term would penalize those customers who received subsidy.

Several comments were received recommending that RHS consider offering a one-time interest rate reduction for customers who received loans at high interest rates and are unable to refinance to other credit. In cases where the customer is receiving subsidy, it was felt that the Agency would save funds because they would provide less subsidy to these customers. In other cases, where the customer is not receiving subsidy, but has a high interest rate, the customer may not be able to refinance to other credit because their RHS loan payments are so high

they may be overextended on other debts or not have sufficient cash required by most other lenders for refinancing. RHS agrees that these comments have merit; however, must weigh the cost of refinancing its own loans. RHS will explore the feasibility and cost of refinancing these debts. If it appears feasible, RHS will propose a separate rule to consider public opinion on this subject.

Positive comments were received on our efforts to streamline forms and use industry standard forms wherever possible. As mentioned in the Proposed Rule, RHS was to publish a Notice in the Federal Register in July to propose our information collection docket on the Handbooks to part 3550. RHS published this Notice on July 18, 1996 (61 FR 37440) and proposed an overall 10% reduction in burden hours and 20% reduction in burden costs. This reduction falls on the heels of a 20% reduction in burden hours published in October 1995, despite the broadening of what is considered public burden in the Paperwork Reduction Act of 1995. RHS is still exploring ways to automate and streamline forms even further.

Several comments were received regarding child care expenses and how these costs figure into loan underwriting. There was confusion as to whether these expenses are considered a debt which must be included in the debt ratios to qualify for assistance. This is an administrative function, and not contained in the rule. For the commentor's information, RHS clarified through this subject recently through an Administrative Notice (AN) which clarified that child care expenses are not considered in total debt. This guidance is included in the Handbooks.

Several commentors expressed concern over RHS's decision to centralize loan servicing. They were concerned that in our efforts to save costs, RHS would be depersonalizing service to its customers and increase the risk of defaults and potential liquidations. RHS is mindful of these issues and has made every effort in its design of the Centralized Servicing Center to ensure a greater and more consistent level of customer service. Our current field structure required staff to specialize in all levels of customer service from outreach and loan origination to portfolio management. As the Agency has been required to reduce staffing levels, we have found that only through consolidation and centralization can we provide the same if not enhanced level of customer service. Experience has also shown that specialization provides for greater consistency and efficiency. The

Centralized Servicing Center will be staffed with talented individuals that will concentrate on one aspect of the program—making our customers successful homeowners. Through specialization, we believe there will be more consistency and timely servicing actions. And through this increased service, default rates will decline and more customers will be successful. The transition will not be easy for either our field staff or our customers. However, in the long run, we believe service to rural America will be enhanced. Field staff can concentrate on outreach and loan origination providing the local level presence that is needed to assist with the prudent development of rural America.

Reopening of Comment Period for Selected Issues

RHS is reopening the comment period on sections 3550.53(g), 3550.57(a), 3550.63 and 3550.68. These section numbers remain unchanged from our proposed rule of April 8, 1996 (61 FR 15395) and are adopted on an interim final basis. All other provisions of part 3550 are adopted as a final rule.

As previously discussed in this rule, these sections generated the vast majority of comments during the comment period. Many commenters supplied RHS with lengthy and well documented cases where these areas may not be serving the best interests of the program. Some of the commenters recommended:

- Returning to our former interest credit program, whereby the interest rate was reduced on the loan to as low as one percent, and modest housing was determined by square footage and amenities. RHS reduced the cost of the program by approximately 30% by implementing the changes in the aforementioned sections. This allows the Agency to provide more homeownership opportunities in rural America while demonstrating that program costs can be substantially reduced. As such, RHS is not further considering this option.

- Modifying the floor payments from 22, 24 and 26% to either a flat 25% or a more incremental scale of 22, 23, 24, 25 and 26%. RHS is analyzing these comments further and will consider them provided they have no negative impact on the overall cost of the program.

- Changing the PITI ratios from 29% for very-low income families and 33% for low-income families to 29% for both, 33% for both, or other percentages. RHS is again considering these options.

- Reimplementing a square footage requirement to ensure that the housing

is modest. Prior to FY 96, RHS considered square footage and amenities in determining modest housing, and changed to the HUD 203(b) limits to provide customers with more choices in selecting a home appropriate to their income and needs. RHS does not want to dictate the type and size of housing to customers, and is not further considering this option.

- Increasing the maximum debt ratio to 41% for very-low and low income families. As mentioned in our discussion of comments, RHS has implemented this change since the impact is minimal on the cost of the program and allows more families an opportunity for homeownership.

- Limiting the maximum loan to a percentage of the HUD 203(b) limits. For example, the State Director could set the percentage by county, and have the authority to increase the percentage on an individual case basis provided the proposed housing is typical of other houses that families with similar incomes and family sizes are purchasing. RHS is further considering this option.

- Modifying the equivalent interest rates from one-half percent increments to one-quarter percent increments and decreasing the income ranges from 10 to 3 percent. RHS is considering this option.

- Returning to the old interest credit formula, increasing the borrower contribution from 20 to 30 percent, but include utilities and maintenance in the total family expenses. Again, because of the substantial cost of the interest credit program, RHS is not considering this option.

- Eliminating utilization of both equivalent interest rates and floor payments to simplify the calculations. RHS may consider this option provided it does not increase program costs.

- Utilizing a state non-metropolitan average income or area median income, whichever is greater, to determine eligibility for assistance. Currently, RHS is utilizing an area (county) income to determine eligibility and the maximum loan amount. This has resulted in some customers qualifying for a loan in one county, but not qualifying for a loan in an adjoining county because of differences in county incomes. RHS is further exploring the use of state non-metropolitan incomes to determine its impact on program costs and our customers.

- RHS is seeking further comments on the above mentioned recommendations and any further comments or recommendations on §§ 3550.53(g), 3550.57, 3550.63 and 3550.68. The Agency's goal is to have a

more simplified and consistent approach to addressing these issues; while not negatively impacting the cost of the program.

Discussion of Interim Final Rule

RHS is issuing this regulation as an interim Final Rule, with an effective date 30 days after publication in the Federal Register, as it is necessary to implement DLOS and improve our level of service to customers. Further delay would not be in the best interest of the direct SPH program or its recipients. As previously mentioned, all provisions of this regulation except sections 3550.53(g), 3550.57(a), 3550.63 and 3550.68 are adopted as final. Sections 3550.53(g), 3550.57(a), 3550.63 and 3550.68 are adopted on an interim final basis, and are subject to a 30-day comment period. RHS intends to publish a final rule on the aforementioned sections by April 1, 1997.

List of Subjects

7 CFR Part 1806

Insurance, Loan programs—Agriculture, Real property insurance, Rural areas.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1922

Loan programs—housing and community development, Low and Moderate income housing, Rural areas.

7 CFR Part 1944

Aged, Farm labor housing, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1951

Accounting, Accounting servicing, Credit, Debt restructuring, Foreclosure, Government acquired property, Interest credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Recapture of subsidy, Rent subsidies, Rural areas, Sale of government acquired property, Surplus government property.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1958

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Loan programs—Housing and community development.

7 CFR Part 3550

Accounting, Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Grant programs—Housing and community development, Housing, Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

Therefore, title 7 of the Code of Federal Regulations is amended as follows:

CHAPTER XVII—(AMENDED)

PART 1806—INSURANCE

1. The authority citation for part 1806 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1969; 42 U.S.C. 1480.

Subpart A—Real Property Insurance

2. Section 1806.1(a) is revised to read as follows:

§ 1806.1 General.

(a) *Authority.* This subpart sets forth the policies and procedures regarding insurance requirements on real property which serves as security for a debt under the Farm Credit Programs of the Farm Service Agency (FSA) or the Multi-Family Housing Programs of the Rural Housing Service (RHS). Any references herein to the Farmers Home Administration (FmHA) or its employees are intended to mean FSA or RHS, as applicable, and their employees.

PART 1910—GENERAL

3. The authority citation for part 1910 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1969; 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

4. Section 1910.1 introductory text is revised to read as follows:

§ 1910.1 General.

This subpart prescribes the policies and procedures for informing interested parties of the Farm Credit loan programs available through the Farm Service Agency (FSA), and how such requests are processed. Requests for Nonprogram (NP) assistance will be handled in accordance with subpart J of part 1951 of this chapter. References contained herein to the housing programs of the Rural Housing Service (RHS), or its successor agency, are no longer applicable.

PART 1922—APPRAISAL

5. The authority citation for part 1922 is revised to read as follows:

Authority: 7 U.S.C. 1969.

Subpart C—Appraisal of Single Family Residential Property

6. Subpart C (§§ 1922.101–1922.150 and all exhibits) is removed and reserved.

PART 1944—HOUSING

7. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1969; 42 U.S.C. 1480.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

8. Subpart A (§§ 1944.1–1944.50) is removed and reserved.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

9. Section 1944.156 is added to read as follows:

§ 1944.156 General loan/grant processing requirements.

(a) *Timeliness.* All applicants will be informed of a decision regarding their request for assistance within a reasonable timeframe established by RHS. If RHS cannot provide an eligibility determination within a reasonable timeframe, the applicant will be notified when the determination will be made. A request for assistance may be withdrawn at any time by the applicant. RHS may return a request for assistance for failure of the applicant to provide the necessary underwriting

information within a reasonable time period established by RHS.

(b) *Unlawful determination.* The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants based on race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), or because all or part of the applicant's income derives from any public assistance program. Department of Agriculture regulations provide that no agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person based on race, color, religion, sex, age, handicap, or national origin under any program or activity administered by such agency, officer, or employee. The Fair Housing Act prohibits discrimination in real estate-related transactions, or in the terms and conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. If an applicant or borrower believes he or she has been discriminated against for any of these reasons, that person can write the Secretary of Agriculture, Washington, DC 20250. Applicants also cannot be denied a loan because the applicant has in good faith exercised his or her rights under the Consumer Credit Protection Act. If an applicant believes he or she was denied a loan for this reason, the applicant should contact the Federal Trade Commission, Washington, DC 20580.

(c) *Taxpayer identification.* All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

Subpart J—Section 504 Rural Housing Loans and Grants

10. Subpart J (§§ 1944.451–1944.500 and all exhibits) is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

11. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1969; 42 U.S.C. 1480.

12. The heading of subpart C is revised to read as follows:

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

13. Section 1951.101 is revised to read as follows:

§ 1951.101 General.

The Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982, the Deficit Reduction Act of 1984, and the Debt Collection Amendments Act of 1996 provides for the use of administrative, salary and Internal Revenue Service (IRS) offsets by government agencies including the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utility Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to as "USDA Agency," to collect delinquent debts. Any money that is or may become payable from the United States to a USDA Agency borrower or other individual or entity indebted to a USDA Agency may be subject to offset for collection of a debt. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrowers account. USDA Agencies will process requests by other Federal agencies for offset in accordance with § 1951.102 of this subpart. This subpart does not apply to direct single family housing customers of the RHS.

Subpart D—Final Payment on Loans

14. Section 1951.151 is revised to read as follows:

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utility Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to as "Agency," for processing final payment on all loans. This subpart does not apply to direct single family housing customers of the RHS.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

15. Section 1951.251 is amended by adding a sentence at the end to read as follows:

§ 1951.251 Purpose.

* * * This subpart does not apply to RHS direct single family housing (SFH) customers.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

16. Subpart G (§§ 1951.301–1951.350) is removed and reserved.

Subpart I—Recapture of Section 502 Rural Housing Subsidy

17. Subpart I (§§ 1951.401–1951.413 and all exhibits) is removed and reserved.

Subpart J—Management and Collection of Nonprogram (NP) Loans

18. Section 1951.451 is amended by revising the introductory text to read as follows:

§ 1951.451 General.

This subpart contains policies and procedures of the Farm Service Agency (FSA) for making, managing, collecting, liquidating, and servicing loans on nonprogram (NP) terms. All references in this subpart to farm real estate, farm property and farm chattels also include nonfarm property that was security for a Farm Credit debt of the FSA.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

19. Subpart M (§§ 1951.601–1951.650) is removed and reserved.

PART 1955—PROPERTY MANAGEMENT

20. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

21. Section 1955.1 is revised to read as follows:

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of loans to individuals and to organizations as identified in § 1955.3. It pertains to the Farm Credit programs of the Farm Service Agency (FSA), Water and Waste programs of the Rural Utilities Service (RUS), Multi-Family Housing (MFH) and Community

Facility (CF) programs of the Rural Housing Service (RHS), and direct programs of the Rural Business-Cooperative Service (RBS). Guaranteed RBS loans are liquidated upon direction from the Deputy Administrator, Business Program, RBS. This subpart does not apply to RHS single family housing loans, or to CF loans sold without insurance in the private sector. These CF loans will be serviced in the private sector and future revisions to this subpart no longer apply to such loans.

Subpart B—Management of Property

22. Section 1955.51 is revised to read as follows:

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), the Water and Waste programs of the Rural Utilities Service (RUS), and Farm Service Agency (FSA), herein referred to as "Agency," and references contained in this subpart to the Farmers Home Administration (FmHA) are synonymous with "Agency." This subpart does not apply to RHS single family housing loans or community program loans sold without insurance to the private sector. These community program loans will be serviced by the private sector and future revisions to this subpart no longer apply to such loans. This subpart covers:

- (a) Management of real property which has been taken into custody by the respective Agency after abandonment by the borrower;
- (b) Management of real and chattel property which is in Agency inventory; and
- (c) Management of real and chattel property which is security for a guaranteed loan liquidated by an Agency (or which the Agency is in the process of liquidating).

Subpart C—Disposal of Inventory Property

23. Section 1955.101 is amended by adding a new sentence to the end to read as follows:

§ 1955.101 Purpose.

* * * This subpart does not apply to Single Family Housing (SFH) inventory property.

PART 1956—DEBT SETTLEMENT

24. The authority citation for part 1956 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Debt Settlement—Farmer Programs and Housing

25. Section 1956.51 is revised to read as follows:

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policy and procedures for settlement of debts owed to the United States under the Farm Credit loan programs of the Farm Service Agency (FSA) and the Multi-Family Housing (MFH) program of the Rural Housing Service (RHS). It also applies to Nonprogram (NP) loans secured by MFH property of the RHS. Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes is also covered by this subpart. Settlement of claims against third party converters, and Economic Opportunity (EO) loans is authorized under the Federal Claims Collection Standards, 4 CFR parts 101–105. This subpart does not apply to RHS direct Single Family Housing (SFH) loans or RHS NP loans secured by SFH property.

PART 1965—REAL PROPERTY

26. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart C—Security Servicing for Single Family Rural Housing Loans

27. Subpart C (§§ 1965.101–1965.150) is removed and reserved.

28. A new chapter XXXV consisting of part 3550 is added to read as follows:

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE**PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS****Subpart A—General****Sec.**

- 3550.1 Applicability.
- 3550.2 Purpose.
- 3550.3 Civil rights.
- 3550.4 Reviews and appeals.
- 3550.5 Environmental requirements.
- 3550.6 State law or state supplement.
- 3550.7 Demonstration programs.
- 3550.8 Exception authority.
- 3550.9 Conflict of interest.
- 3550.10 Definitions.
- 3550.11–3550.49 [Reserved]
- 3550.50 OMB control number.

Subpart B—Section 502 Origination

- 3550.51 Program objectives.
- 3550.52 Loan purposes.
- 3550.53 Eligibility requirements.
- 3550.54 Calculation of income and assets.
- 3550.55 Applications.

- 3550.56 Site requirements.
- 3550.57 Dwelling requirements.
- 3550.58 Ownership requirements.
- 3550.59 Security requirements.
- 3550.60 Escrow account.
- 3550.61 Insurance.
- 3550.62 Appraisals.
- 3550.63 Maximum loan amount.
- 3550.64 Down payment.
- 3550.65 [Reserved]
- 3550.66 Interest rate.
- 3550.67 Repayment period.
- 3550.68 Payment subsidies.
- 3550.69 Deferred mortgage payments.
- 3550.70 Conditional commitments.
- 3550.71 Special requirements for condominiums.
- 3550.72 Community land trusts.
- 3550.73 Manufactured homes.
- 3550.74 Nonprogram loans.
- 3550.75–3550.99 [Reserved]
- 3550.100 OMB control number.

Subpart C—Section 504 Origination

- 3550.101 Program objectives.
- 3550.102 Grant and loan purposes.
- 3550.103 Eligibility requirements.
- 3550.104 Applications.
- 3550.105 Site requirements.
- 3550.106 Dwelling requirements.
- 3550.107 Ownership requirements.
- 3550.108 Security requirements (loans only).
- 3550.109 Escrow account (loans only).
- 3550.110 Insurance (loans only).
- 3550.111 Appraisals (loans only).
- 3550.112 Maximum loan and grant.
- 3550.113 Rates and terms (loans only).
- 3550.114 Repayment agreement (grants only).
- 3550.115–3550.149 [Reserved]
- 3550.150 OMB control number.

Subpart D—Regular Servicing

- 3550.151 Servicing goals.
- 3550.152 Loan payments.
- 3550.153 Fees.
- 3550.154 Inspections.
- 3550.155 Escrow account.
- 3550.156 Borrower obligations.
- 3550.157 Payment subsidy.
- 3550.158 Active military duty.
- 3550.159 Borrower actions requiring RHS approval.
- 3550.160 Refinancing with private credit.
- 3550.161 Final payment.
- 3550.162 Recapture.
- 3550.163 Transfer of security and assumption of indebtedness.
- 3550.164 Unauthorized assistance.
- 3550.165–3550.199 [Reserved]
- 3550.200 OMB control number.

Subpart E—Special Servicing

- 3550.201 Purpose of special servicing actions.
- 3550.202 Past due accounts.
- 3550.203 General servicing actions.
- 3550.204 Payment assistance.
- 3550.205 Delinquency workout agreements.
- 3550.206 Protective advances.
- 3550.207 Payment moratorium.
- 3550.208 Reamortization using promissory note interest rate.
- 3550.209 [Reserved]
- 3550.210 Offsets.
- 3550.211 Liquidation.

3550.212–3550.249 [Reserved]
3550.250 OMB control number.

Subpart F—Post-Servicing Actions

- 3550.251 Property management and disposition.
- 3550.252 Debt settlement policies.
- 3550.253 Settlement of a debt by compromise or adjustment.
- 3550.254–3550.299 [Reserved]
- 3550.300 OMB control number.

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General**§ 3550.1 Applicability.**

This part sets forth policies for the direct single family housing loan programs operated by the Rural Housing Service (RHS) of the U.S. Department of Agriculture (USDA). It addresses the requirements of sections 502 and 504 of the Housing Act of 1949, as amended, and includes policies regarding both loan and grant origination and servicing. Procedures for implementing these regulations can be found in program handbooks, available in any Rural Development office. Any provision on the expenditure of funds under this part is contingent upon the availability of funds.

§ 3550.2 Purpose.

The purpose of the direct RHS single family housing loan programs is to provide low- and very low-income people who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. The section 502 program offers persons who do not currently own adequate housing, and who cannot obtain other credit, the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas. The section 504 program offers loans to very low-income homeowners who cannot obtain other credit to repair or rehabilitate their properties. The section 504 program also offers grants to homeowners age 62 or older who cannot obtain a loan to correct health and safety hazards or to make the unit accessible to household members with disabilities.

§ 3550.3 Civil rights.

RHS will administer its programs fairly, and in accordance with both the letter and the spirit of all equal opportunity and fair housing legislation and applicable executive orders. Loans, grants, services, and benefits provided under this part shall not be denied to any person based on race, color, national origin, sex, religion, marital status, familial status, age, physical or mental disability, receipt of income from public assistance, or because the applicant has, in good faith, exercised

any right under the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.). All activities under this part shall be accomplished in accordance with the Fair Housing Act (42 U.S.C. 3601-3620), Executive Order 11246, and Executive Order 11063, as amended by Executive Order 12259, as applicable. The civil rights compliance requirements for RHS are in 7 CFR part 1901, subpart E.

§ 3550.4 Reviews and appeals.

Whenever RHS makes a decision that is adverse to a participant, RHS will provide the participant with written notice of such adverse decision and the participant's rights to a USDA National Appeals Division hearing in accordance with 7 CFR part 11. Any adverse decision, whether appealable or non-appealable may be reviewed by the next-level RHS supervisor.

§ 3550.5 Environmental requirements.

(a) *Policy.* RHS will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes. RHS will take into account potential environmental impacts of proposed projects by working with RHS applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program's goals in a manner that will protect, enhance, and restore environmental quality.

(b) *Regulatory references.* Processing and servicing actions under this part will be done in accordance with the requirements provided in 7 CFR part 1940, subpart G which addresses environmental requirements and 7 CFR part 1924, subpart A, which addresses lead-based paint.

§ 3550.6 State law or state supplement.

State and local laws and regulations, and the laws of federally recognized Indian tribes, may affect RHS implementation of certain provisions of this regulation, for example, with respect to the treatment of liens, construction, or environmental policies. Supplemental guidance may be issued in the case of any conflict or significant differences.

§ 3550.7 Demonstration programs.

From time to time, RHS may authorize limited demonstration programs. The purpose of these demonstration programs is to test new approaches to offering housing under the statutory authority granted to the Secretary. Therefore, such demonstration programs may not be

consistent with some of the provisions contained in this part. However, any program requirements that are statutory will remain in effect. Demonstration programs will be clearly identified as such.

§ 3550.8 Exception authority.

An RHS official may request, and the Administrator or designee may make, an exception to any requirement or provision of this part or address any omission of this part that is consistent with the applicable statute if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest.

§ 3550.9 Conflict of interest.

Objective. It is the objective of RHS to maintain the highest standards of honesty, integrity, and impartiality by employees. To reduce the potential for employee conflict of interest, all processing, approval, servicing, or review activity will be conducted in accordance with 7 CFR part 1900, subpart D by RHS employees who:

- (1) Are not themselves the applicant or borrower;
- (2) Are not members of the family or close known relatives of the applicant or borrower;
- (3) Do not have an immediate working relationship with the applicant or borrower, the employee related to the applicant or borrower, or the employee who would normally conduct the activity; or
- (4) Do not have a business or close personal association with the applicant or borrower.

(b) *Applicant or borrower responsibility.* The applicant or borrower must disclose any known relationship or association with an RHS employee when such information is requested.

(c) *RHS employee responsibility.* An RHS employee must disclose any known relationship or association with a recipient, regardless of whether the relationship or association is known to others. RHS employees or members of their families may not purchase a Real Estate Owned (REO) property, security property from a borrower, or security property at a foreclosure sale. Loan closing agents who have been involved with a particular property, as well as members of their families, are also precluded from purchasing such properties.

§ 3550.10 Definitions.

Acceleration. Demand for immediate repayment of the entire balance of a

debt if the security instruments are breached.

Adjusted income. Used to determine whether an applicant is income-eligible. Adjusted income provides for deductions to account for varying household circumstances and expenses. See 4 for a complete description of adjusted income.

Adjustment. An agreement to release a debtor from liability generally upon receipt of an initial lump sum representing the maximum amount the debtor can afford to pay and periodic additional payments over a period of up to 5 years.

Amortized payment. Equal monthly payments under a fully amortized mortgage loan that provides for the scheduled payment of interest and principal over the term of the loan.

Applicant. An adult member of the household who will be responsible for repayment of the loan.

Assumption. The procedure whereby the transferee becomes liable for all or part of the debt of the transferor.

Borrower. A recipient who is indebted under the section 502 or 504 programs.

Cancellation. A decision to cease collection activities and release the debtor from personal liability for any remaining amounts owed.

Compromise. An agreement to release a debtor from liability upon receipt of a specified lump sum that is less than the total amount due.

Conditional commitment. A determination that a proposed dwelling will qualify as a program-eligible property. The conditional commitment does not reserve funds, nor does it ensure that a program-eligible applicant will be available to buy the dwelling.

Cosigner. An individual or an entity that joins in the execution of a promissory note to compensate for any deficiency in the applicant's repayment ability. The cosigner becomes jointly liable to comply with the terms of the promissory note in the event of the borrower's default, but is not entitled to any interest in the security or borrower rights.

Cross-collateralized loan. A situation in which a single property secures both RHS and Farm Service Agency loans.

Custodial property. Borrower-owned real property that serves as security for a loan that has been taken into possession by the Agency to protect the Government's interest.

Daily simple interest. A method of establishing borrower payments based on daily interest charged on the outstanding principal balance of the loan. Principal is reduced by the amount of payment in excess of the accrued interest.

Dealer-contractor. A person, firm, partnership, or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes. A person, firm, partnership, or corporation not capable of providing the complete service is not eligible to be a dealer-contractor.

Debt instrument. A collective term encompassing obligating documents for a loan, including any applicable promissory note, assumption agreement, or grant agreement.

Deferred mortgage payments. A subsidy available to eligible, very low-income borrowers of up to 25 percent of their principal and interest payments at 1 percent for up to 15 years. The deferred amounts are subject to recapture on sale or nonoccupancy.

Deficient housing. A dwelling that lacks complete plumbing; lacks adequate heating; is dilapidated or structurally unsound; has an overcrowding situation that will be corrected with loan funds; or that is otherwise uninhabitable, unsafe, or poses a health or environmental threat to the occupant or others.

Elderly family. An elderly family consists of one of the following:

- (1) A person who is the head, spouse, or sole member of a family and who is 62 years of age or older, or who is disabled, and is an applicant or borrower;
- (2) Two or more persons who are living together, at least 1 of whom is age 62 or older, or disabled, and who is an applicant or borrower; or
- (3) In the case of a family where the deceased borrower or spouse was at least 62 years old or disabled, the surviving household member shall continue to be classified as an elderly family for the purpose of determining adjusted income, even though the surviving members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of the death;

(ii) If one of the surviving family members is the spouse of the deceased family member, the family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member, the dwelling was financed under title V of the Housing Act of 1949, as amended.

Escrow account. An account to which the borrower contributes monthly payments to cover the anticipated costs of real estate taxes, hazard and flood

insurance premiums, and other related costs.

Existing dwelling or unit. A dwelling that is more than 1 year old, or less than 1 year old and covered by an approved 10-year warranty plan.

False information. Information that the recipient knew was incorrect or should have known was incorrect that was provided or omitted for the purposes of obtaining assistance for which the recipient was not eligible.

Full-time student. A person who carries at least the minimum number of credit hours considered to be full-time by college or vocational school in which the person is enrolled.

Hazard. A condition of the property that jeopardizes the health or safety of the occupants or members of the community, that does not make it unfit for habitation. (See also the definition of major hazard in this section.)

Household. All persons expected to be living in the dwelling, except for live-in aids, foster children, and foster adults.

Housing Act of 1949, as amended. The Act which provides the authority for the direct single family housing programs. It is codified at 42 U.S.C. 1471 et seq.

HUD. The U.S. Department of Housing and Urban Development.

Inaccurate information. Incorrect information inadvertently provided, used, or omitted without the intent to obtain benefits for which the recipient was not eligible.

Indian reservation. All land located within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments, the titles to which have not been extinguished, if such allotments are subject to the jurisdiction of a federally recognized Indian tribe.

Interest credit. A payment subsidy available to certain eligible section 502 borrowers that reduces the effective interest rate of a loan (see 3550.68(d)). Borrowers receiving interest credit will continue to receive it on all current and future loans for as long as they remain eligible for and continue to receive a subsidy. Borrowers who cease to be eligible for interest credit can never receive interest credit again, but may receive payment assistance if they again qualify for a payment subsidy.

Junior lien. A security instrument or a judgment against the security property

to which the RHS debt instrument is superior. Legal alien. For the purposes of this part, legal alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Leveraged loan. A loan or grant to an Agency borrower from a non-RHS source for the same property, closed simultaneously with an RHS loan.

Live-in aide. A person who lives with an elderly or disabled person and is essential to that person's care and well-being, not obligated for the person's support, and would not be living in the unit except to provide the support services.

Low income. An adjusted income that is greater than the HUD established very low-income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size) for the county or Metropolitan Statistical Area where the property is or will be located.

Major hazard. A condition so severe that it makes the property unfit for habitation. (See also the definition of hazard in this section.)

Manufactured home. A structure that is built to Federally Manufactured Home Construction and Safety Standard and RHS Thermal Performance Standards. It is transportable in 1 or more sections, which in the traveling mode is 10-body feet (3.048 meters) or more in width, and when erected on site is 400 or more square feet (37.16 square meters), and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping, and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. A permanent foundation is required.

Market value. The value of the property as determined by a current appraisal, RHS may authorize the use of a Broker's Price Opinion or similar instrument to determine market value in limited servicing situations.

Mobile home. A manufactured unit often referred to as a "trailer," designed to be used as a dwelling, but built prior to the enactment of the Housing and Community Development Act of 1980 (Pub. L. 96-399) enacted October 8, 1980.

Moderate income. An adjusted income that is greater than the low-income limit, but that does not exceed

the HUD established low-income limit by more than \$5,500.

Modest housing. A property that is considered modest for the area, with a cost that does not exceed the applicable limit established under section 203(b) of the National Housing Act (12 U.S.C. 1709) (unless an exception is approved by RHS). In addition, the property must not be designed for income-producing activities nor have an in-ground swimming pool.

Modular or panelized home. Housing constructed of one or more factory-built sections or panels, which, when completed, meets or exceeds the requirements of the recognized development standards (model building codes) for site built housing, and which is designed to be permanently connected to a site-built foundation.

Moratorium. A period of up to 2 years during which scheduled payments are not required, but are subject to repayment at a later date.

Mortgage. A form of security instrument or consensual lien on real property including a real estate mortgage or a deed of trust.

Net family assets. The value of assets available to a household that could be used towards housing costs. Net family assets are considered in the calculation of annual income and are used to determine whether the household must make additional cash contributions to improve or purchase the property.

Net recovery value. The market value of the security property minus anticipated expenses of liquidation, acquisition, and sale as determined by RHS.

New dwelling. A dwelling that is to be constructed, or an already-existing dwelling that is less than 1 year old and is not covered by an approved 10-year warranty plan.

Nonprogram (NP) interest rate. The interest rate offered by RHS for loans made on NP terms.

NP property. Property that does not meet the program eligibility requirements outlined in §§ 3550.56 and 3550.57.

NP terms. Credit terms available from RHS when the applicant or property is not program-eligible.

Offset. Deductions to pay a debt owed to RHS from a borrower's retirement benefits, salary, income tax refund, or payments from other federal agencies to the borrower. Deductions from retirement benefits and salary generally apply only to current and former federal employees.

Participant. For the purpose of reviews and appeals, a participant is any individual or entity who has applied for, or whose right to participate

in or receive a payment, loan, or other benefit is affected by an RHS decision.

Payment assistance. A payment subsidy available to eligible section 502 borrowers that reduces the effective interest rate of a loan (see § 3550.68(c)). Borrowers eligible for a payment subsidy receive payment assistance unless they are currently eligible for and receive interest credit.

Payment subsidy. A general term for subsidies which reduce the borrower's scheduled payment. It refers to either payment assistance or interest credit.

Person with disability. Any person who has a physical or mental impairment that substantially limits one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, has a record of such an impairment, or is regarded as having such an impairment.

PTI ratio. The amount paid by the borrower for principal, interest, taxes, and insurance (PTI), divided by repayment income.

Principal reduction attributed to subsidy (PRAS). Accelerated principal reduction that can occur when a borrower receives a reduced interest rate through a payment subsidy.

Prior lien. A security instrument or a judgment against the security property that is superior to the RHS debt instrument.

Program-eligible applicant. Any applicant meeting the eligibility requirements described in § 3550.53.

Program-eligible property. A property eligible to be financed under this part, as determined by the criteria listed in §§ 3550.56 through 3550.59.

Program terms. Credit terms that are available only to program-eligible applicants for program-eligible properties.

Property. The land, dwelling, and related facilities for which the applicant will use RHS assistance.

Protective advances. Costs incurred by the Agency to protect the security interest of the Government that are charged to the borrower's account.

Real estate taxes. Taxes and the annual portion of assessments estimated to be due and payable on the property, reduced by any available tax exemption.

Recapture amount. An amount of subsidy to be repaid by the borrower upon disposition or nonoccupancy of the property.

Recipient. Any applicant, borrower, or grant recipient who applies for or receives assistance under the section 502 or 504 programs.

REO. The acronym for "Real Estate Owned." It refers to property for which RHS holds title.

Repayment income. Used to determine whether an applicant has the ability to make monthly loan payments. Repayment income includes amounts excluded for the purpose of determining adjusted income. See § 3550.54 for a complete description.

RHS. The Rural Housing Service of the U.S. Department of Agriculture, or its successor agency, formerly the Rural Housing and Community Development Service (RHCD), a successor agency to the Farmers Home Administration (FmHA).

RHS employee. Any employee of RHS, or any employee of the Rural Development mission area who carries out grant or loan origination or servicing functions for the section 502 or 504 programs.

RHS interest rate. The unsubsidized interest rate offered by RHS for loans made on program terms.

Rural area: A rural area is:

(1) Open country which is not part of or associated with an urban area.

(2) Any town, village, city, or place, including the immediate adjacent densely settled area; which is not part of or associated with an urban area and which: (i) Has a population not in excess of 10,000 if it is rural in character; or

(ii) Has a population in excess of 10,000 but not in excess of 20,000, is not contained within a Metropolitan Statistical Area, and has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of HUD.

(3) An area classified as a rural area prior to October 1, 1990, (even if within a Metropolitan Statistical Area), with a population exceeding 10,000, but not in excess of 25,000, which is rural in character, and has a serious lack of mortgage credit for low- and moderate-income families. This is effective through receipt of census data for the year 2000.

Rural Development. A mission area within USDA which includes RHS, Rural Utilities Service (RUS), and Rural Business-Cooperative Service (RBS).

Scheduled payment. The monthly or annual installment on a promissory note plus escrow (if required), as modified by any payment subsidy agreement, delinquency workout agreement, other documented agreements between RHS and the borrower, or protective advances.

Secured loan. A loan that is collateralized by property so that in the

event of a default on the loan, the property may be sold to satisfy the debt.

Security property. All the property that serves as collateral for an RHS loan.

Subsidy. Interest credit, payment assistance, or deferred mortgage assistance received by a borrower under the section 502 or 504 programs.

Total debt ratio. The amount paid by the borrower for PTI and any recurring monthly debt, divided by repayment income.

Unauthorized assistance. Any loan, payment subsidy, deferred mortgage payment, or grant for which there was no regulatory authorization or for which the recipient was not eligible.

U.S. citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

Unsecured loan. A loan evidenced only by the borrower's promissory note.

Value appreciation. The current market value of the property minus: the balance due prior lienholders, the unpaid balance of the RHS debt, unreimbursed closing costs (if any), principal reduction, the original equity (if any) of the borrower, and the value added by capital improvements.

Very low-income. An adjusted income that does not exceed the HUD-established very low-income limit (generally 50 percent of median income adjusted for household size) for the county or the Metropolitan Statistical Area where the property is or will be located.

Veterans preference. A preference extended to any person applying for a loan or grant under this part who served on active duty and has been discharged or released from the active forces on conditions other than dishonorable from the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. The preference applies to the serviceperson, or the family of a deceased serviceperson who died in service before the termination of such war or such period or era. The applicable timeframes are:

(1) During the period of April 6, 1917, through March 31, 1921;

(2) During the period of December 7, 1941, through December 31, 1946;

(3) During the period of June 27, 1950, through January 31, 1955;

(4) For a period of more than 180 days, any part of which occurred after

January 31, 1955, but on or before May 7, 1975; or

(5) During the period beginning August 2, 1990, and ending the date prescribed by Presidential Proclamation or law.

§ 3550.11-3550.40 [Reserved]

§ 3550.50 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0166. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Ave., SW., Washington, DC 20250-7602. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart B—Section 502 Origination

§ 3550.51 Program objectives.

Section 502 of the Housing Act of 1949, as amended authorizes the Rural Housing Service (RHS) to provide financing to help low- and very low-income persons who cannot obtain adequate housing in rural areas. Resources for the section 502 program are limited, and therefore, applicants are required to use section 502 funds in conjunction with funding or financing from other sources, if feasible. Sections 3550.52 through 3550.73 set forth the requirements for originating loans on program terms. Section 3550.74 describes the differences for originating loans on nonprogram (NP) terms.

§ 3550.52 Loan purposes.

Section 502 funds may be used to buy, build, rehabilitate, improve, or relocate an eligible dwelling and provide related facilities for use by the borrower as a permanent residence. In limited circumstances section 502 funds may be used to refinance existing debt.

(a) **Purchases from existing RHS borrowers.** To purchase a property currently financed by an RHS loan, the new borrower must assume the existing

RHS indebtedness. Section 502 funds may be used to provide additional financing or make repairs. Loan funds also may be used to permit a remaining borrower to purchase the equity of a departing co-borrower.

(b) **Refinancing non-RHS loans.** Debt from an existing non-RHS loan may be refinanced if the existing debt is secured by a lien against the property, RHS will have a first lien position on the security property after refinancing, and:

(1) In the case of loans for existing dwellings, if:

(i) Due to circumstances beyond the applicant's control, the applicant is in danger of losing the property; and

(ii) The debt is over \$5,000 and was incurred for eligible program purposes prior to loan application or was a protective advance made by the mortgagee for items covered by the loan to be refinanced, including accrued interest, insurance premiums, real estate tax advances, or preliminary foreclosure costs.

(2) In the case of loans for a building site without a dwelling, if:

(i) The debt to be refinanced was incurred for the sole purpose of purchasing the site;

(ii) The applicant is unable to acquire adequate housing without refinancing; and

(iii) The RHS loan will include funds to construct an appropriate dwelling on the site for the applicant's use.

(3) Debts incurred after the date of RHS loan application but before closing may be refinanced if the costs are incurred for eligible loan purposes and any construction work conforms to the standards specified in this part.

(c) **Refinancing RHS debt.** Under limited circumstances, an existing RHS loan may be refinanced in accordance with § 3550.204 to allow the borrower to receive payment assistance.

(d) **Eligible costs.** Improvements financed with loan funds must be on land which, after closing, is part of the security property. In addition to acquisition, construction, repairs, or the cost of relocating a dwelling, loan funds may be used to pay for:

(1) Reasonable expenses related to obtaining the loan, including legal, architectural and engineering, technical, title clearance, and loan closing fees; and appraisal, surveying, environmental, tax monitoring, and other technical services; and personal liability insurance fees for Mutual Self-Help borrowers.

(2) The cost of providing special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installment costs for utilities such as water, sewer, electricity, and gas for which the borrower is liable and which are not paid from other funds.

(4) Reasonable and customary lender charges and fees if the RHS loan is being made in combination with a leveraged loan.

(5) Real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(6) Fees to public and private nonprofit organizations that are tax exempt under the Internal Revenue Code for the development and packaging of loan applications, except for loans related to the purchase of an RHS Real Estate Owned (REO) property.

(7) Purchasing and installing essential equipment in the dwelling, including ranges, refrigerators, washers or dryers, if these items are normally sold with dwellings in the area and if the purchase of these items is not the primary purpose of the loans.

(8) Purchasing and installing approved energy savings measures and approved furnaces and space heaters that use fuel that is commonly used, economical, and dependably available.

(9) Providing site preparation, including grading, foundation plantings, seeding or sodding, trees, walks, yard fences, and driveways to a building site.

(e) *Loan restrictions.* Loan funds may not be used to:

(1) Purchase an existing manufactured home, or for any other purposes prohibited in § 3550.73(b).

(2) Purchase or improve income-producing land or buildings to be used principally for income-producing purposes.

(3) Pay fees, commissions, or charges to for-profit entities related to loan packaging or referral of prospective applicants to RHS.

§ 3550.53 Eligibility requirements.

(a) *Income eligibility.* At the time of loan approval, the household's adjusted income must not exceed the applicable low-income limit for the area, and at closing, must not exceed the applicable moderate-income limit for the area (see § 3550.544).

(b) *Citizenship status.* The applicant must be a United States citizen or a noncitizen who qualifies as a legal alien as defined in § 3550.10.

(c) *Primary residence.* Applicants must agree to and have the ability to occupy the dwelling on a permanent basis.

(1) Because of the probability of transfer, loans will not be approved for military personnel on active duty unless the applicant will be discharged within a reasonable period of time.

(2) Because of the probability of moves after graduation, loans will not be approved for a full-time student unless the applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation.

(3) If the home is being constructed or renovated an adult member of the household must be available to make inspections and authorize progress payments as the dwelling is being constructed.

(d) *Eligibility of current homeowners.* Current homeowners are not eligible for initial loans except as follows:

(1) Current homeowners may receive RHS loan funds to:

(i) refinance an existing loan under the conditions outlined in § 3550.52(b);

(ii) purchase a new dwelling if the current dwelling is deficient housing as defined in § 3550.10; or

(iii) make necessary repairs to the property which is financed with an affordable non-RHS loan.

(2) Current homeowners with an RHS loan may receive a subsequent loan.

(e) *Legal capacity.* Applicants must have the legal capacity to incur the loan obligation, or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(f) *Suspension or debarment.* Applications from applicants who have been suspended or debarred from participation in federal programs will be handled in accordance with 7 CFR part 3017.

(g) *Repayment ability.* Applicants must demonstrate adequate repayment ability.

(1) A very low-income applicant is considered to have repayment ability when the monthly amount required for payment of principal, interest, taxes, and insurance (PITI) does not exceed 29 percent of the applicant's repayment income, and the monthly amount required to pay PITI plus recurring monthly debts does not exceed 41 percent of the applicant's repayment income.

(2) A low-income applicant is considered to have repayment ability when the monthly amount required for payment of PITI does not exceed 33 percent of the applicant's repayment income, and the monthly amount required to pay PITI plus recurring monthly debts does not exceed 41 percent of repayment income.

(3) Repayment ratios may exceed the percentages specified in paragraphs (g)(1) and (g)(2) of this section if the applicant has demonstrated an ability to meet higher debt obligations, or if RHS determines, based on other compensating factors, that the household has a higher repayment ability.

(4) If an applicant does not meet the repayment ability requirements, the applicant can have another party join the application as a cosigner.

(5) If an applicant does not meet the repayment ability requirements, the applicant can have other household members join the application.

(h) *Credit qualifications.* Applicants must be unable to secure the necessary credit from other sources on terms and conditions that the applicant could reasonably be expected to fulfill. Applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. An applicant with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, is not eligible for a loan or grant from RHS.

(1) Indicators of unacceptable credit include:

(i) Incidents of more than 2 debt payments more than 30 days late within the last 12 months.

(ii) A foreclosure which has been completed within the last 36 months.

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded in paragraphs (h)(2)(i) and (h)(2)(ii) of this section.

(v) Two or more rent payments paid 30 or more days late within the last 2 years. If the applicant has experienced no other credit problems in the past 2 years, only 1 year of rent history will be evaluated. Rent payment history requirements may be waived if the RHS loan will reduce shelter costs significantly and contribute to an improved repayment ability.

(vi) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months.

(vii) Non-agency debts written off within the last 36 months unless paid in full at least 12 months ago.

(viii) Agency debts that were debt settled, or are being considered for debt settlement.

(ix) Delinquency on a federal debt.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meeting obligations when due for the 12 months prior to the date of application.

(ii) A judgment satisfied more than 12 months before the date of application.

(3) When an application is rejected because of unacceptable credit, the applicant will be informed of the reason and source of information.

§ 3550.54 Calculation of income and assets.

(a) *Repayment income.* Repayment income is the annual amount of income from all sources that are expected to be received by those household members who are parties to the promissory note, except for any student financial aid received by those household members for tuition, fees, books, equipment, materials, and transportation.

Repayment income is used to determine the household's ability to repay a loan.

(b) *Annual income.* Annual income is the income of all household members from all sources except those listed in (b)(1) through (b)(12) of this section:

(1) earned income of persons under the age of 18 unless they are a borrower or a spouse of a member of the household;

(2) payments received for the care of foster children or foster adults;

(3) amounts granted for or in reimbursement of the cost of medical expenses;

(4) earnings of each full-time student 18 years of age or older, except the head of household or spouse, that are in excess of any amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended;

(5) temporary, nonrecurring, or sporadic income (including gifts);

(6) lump sum additions to family assets such as inheritances; capital gains; insurance payments under health, accident, or worker's compensation policies; settlements for personal or property losses; and deferred periodic payments of supplemental security income and Social Security benefits received in a lump sum;

(7) any earned income tax credit;

(8) adoption assistance in excess of any amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended;

(9) amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling;

(10) amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(11) the full amount of any student financial aid; and

(12) any other revenue exempted by a Federal statute; a list of which is available from any Rural Development office.

(c) *Adjusted income.* Adjusted income is used to determine program eligibility for sections 502 and 504 and the amount of payment subsidy for which the household qualifies under section 502. Adjusted income is annual income as defined in paragraph (b) of this section less any of the following deductions for which the household is eligible.

(1) For each family member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(2) A deduction of reasonable expenses for the care of minor 12 years of age or under that:

(i) enable a family member to work or to further a member's education;

(ii) are not reimbursed or paid by another source; and

(iii) in the case of expenses to enable a family member to work do not exceed the amount of income earned by the family member enabled to work.

(3) Expenses related to the care of household members with disabilities that:

(i) enable a family member to work;

(ii) are not reimbursed from insurance or another source; and

(iii) are in excess of three percent of the household's annual income.

(4) For any elderly family, a deduction in the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(5) For elderly households only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which in combination with any expenses related to the care of household members with disabilities described in paragraph (c)(3) of this section, are in excess of three percent of the household's annual income.

(d) *Net family assets.* Income from net family assets must be included in the calculation of annual and repayment

income. Net family assets also are considered in determining whether a down payment is required.

(1) Net family assets include the cash value of:

(i) Equity in real property, other than the dwelling or site;

(ii) Cash on hand and funds in savings or checking accounts;

(iii) Amounts in trust accounts that are available to the household;

(iv) Stocks, bonds, and other forms of capital investments including life insurance policies and retirement plans that are accessible to the applicant without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, inheritances;

(vi) Personal property held as an investment; and

(vii) Any value, in excess of the consideration received, for any business or household assets disposed for less than fair market value during the 2 years preceding the income determination. The value of assets disposed of for less than fair market value shall not be considered if they were disposed of as a result of foreclosure or bankruptcy or a divorce or separation settlement.

(2) Net family assets do not include:

(i) Interest in American Indian trust land;

(ii) Cash on hand which will be used to reduce the amount of the loan;

(iii) The value of necessary items of personal property;

(iv) Assets that are part of the business, trade, or farming operation of any member of the household who is actively engaged in such operation;

(v) The value of an irrevocable trust fund or any other trust over which no member of the household has control.

§ 3550.55 Applications.

(a) *Application submissions.* All persons applying for RHS loans must file a complete written application in a format specified by RHS. Applications will be accepted even when funds are not available.

(b) *Application processing.*

(1) Incomplete applications will be returned to the applicant specifying in writing the additional information that is needed to make the application complete.

(2) An applicant may voluntarily withdraw an application at any time.

(3) RHS may periodically request in writing that applicants reconfirm their interest in obtaining a loan. RHS may withdraw the application of any applicant who does not respond within the specified timeframe.

(4) Applicants who are eligible will be notified in writing. If additional

information becomes available that indicates that the original eligibility determination may have been incorrect, or that circumstances have changed, RHS may reconsider the application and the applicant may be required to submit additional information.

(5) Applicants who are ineligible will be notified in writing and provided with the specific reasons for the rejection.

(c) *Selection for processing.* When funding is not sufficient to serve all program-eligible applicants, applications will be selected for processing using the funding priorities specified in this paragraph. Within priority categories, applications will be processed in the order that the completed applications are received. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans preference. After selection for processing, loans are funded on a first-come, first-served basis.

(1) First priority will be given to existing customers who request subsequent loans to correct health and safety hazards.

(2) Second priority will be given to loans related to the sale of an REO property or the transfer of an existing RHS financed property.

(3) Third priority will be given to applicants facing housing related hardships including applicants who have been living in deficient housing for more than 6 months, current homeowners in danger of losing a property through foreclosure, and other circumstances determined by RHS on a case-by-case basis to constitute a hardship.

(4) Fourth priority will be given to applicants seeking loans for the construction of dwellings in an RHS-approved Mutual Self-Help project or loans that will leverage funding or financing from other sources.

(5) Applications from applicants who do not qualify for priority consideration in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section will be selected for processing after all applications with priority status have been processed.

(d) *Applicant timeframe.* RHS will specify a reasonable timeframe within which eligible applicants selected for processing must provide the information needed to underwrite the loan.

§ 3550.54 Site requirements.

(a) *Rural areas.* Loans may be made only in rural areas designated by RHS. If an area designation is changed to non-rural:

(1) New conditional commitments will be made and existing conditional commitments will be honored only in conjunction with an applicant for a section 502 loan who applied for assistance before the area designation changed.

(2) REO property sales and transfers with assumption may be processed.

(3) Subsequent loans may be made either in conjunction with a transfer with assumption of an RHS loan or to repair properties that have RHS loans.

(b) *Site standards.* Sites must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a State or local government.

(1) The site must not be large enough to subdivide into more than one site under existing local zoning ordinances;

(2) The site must not include farm service buildings, though small outbuildings such as a storage shed may be included; and

(3) The value of the site must not exceed 30 percent of the as improved market value of the property. The State Director may waive the 30 percent requirement in high cost areas where other lenders permit a higher percentage.

§ 3550.57 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income providing purposes, must not have an in-ground pool or have a cost in excess of the section 203(b) limit of the National Housing Act unless RHS authorizes an exception:

(1) *Area-wide exception.* Area-wide exceptions may be granted when RHS determines that the section 203(b) limit is too low to enable applicants to purchase adequate housing.

(2) *Individual exceptions.* Individual exceptions may be granted to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need.

(b) *New dwellings.* Construction must meet the requirements in 7 CFR part 1924, subpart A.

(c) *Existing dwellings.* Existing dwellings must be structurally sound; functionally adequate; in good repair; or to be placed in good repair with loan funds; have adequate electrical, heating, plumbing, water, and wastewater disposal systems; be free of termites and other wood damaging pests and organisms; and meet the thermal

performance requirements for existing dwellings of 7 CFR part 1924, subpart A.

§ 3550.58 Ownership requirements.

After the loan is closed, the borrower must have an acceptable interest in the property as evidenced by one of the following:

(a) *Fee-simple ownership.* Acceptable fee-simple ownership is evidenced by a fully marketable title with a deed vesting a fee-simple interest in the property to the borrower.

(b) *Secure leasehold interest.* A written lease is required. To be acceptable, a leasehold interest must have an unexpired term that is at least 150 percent of the term of the mortgage, unless the loan is guaranteed, in which case the unexpired term of the lease must be at least 2 years longer than the loan term. In no case may the unexpired term be less than 25 years.

(c) *Life estate interest.* To be acceptable a life estate interest must provide the borrower with rights of present possession, control, and beneficial use of the property. Generally, persons with any remainder interests must be signatories to the mortgage. All of the remainder interests need not be included in the mortgage to the extent that one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or if the remainder interests are divided among such a large number of people that it is not practical to obtain the signatures of all of the remainder interests. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(d) *Undivided interest.* All legally competent co-owners will be required to sign the mortgage. When one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or the ownership interests are divided among so large a number of co-owners that it is not practical for all of their interests to be mortgaged, their interests not exceeding 50 percent may be excluded from the security requirements. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(e) *Possessory rights.* Acceptable forms of ownership include possessory rights on an American Indian reservation or State-owned land and the interest of an American Indian in land held in severalty under trust patents or deeds containing restrictions against alienation, provided that land in trust or

restricted status will remain in trust or restricted status.

§ 3550.59 Security requirements.

Before approving any loan, RHS will impose requirements to secure its interests.

(a) *Adequate security.* A loan will be considered adequately secured only when all of the following requirements are met:

(1) RHS obtains at closing a mortgage on all ownership interests in the security property or the requirements of § 3550.58 are satisfied.

(2) No liens prior to the RHS mortgage exist at the time of closing and no junior liens are likely to be taken immediately subsequent to or at the time of closing, unless the other liens are taken as part of a leveraging strategy or the RHS loan is essential for repairs and the senior lien secures an affordable non-RHS loan. Liens junior to the RHS lien may be allowed at loan closing if the junior lien will not interfere with the purpose or repayment of the RHS loan and the total value of all liens on the property is less than or equal to the property's market value.

(3) The provisions of 7 CFR part 1927, subpart B regarding title clearance and the use of legal services have been followed.

(4) Existing and proposed property improvements are totally on the site and do not encroach on adjoining property.

(b) *Guaranteed payment.* Mortgage insurance guaranteeing payment from a Government agency or Indian tribe is adequate security.

§ 3550.60 Escrow account.

RHS may require that customers deposit into an escrow account amounts necessary to ensure that the account will contain sufficient funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs when they are due in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) (12 U.S.C. 2601, et seq.) and section 501(e) of the Housing Act of 1949, as amended.

§ 3550.61 Insurance.

(a) *Customer responsibility.* Until the loan is paid in full the customer must furnish and continually maintain hazard and flood insurance on property securing RHS loans, with companies, in amounts, and on terms and conditions acceptable to RHS. Customers who are required to have insurance may be required to escrow funds to ensure payment. All policies must have a "loss payable clause" payable to RHS to protect the Government's interest.

(b) *Amount.* Essential buildings must be insured in an amount at least equal to the balance of the secured debts.

(c) *Flood insurance.* Flood insurance must be obtained and maintained for the life of the loan for all property located in a Special Flood Hazard Area (SFHA) as determined by the Federal Emergency Management Agency (FEMA). RHS actions will be consistent with 7 CFR part 1806, subpart B which addressed flood insurance requirements. If flood insurance through FEMA's National Flood Insurance Program is not available in an SFHA, the property is not eligible for federal financial assistance.

(d) *Losses.*

(1) Loss deductible clauses may not exceed \$250 or 1 percent of the insurance coverage, whichever is greater. The deductible for any 1 building may not exceed \$750.

(2) Customers must immediately notify RHS of any loss or damage to insured property and collect the amount of the loss from the insurance company.

(3) Depending on the amount of the loss, RHS may require that loss payments be supervised. All repairs and replacements done by or under the direction of the borrower, or by contract, will be planned, performed, inspected, and paid for in accordance with 7 CFR part 1924, subpart A.

(4) When insurance funds remain after all repairs, replacements, and other authorized disbursements have been made, the funds will be applied in the following order:

(i) Prior liens, including delinquent property taxes;

(ii) Past-due amounts;

(iii) Protective advances due;

(iv) Released to the customer if the RHS debt is adequately secured.

(5) If a loss occurs when insurance is not in force, the borrower is responsible for making the needed repairs or replacements and ensuring that the insurance is reinstated on the property.

(6) If the borrower is not financially able to make the repairs, RHS may take one of the following actions:

(i) Make a subsequent loan for repairs;

(ii) Subordinate the RHS lien to permit the borrower to obtain funds for needed repairs from another source;

(iii) Permit the borrower to obtain funds secured by a junior lien from another source;

(iv) Make a protective advance to protect the Government's interest;

(v) Accelerate the account.

§ 3550.62 Appraisals.

(a) *Requirement.* An appraisal is required when the debt to be secured exceeds \$15,000 or whenever RHS

determines that it is necessary to establish the adequacy of the security. Appraisals must be made in accordance with the Uniform Standards of Professional Appraisal Practices. When other real estate is taken as additional security, it will be appraised if it represents a substantial portion of the security for the loan.

(b) *Fees.* RHS will charge a fee for each loan application that requires an appraisal, except the appraisal fee is not required on appraisals done for subsequent loans needed to make minimal, essential repairs or in cases where another party provides an appraisal which is acceptable to RHS. Fees collected in connection with a dwelling constructed under an approved conditional commitment will be paid to the contractor at closing to offset the cost of the real estate appraisal that is included in the conditional commitment fee.

§ 3550.63 Maximum loan amount.

Total secured indebtedness must not exceed the section 203(b) or market value limitations specified in paragraphs (a) and (b) of this section. In addition, the borrower may also finance the amount of the RHS appraisal and tax monitoring fee and the amount required to establish an escrow account for taxes and insurance over and above the limitations specified below. This section does not apply to NP loans.

(a) *Section 203(b) Limitation.* The section 203(b) limitation is the amount established by 203(b) of the National Housing Act, unless RHS authorizes an exception, as described in 7(a) of this subpart.

(b) *Market Value Limitation.*

(1) The market value limitation is 100 percent of market value for existing housing and for new dwellings for which RHS will receive adequate documentation of construction quality and the source of such documentation is acceptable to RHS.

(2) The market value limitation is 90 percent of market value for new dwellings for which adequate documentation of construction quality is not available.

(3) The market value limitation can be increased by:

(i) Up to one percent, if RHS makes a subsequent loan for closing costs only, in conjunction with the sale of an REO property or an assumption;

(ii) The amount necessary to make a subsequent loan for repairs necessary to protect the Government's interest, and reasonable closing costs;

(iii) The amount necessary to refinance an existing borrower's RHS

loans, plus closing costs associated with the new loan.

§ 3550.64 Down payment.

Elderly families must use any net family assets in excess of \$10,000 towards a down payment on the property. Non-elderly families must use net family assets in excess of \$7,500 towards a down payment on the property. Applicants may contribute assets in addition to the required down payment to further reduce the amount to be financed.

§ 3550.65 [Reserved]

§ 3550.66 Interest rate.

Loans will be written using the applicable RHS or NP interest rate in effect at loan approval or loan closing, whichever is lower. Information about current interest rates is available in any Rural Development office.

§ 3550.67 Repayment period.

Loans will be scheduled for repayment over a period that does not exceed the expected useful life of the property as a dwelling. The loan repayment period will not exceed:

(a) Thirty-three years in all cases except as noted in paragraphs (b), (c), and (d) of this section.

(b) Thirty-eight years:

(1) For initial loans, or subsequent loans made in conjunction with an assumption, if the applicant's adjusted income does not exceed 60 percent of the area adjusted median income and the longer term is necessary to show repayment ability.

(2) For subsequent loans not made in conjunction with an assumption if the applicant's initial loan was for a period of 38 years, the applicant's adjusted income at the time the subsequent loan is approved does not exceed 60 percent of area adjusted median income, and the longer term is necessary to show repayment ability.

(c) Ten years for loans not exceeding \$2,500.

(d) Thirty years for manufactured homes.

§ 3550.68 Payment subsidies.

RHS administers two types of payment subsidies: payment assistance and interest credit. Payment subsidies are subject to recapture when the borrower transfers title or ceases to occupy the property.

(a) Eligibility for payment subsidy.

(1) Applicants or borrowers who receive loans on program terms are eligible to receive payment subsidy if they personally occupy the property and have adjusted income at or below the applicable moderate-income limit.

(2) Borrowers with loans approved before August 1, 1988, are not eligible for payment assistance, even if they assumed the loan after that date.

(3) Payment assistance may be granted for initial loans or subsequent loans made in conjunction with an assumption only if the term of the loan is at least 25 years or more.

(4) Payment assistance may be granted for subsequent loan not made in conjunction with an assumption if the initial loan was for a term of 25 years or more.

(b) *Determining type of payment subsidy.* A borrower currently receiving interest credit will continue to receive it for the initial loan and for any subsequent loan for as long as the borrower is eligible for and remains on interest credit. A borrower who has never received interest credit, or who has stopped receiving interest credit and at a later date again qualifies for a payment subsidy, will receive payment assistance.

(c) Calculation of payment assistance.

The amount of payment assistance granted is the difference between the installment due on the promissory note and the greater of the payment amortized at the equivalent interest rate or the payment calculated based on the required floor payment. In leveraging situations, the equivalent interest rate will be used.

(1) The floor payment is a minimum percentage of adjusted income that the borrower must pay for PITI:

(i) Very low-income borrowers must pay a minimum of 22 percent of adjusted income;

(ii) Low-income borrowers with adjusted income below 65 percent of area adjusted median income must pay a minimum of 24 percent of adjusted income; and

(iii) Low-income borrowers with adjusted incomes between 65 and 80 percent of area adjusted median income must pay a minimum of 26 percent of adjusted income.

(2) The equivalent interest rate is determined by a comparison of the borrower's adjusted income to the adjusted median income for the area in which the security property is located. The following chart is used to determine the equivalent interest rate paid by applicants eligible for payment assistance.

PERCENTAGE OF MEDIAN INCOME AND THE EQUIVALENT INTEREST RATE

When the applicants adjusted income is—

Equal to or more than	But less than	Then the equivalent interest rate is ¹
00%	50.01% of adjusted median income.	1
50.01%	55% of adjusted median income.	2
55%	60% of adjusted median income.	3
60%	65% of adjusted median income.	4
65%	70% of adjusted median income.	5
70%	75% of adjusted median income.	6
75%	80.01% of adjusted median income.	6.5
80.01%	90% of adjusted median income.	7.5
90%	100% of adjusted median income.	8.5
100%	110% of adjusted median income.	9
110%	or more than median income.	9.5

¹ Or note rate, whichever is less; in no case will the equivalent interest rate be less than one percent.

(d) *Calculation of interest credit.* The amount of interest credit granted is the difference between the sum of the annual installments due at the promissory note interest rate and the greater of:

(1) Twenty percent of the borrower's adjusted income less the cost of real estate taxes and insurance; or

(2) The amount the borrower would pay if the loan were amortized at an interest rate of one percent.

(e) *Annual review.* The borrower's income will be reviewed annually to determine whether the borrower is eligible for continued payment subsidy. The borrower must notify RHS whenever an adult member of the household changes or obtains employment, there is a change in household composition, or if income increases by at least 10 percent so that RHS can determine whether a review of the borrowers circumstances is required.

§ 3550.69 Deferred mortgage payments.

For qualified borrowers, RHS may defer up to 25 percent of the monthly principal and interest payment at 1 percent for up to 15 years. This assistance may be granted only at initial loan closing and is reviewed annually. Deferred mortgage payments are subject to recapture when the borrower transfers title or ceases to occupy the property.

(a) *Eligibility.* In order to qualify for deferred mortgage payments, all of the following must be true:

(1) The applicants adjusted income at the time of initial loan approval does not exceed the applicable very low-income limits.

(2) The loan term is 38 years, or 30 years for a manufactured home.

(3) The applicant's payments for principal and interest, calculated at a one percent interest rate for the maximum allowable term, plus estimated costs for taxes and insurance exceeds:

(i) For applicants receiving payment assistance, 29 percent of the applicants repayment income by more than \$10 per month; or

(ii) For applicants receiving interest credit, 20 percent of adjusted income by more than \$10 per month.

(b) Amount and terms.

(1) The amount of the mortgage payment to be deferred will be the difference between the applicants payment for principal and interest, calculated at one percent interest for the maximum allowable term, plus estimated costs for taxes and insurance and:

(i) For applicants receiving payment assistance, 29 percent of the applicants repayment income.

(ii) For applicants receiving interest credit, 20 percent of adjusted income.

(2) Deferred mortgage payment agreements will be effective for a 12-month period.

(3) Deferred mortgage assistance may be continued for up to 15 years after loan closing. Once a borrower becomes ineligible for deferred mortgage assistance, the borrower can never again receive deferred mortgage assistance.

(c) *Annual review.* The borrower's income, taxes, and insurance will be reviewed annually to determine eligibility for continued deferred mortgage assistance. The borrower must notify RHS whenever an adult member of the household changes or obtains employment or if income increases by at least 10 percent so that RHS can determine whether a review of the borrower's circumstances is required.

§ 3550.70 Conditional commitments.

A conditional commitment is a determination by RHS that a dwelling be offered for sale will be acceptable for purchase by a qualified RHS loan applicant if it is built or rehabilitated in accordance with RHS-approved plans, specifications, and regulations and priced within the lesser of the property's appraised value or the applicable HUD section 203(b) limit. The conditional commitment does not

reserve funds, does not guarantee funding, and does not ensure that an eligible loan applicant will be available to buy the dwelling.

(a) *Eligibility.* To be eligible to request a conditional commitment, the builder, dealer-contractor, or seller must:

(1) Have an adequate ownership interest in the property, as defined in § 3550.58, prior to the beginning of any planned construction;

(2) Have the experience and ability to complete any proposed work in a competent and professional manner;

(3) Have the legal capacity to enter into the required agreements;

(4) Be financially responsible and have the ability to finance or obtain financing for any proposed construction or rehabilitation; and

(5) Comply with the requirements of 7 CFR part 1901, subpart E and all applicable laws, regulations, and Executive Orders relating to equal opportunity. Anyone who receives 5 or more conditional commitments during a 12-month period must obtain RHS approval of an affirmative marketing plan.

(b) *Limitations.* Conditional commitments for new or substantially rehabilitated dwellings will not be issued after construction has started. RHS may limit the total number of conditional commitments issued in any locality based on market demand.

(c) *Commitment period.* A conditional commitment will be valid for 12 months from the date of issuance. The commitment may be extended for up to an additional 6 months if there are unexpected delays in construction caused by such factors as bad weather, materials shortages, or marketing difficulties. Conditional commitments may be canceled if construction does not begin within 60 days after the commitment is issued.

(d) *Conditional commitments involving packaging of applications.* A conditional commitment may be made to a seller, builder, or dealer-contractor who packages an RHS loan application for a prospective purchaser. In cases where the dwelling is to be constructed for sale to a specific eligible applicant, all of the following conditions must be met:

(1) The conditional commitment will not be approved until the applicant's loan has been approved;

(2) Construction will not begin until loan funds are obligated for the loan. Exceptions may be made when it appears likely that funding will be forthcoming and as long as the RHS lien priority is not jeopardized. The sales agreement must indicate that the loan has been approved but not funded and

must provide that if the loan is not closed within 90 days of the date of approval, the contractor may terminate the sales agreement and sell the property to another party. If the sales agreement is terminated, the conditional commitment will be honored for another eligible loan applicant for the remaining period of the commitment; and

(3) The RHS loan will be closed only after the dwelling is constructed or the required rehabilitation completed and final inspection has been made.

(e) *Fees.* An application for a conditional commitment must include payment of the conditional commitment fee. The fee will be refunded if for any reason preliminary inspection of the property or investigation of the conditional commitment applicant indicates that a conditional commitment will not be issued. Application fee will not be refunded for any property on which the required appraisal has been made.

(f) *Failure of conditional commitment applicant or dwelling to qualify.* The conditional commitment applicant will be informed if the conditional commitment is denied. Conditional commitments will be canceled if the property does not meet program requirements.

(g) *Changes in plans, specifications, or commitment price.* The holder of the conditional commitment must request approval for changes in plans, specifications, and commitment price. RHS may approve the changes if the following requirements are met:

(1) The property price does not exceed the maximum loan limit and increases in costs are due to factors beyond the control of the commitment holder; and

(2) The requested changes are justifiable and appropriate.

(h) *Builder's warranty.* The builder or seller, as appropriate, must execute either an RHS-approved "Builder's Warranty," or provide a 10-year insured warranty when construction is completed or the loan is closed.

§ 3550.71 Special requirements for condominiums.

RHS loans may be made for condominium units under the following conditions:

(a) The unit is in a project approved or accepted by U.S. Department of Housing and Urban Development (HUD), the Federal National Mortgage Association (Fannie Mae), or the Federal Home Loan Mortgage Corporation (Freddie Mac).

(b) The condominium project complies with the requirements of the

condominium enabling statute and all other applicable laws. Any right of first refusal in the condominium documents will not impair the rights of RHS to:

- (1) Foreclose or take title to a condominium unit pursuant to the remedies in the mortgage;
- (2) Accept a deed in lieu of foreclosure in the event of default by a mortgagor; and
- (3) Sell or lease a unit acquired by RHS.

(c) If RHS obtains title to a condominium unit pursuant to the remedies in its mortgage or through foreclosure, RHS will not be liable for more than 6 months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the unit by RHS. The homeowners association's lien priority may include costs of collecting unpaid dues.

(d) In case of condemnation or substantial loss to the units or common elements of the condominium project, unless at least two-thirds of the first mortgages or unit owners of the individual condominium units have given their consent, the homeowners association may not:

- (1) By act or omission seek to abandon or terminate the condominium project;
- (2) Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each condominium unit in the common elements;

(3) Partition or subdivide any condominium unit;

(4) Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission (the granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project is not a transfer within the meaning of this clause); or

(5) Use hazard insurance proceeds for losses to any condominium property (whether units or common elements) for other than the repair, replacement, or reconstruction of the condominium property.

(e) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law relate only to the individual condominium units and not to the condominium project as a whole.

(f) No provision of the condominium documents gives a condominium unit owner or any other party priority over any rights of RHS as first or second mortgagee of the condominium unit pursuant to its mortgage in the case of

a payment to the unit owner of insurance proceeds or condemnation awards for losses to or taking of condominium units or common elements.

(g) If the condominium project is on a leasehold the underlying lease provides adequate security of tenure as described in § 3550.58(b).

(h) At least 70 percent of the units have been sold. Multiple purchases of condominium units by one owner are counted as one sale when determining if the sales requirement has been met.

(i) No more than 15 percent of the unit owners are more than 1 month delinquent in payment of homeowners association dues or assessments at the time the RHS loan is closed.

§ 3550.72 Community land trusts.

Eligible dwellings located on land owned by a community land trust may be financed if:

- (a) The loan meets all the requirements of this subpart; and
- (b) Any restrictions, imposed by the community land trust on the property or applicant are:

- (1) Reviewed and accepted by RHS before loan closing; and
- (2) Automatically and permanently terminated upon foreclosure or acceptance by RHS of a deed in lieu of foreclosure.

§ 3550.73 Manufactured homes.

With the exception of the restrictions and additional requirements contained in this section, section 502 loans on manufactured homes are subject to the same conditions as all other section 502 loans.

(a) **Eligible costs.** In addition to the eligible costs described in § 3550.52(d), RHS may finance the following activities related to manufactured homes when a real estate mortgage covers both the unit and the site:

- (1) Purchase of an eligible unit, transportation, and set-up costs, and purchase of an eligible site if not already owned by the applicant;

(2) Site development work in accordance with 7 CFR part 1924, subpart A;

(3) Subsequent loans in conjunction with an assumption or sale of an REO property; or

(4) Subsequent loans for repairs of units financed under section 502.

(b) **Loan restrictions.** In addition to the loan restrictions described in § 3550.52(e), RHS may not use loan funds to finance:

- (1) An existing unit and site unless it is already financed with a section 502 loan or is an RHS REO property.

(2) The purchase of a site without also financing the unit.

(3) Alteration or remodeling of the unit when the initial loan is made.

(4) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, stereo sets, and other similar items of personal property. Furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment, or other similar items.

(c) **Dealer-contractors.** No loans will be made on a manufactured home sold by any entity that is not an approved dealer-contractor that will provide complete sales, service, and site development services.

(d) **Loan term.** The maximum term of a loan on a manufactured home is 30 years.

(e) **Construction and development.** Unit construction, site development and set-up must conform to the Federal Manufactured Home Construction and Safety Standards (FMHCS) and 7 CFR part 1924, subpart A. Development under the Mutual Self-Help and borrower construction methods is not permitted for manufactured homes.

(f) **Contract requirements.** The dealer-contractor must sign a construction contract, as specified in 7 CFR 1924.6 which will cover both the unit and site development work. The use of multi-contracts is prohibited. A dealer-contractor may use subcontractors if the dealer-contractor is solely responsible for all work under the contract. Payment for all work will be in accordance with 7 CFR part 1924, subpart A, except no payment will be made for materials or property stored on site (e.g., payment for a unit will be made only after it is permanently attached to the foundation).

(g) **Lien release requirements.** All persons furnishing materials or labor in connection with the contract except the manufacturer of the unit must sign a Release by Claimants document, as specified in 7 CFR part 1924, subpart A. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin to verify that the unit is free and clear of all legal encumbrances.

(h) **Warranty requirements.** The dealer-contractor must provide a warranty in accordance with the provisions of 7 CFR 1924.12. The warranty must identify the unit by serial number. The dealer-contractor must certify that the unit substantially complies with the plans and specifications and the manufactured home has sustained no hidden damage during transportation and, if

manufactured in separate sections, that the sections were properly joined and sealed according to the manufacturer's specifications. The dealer-contractor will also furnish the applicant with a copy of all manufacturer's warranties.

§ 3550.74 Nonprogram loans.

NP terms may be extended to applicants who do not qualify for program credit, or for properties that do not qualify as program properties, when it is in the best interest of the Government. NP loans are originated and serviced according to the requirements for program loans except as indicated in this section.

(a) **Purpose.** NP terms may be offered to expedite:

- (1) Sale of an REO property.
- (2) Assumption of an existing program loan on new rates and terms. If additional funds are required to purchase the property, the applicant must obtain them from another source.

(3) Conversion of a program loan that has received unauthorized assistance.

(4) Continuation of a loan on a portion of a security property when the remainder is being transferred and the RHS debt is not paid in full.

(b) **Terms.**

(1) **Rate and term:**

(i) For an applicant who intends to occupy the property, the term will not exceed 30 years.

(ii) For other applicants, the term will not exceed 10 years. If more favorable terms are necessary to facilitate the sale, the loan may be amortized over a period of up to 20 years with payment in full due not later than 10 years from the date of closing.

(iii) An applicant with an NP loan under paragraph (b)(1)(i) of this section who wishes to retain the property and purchase a new property with RHS credit must purchase the second property according to the terms of paragraph (b)(1)(ii) of this section, even if the new property will serve as the applicant's principal residence.

(2) NP loans are written at the NP interest rate in effect at the time of loan approval.

(3) NP borrowers are not eligible for payment assistance or a moratorium.

(c) **Additional requirements.**

(1) NP applicants other than public bodies and nonprofit organizations must pay a nonrefundable application fee.

(2) NP applicants must make a down payment based upon the purchase price and whether the applicant intends to personally occupy the property or use it for other purposes.

(3) NP applicants cannot finance loan closing costs or escrow, tax service, or appraisal fees.

(d) Reduced restrictions.

(1) NP applicants need not be unable to obtain other credit in order to receive an NP loan and are not required to refinance with private credit when they are able to do so.

(2) NP applicants are not required to occupy the property.

(3) NP applicants are not subject to leasing restrictions.

(e) **Waiver of costs.** When the purpose of the loan is the conversion of a program loan that has received unauthorized assistance or continuation of a loan on a portion of a security property when the remainder is being transferred, the application fee, appraisal fee, and down payment may be waived.

§ 3550.75-3550.99 [Reserved]

§ 3550.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0166. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250-0762. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart C—Section 504 Origination

§ 3550.101 Program objectives.

This subpart sets forth policies for administering loans and grants under section 504(a) of title V of the Housing Act of 1949, as amended. Section 504 loans and grants are intended to help very low-income owner-occupants in rural areas repair their properties.

§ 3550.102 Grant and loan purposes.

(a) **Grant funds.** Grant funds may be used only to pay costs for repairs and improvements that will remove identified health and safety hazards or to repair or remodel dwellings to make them accessible and useable for household members with disabilities.

Unused grant funds must be returned to the Rural Housing Service (RHS).

(b) **Loan funds.** Loan funds may be used to make general repairs and improvements to properties or to remove health and safety hazards, as long as the dwelling remains modest in size and design.

(c) **Eligibility of mobile and manufactured homes.** Repairs necessary to remove health and safety hazards may be made to mobile or manufactured homes provided:

(1) The applicant owns the home and site and has occupied the home prior to filing an application with RHS; and

(2) The mobile or manufactured home is on a permanent foundation or will be put on a permanent foundation with section 504 funds.

(d) **Eligible costs.** In addition to construction costs to make necessary repairs and improvements, loan and grant funds may be used for:

(1) Reasonable expenses related to obtaining the loan or grant, including legal, architectural and engineering, title clearance, and loan closing fees; and appraisal, surveying, environmental, tax monitoring, and other technical services.

(2) The cost of providing special design features or equipment when necessary because of a physical disability of the applicant or a member of the household.

(3) Reasonable connection fees, assessments, or the pro rata installation costs for utilities such as water, sewer, electricity, and gas for which the borrower is liable and which are not paid from other funds.

(4) Real estate taxes that are due and payable on the property at the time of closing and for the establishment of escrow accounts for real estate taxes, hazard and flood insurance premiums, and related costs.

(5) Fees to public and private nonprofit organizations that are tax exempt under the Internal Revenue Code for the development and packaging of applications.

(e) **Restrictions on uses of loan or grant funds.** Section 504 funds may not be used to:

(1) Assist in the construction of a new dwelling.

(2) Make repairs to a dwelling in such poor condition that when the repairs are completed, the dwelling will continue to have major hazards.

(3) Move a mobile home or manufactured home from one site to another.

(4) Pay for off-site improvements except for the necessary installation and assessment costs for utilities.

(5) Refinance any debt or obligation of the applicant incurred before the date of

application, except for the installation and assessment costs of utilities.

(6) Pay fees, commission, or charges to for-profit entities related to loan packaging or referral of prospective applicants to RHS.

§ 3550.103 Eligibility requirements.

To be eligible, applicants must meet the following requirements:

(a) *Owner-occupant.* Applicants must own, as described in § 3550.107, and occupy the dwelling.

(b) *Age (grant only).* To be eligible for grant assistance, an applicant must be 62 years of age or older at the time of application.

(c) *Income eligibility.* At the time of loan or grant approval, the household's adjusted income must not exceed the applicable very low-income limit. Section 3550.54 provides a detailed discussion of the calculation of adjusted income.

(d) *Citizenship status.* The applicant must be a U.S. citizen or a non-citizen who qualifies as a legal alien, as defined in § 3550.10.

(e) *Need and use of personal resources.* Applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. In cases where the household is experiencing medical expenses in excess of three percent of the household's income, this requirement may be waived or modified. Elderly families must use any net family assets in excess of \$10,000 to reduce their section 504 request. Non-elderly families must use any net family assets in excess of \$7,500 to reduce their section 504 request. Applicants may contribute assets in excess of the aforementioned amounts to further reduce their request for assistance. The definition of assets for this purpose is net family assets as described in § 3550.54 of subpart B of this part, less the value of the dwelling and a minimum adequate site.

(f) *Legal capacity.* The applicant must have the legal capacity to incur the loan obligation or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters.

(g) *Suspension or debarment.* Applications from applicants who have been suspended or debarred from participation in federal programs will be handled in accordance with FmHA Instruction 1940-M (available in any Rural Development office).

(h) *Repayment ability (loans only).* Applicants must demonstrate adequate

repayment ability as supported by a budget.

(1) If an applicant does not meet the repayment ability requirements, the applicant can have another party join the application as a co-signer.

(2) If an applicant does not meet the repayment ability requirements, the applicant can have other household members join the application.

(i) *Credit qualifications.* Applicants must be unable to secure the necessary credit from other sources under terms and conditions that the applicant could reasonably be expected to fulfill. Loan applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. An applicant with an outstanding judgment obtained by the United States in a federal court, other than the United States Tax Court, is not eligible for a loan or grant from RHS.

(1) Indicators of unacceptable credit include:

(i) Repeated incidents of 2 debt payments being more than 30 days late within the last 12 months that indicate an unwillingness to meet financial obligations when due.

(ii) Loss of security due to a foreclosure if the foreclosure has been completed within the last 36 months.

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens with no satisfactory arrangement for payment.

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded by paragraphs (i)(2)(ii) and (i)(2)(iii) of this section.

(v) Outstanding collection accounts with a record of irregular payment with no satisfactory arrangements for repayment, or collection accounts that were paid in full within the last 6 months.

(vi) Non-agency debts written off within the last 36 months or paid in full at least 12 months ago.

(vii) Agency debts that were debt settled, or are being considered for debt settlement.

(viii) Delinquency on a federal debt.

(2) The following will not be considered indicators of unacceptable credit:

(i) A bankruptcy in which debts were discharged more than 36 months prior to the date of application or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meet obligations when due for the 12 months prior to the date of application.

(ii) A non-foreclosure judgment satisfied more than 12 months before the date of application.

(3) When an application is rejected because of unacceptable credit, the applicant will be informed of the reason and source of information.

§ 3550.104 Applications.

(a) *Application submissions.* All persons applying for section 504 loans or grants must file a complete written application in a format specified by RHS. Applications will be accepted even when funds are not available.

(b) *Application processing.*

(1) Incomplete applications will be returned to the applicant specifying in writing the additional information that is needed to make the application complete.

(2) An applicant may voluntarily withdraw an application at any time.

(3) RHS may periodically request in writing that applicants reconfirm their interest in obtaining a loan or grant. RHS may withdraw the application of any applicant who does not respond within the specified timeframe.

(4) Applicants who are eligible will be notified in writing. If additional information becomes available that indicates that the original eligibility determination may have been in error or that circumstances have changed, RHS may reconsider the application and the applicant may be required to submit additional information.

(5) Applicants who are ineligible will be notified in writing and provided with the specific reasons for the rejection.

(c) *Processing priorities.* When funding is not sufficient to serve all eligible applicants, applications for assistance to remove health and safety hazards will receive priority for funding. In the case of applications with equivalent priority status that are received on the same day, preference will be extended to applicants qualifying for a veterans preference. After selection for processing, requests for assistance are funded on a first-come, first-served basis.

§ 3550.105 Site requirements.

(a) *Rural areas.* Loans may be made only in rural areas designated by RHS. If an area designation is changed to nonrural an existing RHS borrower may receive 504 assistance.

(b) *Not subdividable.* The site must not be large enough to subdivide into more than one site under existing local zoning ordinances.

§ 3550.106 Dwelling requirements.

(a) *Modest dwelling.* The property must be one that is considered modest

for the area, must not be designed for income producing purposes, have an in-ground pool, or have a value in excess of the 203(b) limits of the National Housing Act.

(b) *Post-repair condition.* Dwellings repaired with section 504 funds need not be brought to the agency development standards or thermal performance standards of 7 CFR part 1924, subpart A, nor must all existing hazards be removed. However, the dwelling may not continue to have major health or safety hazards.

(c) *Construction standards.* All work must be completed in accordance with local construction codes and standards. When potentially hazardous equipment or materials are being installed, all materials and installations must be in accordance with the applicable standards in 7 CFR part 1924, subpart A.

§ 3550.107 Ownership requirements.

The applicant must have an acceptable ownership interest in the property as evidenced by one of the following:

(a) *Full fee ownership.* Acceptable full fee ownership is evidenced by a fully marketable title with a deed vesting a fee interest in the property to the applicant.

(b) *Secure leasehold interest.* A written lease is required. For loans, the unexpired portion of the lease must not be less than 2 years beyond the term of the promissory note. For grants, the remaining lease period must be at least 5 years. A leasehold for mutual help housing financed by U.S. Department of Housing and Urban Development (HUD) on Indian lands requires no minimum lease period and constitutes acceptable ownership.

(c) *Life estate interest.* To be acceptable, a life estate interest must provide the applicant with rights of present possession, control, and beneficial use of the property. For secured loans, generally persons with any remainder interests must be signatories to the mortgage. All of the remainder interests need not be included in the mortgage to the extent that one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or if the remainder interests are divided among such a large number of people that it is not practical to obtain the signatures of all of the remainder interests. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(d) *Undivided interest.* An undivided interest is acceptable if there is no reason to believe that the applicant's position as an owner-occupant will be jeopardized as a result of the improvements to be made, and:

(1) In the case of unsecured loans or grants, if any co-owners living or planning to live in the dwelling sign the repayment agreement.

(2) In the case of a secured loan, when one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage), cannot be located, or the ownership interests are divided among so large a number of co-owners that it is not practical for all of their interests to be mortgaged, their interests not exceeding 50 percent may be excluded from the security requirements. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(e) *Possessory rights.* Acceptable forms of ownership include possessory right on an American Indian reservation or State-owned land and the interest of an American Indian in land held severally under trust patents or deeds containing restrictions against alienation, provided that land in trust or restricted status will remain in trust or restricted status.

(f) *Land purchase contract.* A land purchase contract is acceptable if the applicant is current on all payments, and there is a reasonable likelihood that the applicant will be able to continue meeting the financial obligations of the contract.

(g) *Alternative evidence of ownership.* If evidence, as described in paragraphs (a) through (e) of this section, is not available, RHS may accept any of the following as evidence of ownership:

(1) Records of the local taxing authority that show the applicant as owner and that demonstrate that real estate taxes for the property are paid by the applicant.

(2) Affidavits by others in the community stating that the applicant has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

(3) Any instrument, whether or not recorded, which is commonly accepted as evidence of ownership.

§ 3550.108 Security requirements (loans only).

When the total section 504 indebtedness is \$2,500 or more, the property will be secured by a mortgage on the property, leasehold interest, or land purchase contract.

(a) RHS does not require a first lien position, but the total of all debts on the secured property may not exceed the value of the security, except by the amount of any required contributions to an escrow account for taxes and insurance and any required appraisal fee.

(b) Title clearance and the use of legal services generally must be conducted in accordance with 7 CFR part 1927, subpart B. These requirements need not be followed for:

(1) Loans where the total RHS indebtedness is \$7,500 or less; or
(2) Subsequent loans made for minimal essential repairs necessary to protect the Government's interest.

§ 3550.109 Escrow account (loans only).

RHS may require that borrowers deposit into an escrow account amounts necessary to ensure that the account will contain sufficient funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs when they are due in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) and section 501(e) of the Housing Act of 1949, as amended.

§ 3550.110 Insurance (loans only).

(a) *Borrower responsibility.* Until the loan is paid in full, any borrower with a secured indebtedness in excess of \$15,000 must furnish and continually maintain hazard insurance on the security property, with companies, in amounts, and on terms and conditions acceptable to RHS and include a "loss payable clause" payable to RHS to protect the Government's interest.

(b) *Amount.* Essential buildings must be insured in an amount at least equal to the balance of the secured debts.

(c) *Flood insurance.* Flood insurance must be obtained and maintained for the life of the loan for all property located in Special Flood Hazard Areas (SFHA) as determined by the Federal Emergency Management Agency (FEMA). RHS actions will be consistent with 7 CFR part 1806, subpart B which addresses flood insurance requirements. If flood insurance through FEMA's National Flood Insurance Program is not available in a SFHA, the property is not eligible for federal financial assistance.

(d) *Losses.*

(1) Loss deductible clauses may not exceed \$250 or 1 percent of the insurance coverage, whichever is greater. The deductible for any 1 building may not exceed \$750.

(2) Borrowers must immediately notify RHS of any loss or damage to insured property and collect the amount of the loss from the insurance company.

(3) RHS may require that loss payments be supervised. All repairs and

replacements done by or under the direction of the borrower, or by contract, will be planned, performed, inspected, and paid for in accordance with 7 CFR part 1924, subpart A.

(4) When insurance funds remain after all repairs, replacements, and other authorized disbursements have been made, the funds will be applied in the following order:

(i) Prior liens, including delinquent property taxes.
(ii) Delinquency on the account.
(iii) Advances due for recoverable cost items.

(iv) Released to the borrower if the RHS debt is adequately secured.

(5) If a loss occurs when insurance is not in force, the borrower is responsible for making the needed repairs or replacements and ensuring that the insurance is reinstated on the property.
(6) If the borrower is not financially able to make the repairs, RHS may take one of the following actions:

(i) Make a subsequent loan for repairs.

(ii) Subordinate the RHS lien to permit the borrower to obtain funds for needed repairs from another source.

(iii) Permit the borrower to obtain funds secured by a junior lien from another source.

(iv) Make a protective advance to protect the Government's interest.

(v) Accelerate the account and demand payment in full.

§ 3550.111 Appraisals (loans only).

An appraisal is required when the section 504 debt to be secured exceeds \$15,000 or whenever RHS determines that it is necessary to establish the adequacy of the security. RHS may charge an appraisal fee. Appraisals must be made in accordance with the Uniform Standards of Professional Appraisal Practices. When other real estate is taken as additional security it will be appraised if it represents a substantial portion of the security for the loan.

§ 3550.112 Maximum loan and grant.

(a) *Maximum loan permitted.* The sum of all outstanding section 504 loans to 1 borrower or on 1 dwelling may not exceed \$20,000.

(1) Transferees who have assumed a section 504 loan and wish to obtain a subsequent section 504 loan are limited to the difference between the unpaid principal balance of the debt assumed and \$20,000.

(2) For a secured loan, the total of all debts on the secured property may not exceed the value of the security, except by the amount of any required appraisal and tax monitoring fees, and the contributions to an escrow account for taxes and insurance.

(b) *Maximum loan based upon ability to pay.* The maximum loan is limited to the principal balance that can be supported given the amount the applicant has available, as determined by RHS, to repay a loan at 1 percent interest with a 20-year term.

(c) *Maximum grant.* The lifetime total of the grant assistance to any recipient is \$7,500. No grant can be awarded unless the maximum level of loans, as supported by a budget, have been obtained.

§ 3550.113 Rates and terms (loans only).

(a) *Interest rate.* The interest rate for all section 504 loans will be 1 percent.

(b) *Loan term.* The repayment period for the loan should generally be as short as possible based on the applicant's repayment ability, and may never exceed 20 years; however loans made in combination with grants must have a term of 20 years.

§ 3550.114 Repayment agreement (grants only).

Grant recipients are required to sign a repayment agreement which specifies that the full amount of the grant must be repaid if the property is sold in less than 3 years from the date the grant was approved.

§ 3550.115-3550.140 [Reserved]

§ 3550.150 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0166. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, SW, Washington, DC 20250-0762. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart D—Regular Servicing

§ 3550.151 Servicing goals.

This subpart sets forth the Rural Housing Service (RHS) policies for

managing the repayment of loans made under sections 502 and 504 of the Housing Act of 1949, as amended.

§ 3550.152 Loan payments.

(a) *Payment terms.* Unless the loan documents specify other loan repayment terms, borrowers are required to make monthly payments. Borrowers with existing loans specifying annual payments may request conversion to monthly payments, and must convert to a monthly payment schedule before any subsequent loan or new payment assistance is approved. Suitable forms of payment are: check, money order, or bank draft. Borrowers who make cash payments will be assessed a fee to cover the cost of conversion to a money order.

(b) *Application of payments.* If a borrower makes less than the scheduled payment, the payment is held in suspense and is not applied to the borrower's account. When subsequent payments are received in an amount sufficient to equal a scheduled payment, the amount will be applied in the following order:

(1) Protective advances charged to the account.

(2) Accrued interest due.

(3) Principal due.

(4) Escrow for taxes and insurance.

(c) *Multiple loans.* When a borrower with multiple loans for the same property makes less than the scheduled payment on all loans, the payment will be applied to the oldest loan and then in declining order of age. Future remittances will be applied beginning with the oldest unpaid installment.

(d) *Application of excess payments.* Borrowers can elect to make payments in excess of the scheduled amount to be applied to principal, provided there are no outstanding fees.

§ 3550.153 Fees.

RHS may assess reasonable fees including a tax service fee, fees for late payments, and fees for checks returned for insufficient funds.

§ 3550.154 Inspections.

RHS or its agent may make reasonable entries upon and inspections of any property used as security for an RHS loan as necessary to protect the interest of the Government. RHS will give the borrower notice at the time of or prior to an inspection.

§ 3550.155 Escrow account.

Escrow accounts will be administered in accordance with RESPA and section 501(e) of the Housing Act of 1949, as amended.

(a) Upon creation of the escrow account, RHS may require borrowers to

deposit funds sufficient to pay taxes and insurance premiums applicable to the mortgage for the period since the last payments were made and to fund a cushion as permitted by RESPA.

(b) Borrowers may elect to escrow at any time during the term of the loan if the outstanding RHS loan balance is over \$2,500.

(c) RHS may require borrowers to escrow in conjunction with any special servicing action.

§ 3550.156 Borrower obligations.

(a) After receiving a loan from RHS, borrowers are expected to meet a variety of obligations outlined in the loan documents. In addition to making timely payments, these obligations include:

(1) Maintaining the security property; and

(2) Maintaining an adequately funded escrow account, or paying real estate taxes, hazard and flood insurance, and other related costs when due.

(b) If a borrower fails to fulfill these obligations, RHS may obtain the needed service and charge the cost to the borrowers account.

§ 3550.157 Payment subsidy.

(a) *Borrowers currently receiving payment subsidy.*

(1) RHS will review annually each borrower's eligibility for continued payment subsidy and determine the appropriate level of assistance. To be eligible for payment subsidy renewal, the borrower must also occupy the property.

(2) If the renewal is not completed before the expiration date of the existing agreement, the effective date of the renewal will be either the expiration date of the previous agreement if RHS error caused the delay, or the next due date after the renewal is approved in all other cases.

(3) The borrower must notify RHS whenever an adult member of the household becomes employed or changes employment, there is a change in household composition, or if income increases by at least 10 percent. The household may also report decreases in income. If the change in the household's income will cause the payment for principal and interest to change by at least 10 percent, the household's payment subsidy may be adjusted for a new 12-month period. The new agreement will be effective the due date following the date the borrower's information is verified by RHS.

(b) *Borrowers not currently receiving payment subsidy.* Payment assistance may be granted to borrowers not currently receiving payment subsidy

whose loans were approved on or after August 1, 1968, whose income does not exceed the applicable low-income limit for the area, are personally occupying the RHS financed property, and who meet the requirements of § 3550.53(b), (e), and (f). In general, to receive payment assistance the term of the loan at closing must have been at least 25 years. If an account has been reamortized and the initial term of the loan was at least 25 years, payment assistance may be granted even though the term of the reamortized loan is less than 25 years. Payment assistance may be granted on a subsequent loan for repairs with a term of less than 25 years.

(c) *Cancellation of payment subsidy.* RHS will cancel a payment subsidy if the borrower does not occupy the property, has sold or transferred title to the property, or is no longer eligible for payment subsidy.

§ 3550.158 Active military duty.

The Soldiers and Sailors Relief Act requires that the interest rate charged a borrower who enters full-time active military duty after a loan is closed not exceed six percent. Active military duty does not include participation in a military reserve or the National Guard unless the borrower is called to active duty.

(a) *Amount of assistance.* If a borrower qualifies for payment subsidy after reduction of the interest rate to six percent, the amount of payment subsidy received during the period of active military duty will be the difference between the amount due at the subsidized rate for principal and interest and the amount due at a six percent interest rate. The six percent interest rate will be effective with the first payment due after RHS confirms the active military status of the borrower.

(b) *Change of active military status.* The borrower must notify RHS when he or she is no longer on active military duty. RHS will cancel the six percent interest rate and resume use of the promissory note interest rate. A new payment subsidy agreement may be processed if the borrower is eligible.

§ 3550.159 Borrower actions requiring RHS approval.

(a) *Mineral leases.* Borrowers who wish to lease mineral rights to a security property must request authorization from RHS. RHS may consent to the lease of mineral rights and subordinate its liens to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence and the Government's security interest will not be adversely

affected. Subordination of RHS loans to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property.

(1) If the proposed activity is likely to decrease the value of the security property, RHS may consent to the lease only if the borrower assigns 100 percent of the income from the lease to RHS to be applied to reduce principal and the rent to be paid is at least equal to the estimated decrease in the market value of the security.

(2) If the proposed activity is not likely to decrease the value of the security property, RHS may consent to the lease if the borrower agrees to use any damage compensation received from the lessee to repair damage to the site or dwelling, or to assign it to RHS to be applied to reduce principal.

(b) *Subordination.* RHS may subordinate its interests to permit a borrower to defer recapture amounts and refinance the loan, or to obtain a subsequent loan with private credit.

(1) When it is in the best interest of the Government, subordination will be permitted if:

(i) The other lender will verify that the funds will be used for purposes for which an RHS loan could be made;

(ii) The prior lien debt will be on terms and conditions that the borrower can reasonably be expected to meet without jeopardizing repayment of the RHS indebtedness;

(iii) Any proposed development will be planned and performed in accordance with 7 CFR part 1924, subpart A or directed by the other lender in a manner which is consistent with that subpart; and

(iv) An agreement is obtained in writing from the prior lienholder providing that at least 30 days prior written notice will be given to RHS before action to foreclose on the prior lien is initiated.

(2) The total amount of debt permitted when RHS subordinates its interests depends on whether the borrower pays off the RHS loan.

(i) For situations in which the borrower is obtaining a subsequent loan from another source and will not pay off the RHS debt, the prior lien debt plus the unpaid balance of all RHS loans, exclusive of recapture, will not exceed the market value of the security.

(ii) For situations in which RHS is subordinating only a deferred recapture amount, the prior lien debt plus the deferred recapture amount will not exceed the market value of the security.

(c) *Partial release of security.* RHS may consent to transactions affecting the security, such as sale or exchange of security property or granting of a right-

of-way across the security property, and grant a partial release provided:

(1) The compensation is:

(i) For sale of the security property, cash in an amount equal to the value of the security being disposed of or rights granted.

(ii) For exchange of security property, another parcel of property acquired in exchange with value equal to or greater than that being disposed of.

(iii) For granting an easement or right-of-way, benefits derived that are equal to or greater than the value of the security property being disposed of.

(2) An appraisal must be conducted if the latest appraisal is more than 1 year old or if it does not reflect market value and the amount of consideration exceeds \$5,000. The appraisal fee will be charged to the borrower.

(3) The security property, after the transaction is completed, will be an adequate but modest, decent, safe, and sanitary dwelling and related facilities.

(4) Repayment of the RHS debt will not be jeopardized.

(5) If applicable, the environmental requirements of 7 CFR part 1940, subpart G are met.

(6) When exchange of all or part of the security is involved, title clearance is obtained before release of the existing security.

(7) Proceeds from the sale of a portion of the security property, granting an easement or right-of-way, damage compensation, and all similar transactions requiring RHS consent, will be used in the following order:

(i) To pay customary and reasonable costs related to the transaction that must be paid by the borrower.

(ii) To be applied on a prior lien debt, if any.

(iii) To be applied to RHS indebtedness or used for improvements to the security property in keeping with purposes and limitations applicable for use of RHS loan funds. Proposed development will be planned and performed in accordance with 7 CFR part 1924, subpart A and supervised to ensure that the proceeds are used as planned.

(d) *Lease of security property.* A borrower must notify RHS if they lease the property. If the lease is for a term of more than 3 years or contains an option to purchase, RHS may liquidate the loan. During the period of any lease, the borrower is not eligible for a payment subsidy or special servicing benefits.

§ 3550.160 Refinancing with private credit.

(a) *Objective.* RHS direct loan programs are not intended to supplant or compete with private credit sources. Therefore, borrowers are required to

refinance RHS loans with private credit sources when RHS determines that the borrower meets RHS criteria.

(b) *Criteria for refinancing with private credit.* Borrowers must refinance with private credit when RHS determines that the borrower has the ability to obtain other credit at reasonable rates and terms based on their income, assets, and credit history. Reasonable rates and terms are those commercial rates and terms that borrowers are expected to meet when borrowing for similar purposes. Differences in interest rates and terms between RHS and other lenders will not be an acceptable reason for a borrower to fail to refinance with private credit if the available rates and terms are within the borrower's ability to pay.

(c) *Notice of requirement to refinance with private credit.* The financial status of all borrowers may be reviewed periodically to determine their ability to refinance with private credit. A borrower's financial status may be reviewed at any time if information becomes available to RHS that indicates that the borrower's circumstances have changed.

(1) A borrower undergoing review is required to supply, within 30 days of a request from RHS, sufficient financial information to enable RHS to determine the borrower's ability to refinance with private credit. Foreclosure action may be initiated against any borrower who fails to respond.

(2) When RHS determines that a borrower has the ability to refinance with private credit, the borrower will be required to refinance within 90 days.

(3) Within 30 days after being notified of the requirement to refinance with private credit, a borrower may contest the RHS decision and provide additional financial information to document an inability to refinance with private credit.

(d) *Failure to refinance with private credit.*

(1) If the borrower is unable to secure private credit, the borrower must submit written statements and documentation to RHS showing:

(i) The lenders contacted.

(ii) The amount of the loan requested by the borrower and the amount, if any, offered by the lenders.

(iii) The rates and terms offered by the lender or the specific reasons why other credit is not available.

(iv) The information provided by the borrower to the lenders regarding the purpose of the loan.

(2) If RHS determines that the borrower's submission does not demonstrate the borrower's inability to refinance with private credit, or if the

borrower fails to submit the required information, foreclosure may be initiated.

(e) *Subordination of recapture amount.* RHS may subordinate its interest in any deferred recapture amount to permit a borrower to refinance with private credit. The amount to which the RHS debt will be subordinated may include:

(1) The amount required to repay the RHS debt, exclusive of recapture;

(2) Reasonable closing costs;

(3) Up to one percent of the loan amount for loan servicing costs, if required by the lender; and

(4) The cost of any necessary repairs or improvements to the security property.

(f) *Application for additional credit.* A borrower who has been asked to refinance with private credit will not be considered for additional credit until the refinancing issue is resolved unless such additional credit is necessary to protect the Government's interest.

§ 3550.161 Final payment.

(a) *Payment in full.* Full payment of a borrower's account includes repayment of principal and outstanding interest, unauthorized assistance, recapture amounts, and charges made to the borrower's account. Any supervised funds or funds remaining in a borrower's escrow account will be applied to the borrower's account or returned to the borrower.

(b) *Release of security instruments.* RHS may release security instruments when full payment of all amounts owed has been received and verified. If RHS and the borrower agree to settle the account for less than the full amount owed, the security instruments may be released when all agreed-upon amounts are received and verified. Security instruments will not be released until any deferred recapture amount has been paid in full.

(c) *Payoff statements.* At the borrower's request, RHS will provide a written statement indicating the amount required to pay the account in full. RHS may charge a fee for statements for the same account if more than 2 statements are requested in any 30 day period.

(d) *Suitable forms of payment.* Suitable forms of payment are: check, money order, or bank draft. Borrowers who make cash payments will be assessed a fee to cover conversion to a money order.

(e) *Recording costs.* Recording costs for the release of the mortgage will be the responsibility of the borrower, except where State law requires the mortgage to be recorded or filed for satisfaction.

§ 3550.162 Recapture.

(a) *Recapture policy.* Borrowers with loans approved or assumed on or after October 1, 1979, will be required to repay subsidy amounts received through payment subsidy or deferred mortgage assistance. Amounts to be recaptured are due and payable when the borrower transfers title or ceases to occupy the property.

(b) *Amount to be recaptured.*

(1) The maximum amount to be recaptured is the amount of principal reduction attributed to subsidy and the lesser of:

(i) The amount of subsidy received; or

(ii) 50 percent of the value appreciation.

(2) The value appreciation of a property with a cross-collateralized loan is based on the market value of the dwelling; and if located on a farm, the dwelling and a minimum adequate site.

(3) Interest reduced from the promissory note rate to six percent under the Soldiers and Sailors Relief Act is not subject to recapture.

(c) *Option to defer payment of recapture amounts.*

(1) Borrowers may defer payment of recapture amounts if the loan is repaid, the title does not transfer, and the borrower continues to occupy the property.

(2) The RHS mortgage securing the deferred recapture amount may be subordinated to permit refinancing if the RHS mortgage will be adequately secured.

(3) Borrowers eligible to defer recapture may receive a discount on the recapture amount due if the recapture amount is paid along with the final payment, or in the case of a final installment, within 60 days of the date RHS notifies the borrower that recapture may be due.

(d) *Borrower ceases to occupy the property.* When a borrower ceases to occupy a property:

(1) The borrower may pay the recapture amount in full or reamortize the existing loan to include the recapture amount.

(2) If the borrower does not pay the recapture amount or consent to reamortization within 30 days, RHS may proceed with foreclosure.

(e) *Assumed loans.*

(1) When a loan subject to recapture is assumed under new rates and terms, the recapture amount may be paid in full by the seller or included in the principal amount assumed by the buyer.

(2) When a loan is assumed under the terms of the promissory note, recapture amounts will not be due. When the new borrower transfers title or ceases to occupy the property, all subsidy subject

to recapture before and after the assumption is due.

(3) When a borrower has deferred payment of recapture amounts, the deferred recapture amount may be included in the principal amount of the new loan.

§ 3550.163 Transfer of security and assumption of indebtedness.

(a) *General policy.* RHS mortgages contain due-on-sale clauses that generally require RHS consent before title to a security property can be transferred with an assumption of the indebtedness. If it is in the best interest of the Government, RHS will approve the transfer of title and assumption of indebtedness on program or nonprogram (NP) terms, depending on the transferee's eligibility and the property's characteristics.

(b) *RHS approval of assumptions.*

(1) A borrower with a loan on program terms who wishes to transfer a security property restricted by a due-on-sale clause to a purchaser who wishes to assume the debt must receive prior authorization from RHS. If RHS authorizes the transfer and assumption, the account will be serviced in the purchaser's name and the purchaser will be liable for the loan under the terms of the security instrument.

(2) If a borrower sells a security property with a due-on-sale clause without obtaining RHS authorization, RHS will not approve assumption of the indebtedness, and the loan will be liquidated unless RHS determines that it is in the Government's best interest to continue the loan. If RHS decides to continue the loan, the account will be serviced in the original borrower's name and the original borrower will remain liable for the loan under the terms of the security instrument.

(c) *Exceptions to due-on-sale clauses.*

(1) Due-on-sale clauses are not triggered by the following types of transfers:

(i) A transfer from the borrower to a spouse or children not resulting from the death of the borrower.

(ii) A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower.

(iii) A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement.

(iv) A transfer to a person other than a deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time

of death, and there is a reasonable prospect of repayment.

(v) A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property.

(2) A transferee who obtains property through one of the types of transfer listed in paragraph (c)(1) of this section:

(i) Is not required to assume the loan, and RHS is not permitted to liquidate the loan, if the transferee continues to make scheduled payments and meet all other obligations of the loan. A transferee who does not assume the loan is not eligible for payment assistance or a moratorium.

(ii) May assume the loan on the rates and terms contained in the promissory note, with no down payment. If the account is past due at the time an assumption is executed, the account may be brought current by using any of the servicing methods discussed in subpart E of this part.

(iii) May assume the loan under new rates and terms if the transferee applies and is program-eligible.

(3) Any subsequent transfer of title, except upon death of the inheritor or between inheritors to consolidate title, will be treated as a sale.

(d) *Requirements for an assumption.*

(1) Loans secured by program-eligible properties to be assumed by program-eligible purchasers may be assumed on program terms. Loans secured by nonprogram properties and loans to be assumed by purchasers who are not eligible for program terms may be assumed on NP terms.

(2) The amount the transferee will assume will be either the current market value less any prior liens and any required down payment, or the indebtedness, whichever is less.

(3) For loans assumed on program terms, the interest rate charged by RHS will be the rate in effect at loan approval or loan closing, whichever is lower. For loans assumed on nonprogram terms, the interest rate will be the rate in effect at the time of loan approval.

(4) If additional financing is required to purchase the property or to make repairs, RHS may approve a subsequent loan under subparts B or C of this part.

(5) If an appraisal is required for an assumption on new terms, the purchaser is responsible for the appraisal fee.

(6) If all or a portion of the borrower's account balance is assumed, the borrower and co-signer, if any, will be released from liability on the amount of the indebtedness assumed. If an account balance remains after the assumption, RHS may pursue debt settlement in accordance with subpart F of this part.

(7) Unless it is in the Government's best interest, RHS will not approve an

assumption of a secured loan if the seller fails to repay any unsecured RHS loan.

(8) If a loan is secured by a property with a dwelling situated on more than a minimum adequate site and the excess property cannot be sold separately as a minimum adequate site for another dwelling, RHS may approve a transfer of the entire property. If the excess property can be sold separately as a minimum adequate site, RHS will approve assumption of only the dwelling and the minimum adequate site. If the value of the dwelling on the minimum adequate site is less than the amount of the outstanding RHS debt, the remaining debt will be secured by the excess property. The outstanding debt will be converted to an NP loan and reamortized over a period not to exceed 10 years or the final due date of the original promissory note, whichever is sooner.

§ 3550.154 Unauthorized assistance.

(a) *Definition.* Unauthorized assistance includes any loan, payment subsidy, deferred mortgage payment, or grant for which the recipient was not eligible.

(b) *Unauthorized assistance due to false information.*

(1) False information includes information that the recipient knew was incorrect or should have known was incorrect that was provided or omitted for the purposes of obtaining assistance for which the recipient was not eligible.

(2) If the recipient receives an unauthorized loan due to false information, RHS will adjust the account using the NP interest rate that was in effect when the loan was approved. The recipient must pay the account in full within 30 days.

(3) If the recipient receives unauthorized subsidy due to false information, RHS will require the recipient to repay it within 30 days. The account cannot be reamortized to include the unauthorized subsidy. If the recipient repays the unauthorized subsidy, the loan may be continued.

(c) *Unauthorized assistance due to inaccurate information.*

(1) Inaccurate information includes incorrect information inadvertently provided, used, or omitted without the intent to obtain benefits for which the recipient was not eligible.

(2) RHS will permit a recipient who receives an unauthorized loan due to inaccurate information to retain the loan under the following conditions.

(i) If the inaccurate information was related to the purpose of the loan or the recipient's eligibility, with the exception of income, or the income used

was incorrect, but the recipient still qualified as income-eligible, RHS will allow the recipient to continue the loan on existing terms.

(ii) If a section 502 recipient's income was above the moderate-income level, RHS will convert the loan to an NP loan, using the nonprogram interest rate in effect on the date the loan was approved.

(iii) If a section 504 recipient's income was above the very low-income level, RHS will apply the applicable 502 or nonprogram interest rate in effect on the date the loan was approved.

(iv) If an incorrect interest rate was used, RHS will adjust the account using the correct interest rate.

(3) If the recipient receives unauthorized subsidy due to inaccurate information, RHS will require the recipient to repay it within 30 days. If the recipient cannot repay it within 30 days, the account may be reamortized. If the recipient repays the unauthorized subsidy or reamortizes the loan, the loan may be continued.

(d) *Unauthorized grants.* Recipients may either repay the unauthorized assistance in a lump sum or execute a promissory note, regardless of whether the unauthorized assistance was due to false or inaccurate information. RHS may seek a judgment if the recipient refuses to repay the unauthorized assistance.

(e) *Account servicing.* RHS will adjust all accounts retroactively to establish the amount of unauthorized assistance. If the recipient does not repay the unauthorized assistance within 30 days, RHS may accelerate the loan. If the unauthorized assistance is due to inaccurate information and the recipient is unable to repay within 30 days, RHS may reamortize the loan.

(f) *Accounts with no security.* If an unauthorized loan or grant is unsecured, RHS may seek the best mortgage obtainable.

§§ 3550.165-3550.199 [Reserved]

§ 3550.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0166. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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Subpart E—Special Servicing

§ 3550.201 Purpose of special servicing actions.

The Rural Housing Service (RHS) may approve special servicing actions to reduce the number of borrower failures that result in liquidation. Borrowers who have difficulty keeping their accounts current may be eligible for one or more available servicing options including: payment assistance; delinquency workout agreements that temporarily modify payment terms; protective advances of funds for taxes, insurance, and other approved costs; payment moratoriums; and reamortization of the loan.

§ 3550.202 Past due accounts.

An account is past due if the scheduled payment is not received by the due date, or as authorized by State law.

(a) *Late fee.* A late fee will be assessed if the full scheduled payment is not received by the 15th day after the due date.

(b) *Liquidation.*

(1) *For borrowers with monthly payments.* The account may be accelerated without further servicing when at least 3 scheduled payments are past due or an amount equal to at least 2 scheduled payments is past due for at least 3 consecutive months. In such cases RHS may pursue voluntary liquidation and foreclosure.

(2) *For borrowers with annual payments.* The account may be accelerated without further servicing when at least ¾ of 1 scheduled payment has not been received by its due date. In such cases, RHS may pursue voluntary liquidation and foreclosure.

§ 3550.203 General servicing actions.

Whenever any of the servicing actions described in this subpart result in reamortization of the account RHS may:

(a) Require a borrower who currently makes annual payments, but receives a monthly income, to convert to monthly payments.

(b) Require the creation and funding of an escrow account for real estate

taxes and insurance, if one does not already exist for any borrower with monthly payments.

(c) Convert the method of calculating interest for any account being charged daily simple interest to an amortized payment schedule.

§ 3550.204 Payment assistance.

Borrowers who are eligible may be offered payment assistance in accordance with subpart B of this part. Borrowers who are not eligible for payment assistance because the loan was approved before August 1, 1988, or the loan was made on above-moderate or nonprogram (NP) terms, may refinance the loan in order to obtain payment assistance if:

(a) The borrower is eligible to receive a loan with payment assistance;

(b) Due to circumstances beyond the borrower's control, the borrower is in danger of losing the property; and

(c) The property is program-eligible.

§ 3550.205 Delinquency workout agreements.

Borrowers with past due accounts may be offered the opportunity to avoid liquidation by entering into a delinquency workout agreement that specifies a plan for bringing the account current. To receive a delinquency workout agreement, the following requirements apply:

(a) A borrower who is able to do so will be required to pay the past-due amount in a single payment.

(b) A borrower who is unable to pay the past-due amount in a single payment must pay monthly all scheduled payments plus an agreed upon additional amount that brings the account current within 2 years or the remaining term of the loan, whichever is shorter.

(c) If a borrower becomes more than 30 days past due under the terms of a delinquency workout agreement, RHS may cancel the agreement.

§ 3550.206 Protective advances.

RHS may pay for fees or services and charge the cost against the borrower's account to protect the Government's interest.

(a) *Advances for taxes and insurance.* RHS may advance funds to pay real estate taxes, hazard and flood insurance premiums, and other related costs, as well as amounts needed to fund the current escrow cycle.

(b) *Advances for costs other than taxes and insurance.* Protective advances for costs other than taxes and insurance, such as emergency repairs, will be made only if the borrower cannot obtain a subsequent loan.

(c) Repayment arrangements.

(1) Advances for borrowers with multiple loans will be charged against the largest loan.

(2) Amounts advanced will be due with the next scheduled payment. RHS may schedule repayment consistent with the borrowers ability to repay or reamortize the loan.

(3) Advances will bear interest at the promissory note rate of the loan to which the advance was charged.

§ 3550.207 Payment moratorium.

RHS may defer a borrowers scheduled payments for up to 2 years. NP borrowers are not eligible for a payment moratorium.

(a) *Borrower eligibility.* For a borrower to be eligible for a moratorium, all of the following conditions must be met:

(1) Due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making scheduled payments because:

(i) The borrower's repayment income fell by at least 20 percent within the past 12 months;

(ii) The borrower must pay unexpected and unreimbursed expenses resulting from the illness, injury, or death of the borrower or a family member; or

(iii) The borrower must pay unexpected and unreimbursed expenses resulting from damage to the security property in cases where adequate hazard insurance was not available or was prohibitively expensive.

(2) The borrower occupies the dwelling, unless RHS determines that it is uninhabitable.

(3) The borrower's account is not currently accelerated.

(b) *Reviews of borrower eligibility.*

(1) Periodically RHS may require the borrower to submit financial information to demonstrate that the moratorium should be continued. The moratorium may be canceled if:

(i) The borrower does not respond to a request for financial information;

(ii) RHS receives information indicating that the moratorium is no longer required; or

(iii) In the case of a moratorium granted to pay unexpected or unreimbursed expenses, the borrower cannot show that an amount at least equal to the deferred payments has been applied toward the expenses.

(2) At least 30 days before the moratorium is scheduled to expire, RHS will require the borrower to provide financial information needed to determine whether the borrower is able to resume making scheduled payments.

(c) *Resumption of scheduled payments.* When the borrower is able to

resume scheduled payments, the loan will be reamortized to include the amount deferred during the moratorium and the borrower will be required to escrow. If the new monthly payment, after consideration of the maximum amount of payment subsidy available to the borrower, exceeds the borrower's repayment ability, all or part of the interest that has accrued during the moratorium may be forgiven.

(d) *Borrowers unable to resume scheduled payments.* If even after all appropriate servicing actions have been taken the borrower is unable to resume making scheduled payments after 2 consecutive years of being on a moratorium, the account will be liquidated.

§ 3550.208 Reamortization using promissory note interest rate.

Reamortization using the promissory note interest rate may be authorized when RHS determines that reamortization is required to enable the borrower to meet scheduled obligations, and only if the Government's lien priority is not adversely affected.

(a) *Permitted uses.* Reamortization at the promissory note interest rate may be used to accomplish a variety of servicing actions, including to:

(1) Repay unauthorized assistance due to inaccurate information.

(2) Repay principal and interest accrued and advances made during a moratorium.

(3) Bring current an account under a delinquency workout agreement after the borrower has demonstrated the willingness and ability to meet the terms of the loan and delinquency workout agreement and reamortization is in the borrower's and Government's best interests.

(4) Bring a delinquent account current in the case of an assumption where the due on sale clause is not triggered as described in § 3550.163(c).

(5) Cover the remaining debt when a portion of the security property is being transferred but the acquisition price does not cover the outstanding debt. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being reamortized, whichever is sooner.

(b) *Payment term of reamortized loan.* Except as noted in paragraph (a)(6) of this section, the term of the reamortized loan may be extended to the maximum term for which the borrower was eligible at the time the loan was originally made, less the number of years the loan has been outstanding. In all cases, the term must not exceed the remaining security life of the property.

§ 3550.209 [Reserved]**§ 3550.210 Offsets.**

Any money that is or may become payable from the United States to an RHS borrower may be subject to administrative, salary, or Internal Revenue Service (IRS) offsets for the collection of a debt owed to RHS.

(a) *IRS offset.* RHS may take action to effect offset of claims due RHS against tax refunds due to RHS debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and 26 CFR 301.6402-6.

(b) *Salary offset.* Offset of claims due to RHS may be collected pursuant to the salary offset provisions in 7 CFR part 3, subpart C for a federal employee or other persons covered in that subpart.

(c) *Administrative offset.* RHS may take action to effect administrative offset to recover delinquent claims due to it in accordance with the procedures in 7 CFR part 3, subpart B.

(d) *Offset by other federal agencies.* Escrow funds and loan and grant funds held or payable by RHS are not subject to offset by other federal agencies.

§ 3550.211 Liquidation.

(a) *Policy.* When RHS determines that a borrower is unable or unwilling to meet loan obligations, RHS may accelerate the loan and, if necessary, acquire the security property. The borrower is responsible for all expenses associated with liquidation and acquisition. If the account is satisfied in full, the borrower will be released from liability. If the account is not satisfied in full, RHS may pursue any deficiency unless the borrower received a moratorium at any time during the life of the loan and faithfully tried to repay the loan.

(b) *Tribal allotted or trust land.* Liquidations involving a security interest in tribal allotted or trust land shall only be pursued after offering to transfer the account to an eligible tribal member, the tribe, or the Indian Housing Authority. Forced liquidation of RHS security interests in Indian trust lands or on tribal allotted land will be recommended only after the State Director has determined it is in the best interest of the Government.

(c) *Acceleration and foreclosure.* If RHS determines that foreclosure is in the best interest of the Government, RHS will send an acceleration notice to each borrower and any cosigner. If the borrower does not pay the full account balance and meet the other terms of the loan within 30 days of acceleration, RHS may foreclose. RHS will not accept partial payment of an accelerated loan

unless required to accept the payment by State law.

(d) *Voluntary liquidation.* Borrowers may voluntarily liquidate through:

(1) *Refinancing or sale.* The borrower may refinance or sell the security property for at least net recovery value and apply the proceeds to the account.

(2) *Deed in lieu of foreclosure.* RHS may accept a deed in lieu of foreclosure to convey title to the security property only after the debt has been accelerated and when it is in the Government's best interest.

(3) *Offer by third party.* If a junior lienholder or cosigner makes an offer in the amount of at least the net recovery value, RHS may assign the note and mortgage.

(e) *Bankruptcy.*

(1) When a petition in bankruptcy is filed by a borrower after acceleration, collection actions and foreclosure actions are suspended in accordance with the provisions of the Bankruptcy Code.

(2) RHS may accept conveyance of security property by the trustee in bankruptcy if the Bankruptcy Court has approved the transaction. RHS determines the conveyance is in the best interest of the Government, and RHS will acquire title free of all liens and encumbrances except RHS liens.

(3) Whenever possible in a Chapter 7 Bankruptcy, a reaffirmation agreement will be signed by the borrower and approved by the court prior to discharge, if RHS decides to continue with the borrower.

(f) *Junior lienholder foreclosure.* When a junior lienholder foreclosure does not result in payment in full of the RHS debt but the property is sold subject to the RHS lien, RHS may liquidate the account unless the new owner is eligible to assume the RHS debt and actually assumes the RHS debt.

(g) *Payment subsidy.* If the borrower is receiving payment subsidy, the payment subsidy agreement will not be canceled when the debt is accelerated, but will not be renewed unless the account is reinstated.

(h) *Eligibility for special servicing actions.* A borrower is not eligible for special servicing actions once the account has been accelerated.

(i) *Reporting.* RHS may report to IRS and credit reporting agencies any debt settled through liquidation.

§ 3550.212-3550.249 [Reserved]**§ 3550.250 OMB control number:**

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget

(OMB) and have been assigned OMB control number 0575-0166. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 3 hours per response, with an average of 1½ hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, SW, Washington, DC 20250-7602. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Subpart F—Post-Servicing Actions**§ 3550.251 Property management and disposition.**

(a) *Policy.* Rural Housing Service (RHS) will manage custodial property and Real Estate Owned (REO) property to protect the Government's interest, and may dispose of REO property through direct sales, sealed bid, or auction. RHS will follow affirmative fair housing marketing policies.

(b) *Custodial property.* RHS may take custodial possession of security property that has been abandoned, or for other reasons necessary to protect the Government's security. After taking custodial possession of a security property, RHS may maintain and repair the security property as needed to protect the Government's interest, pay required real estate taxes and assessments, and secure personal property left on the premises. Expenses will be charged to the borrower's account. Custodial property may be leased when it is in the Government's best interest and in such cases the borrower's account will be credited for income from the security property.

(c) *REO property.*

(1) *Classification.* When RHS takes title to a security property, it is classified as either program or nonprogram (NP) property. An REO property that is eligible for financing under the section 502 program, or which could reasonably be repaired to be eligible, is classified as program property. An REO property that cannot reasonably be repaired to be eligible as section 502 property, and property that has been improved to a point that it will no longer qualify as modest under section 502, is classified as NP property.

(2) *Disclosing decent, safe, and sanitary defects.* When RHS determines that an REO property to be sold is not decent, safe, and sanitary, or does not meet cost-effective energy conservation standards, it will disclose the reasons why. The deed by which such an REO property is conveyed will contain a covenant restricting it from residential use until it is decent, safe, and sanitary and meets the RHS cost-effective energy conservation standards. RHS will also notify any potential purchaser of any known lead-based paint hazards.

(3) *Property on Indian tribal allotted or trust land.* REO property which is located on Indian tribal allotted or trust land, will be sold or otherwise disposed of only to a member of the particular tribe having jurisdiction over the allotted or tribal land, to the tribe, or to an Indian housing authority serving the tribe on a first-come, first-served basis.

(4) *Reservation of program REO properties.*

(i) Program REO properties are reserved for program-eligible applicants and nonprofit organizations or public bodies providing transitional housing during the first 60 days after the date of the first notice of sale, and during the first 30 days following any reduction in price or any other change in credit terms or other sale terms. After the expiration of a reservation period, program REO properties can be bought by any buyer.

(ii) An offer on a program REO property from a buyer who does not qualify for a section 502 program loan may be submitted during a reservation period, but is considered to have been received on the day after the reservation period ends.

(iii) No offer is considered until 3 business days after the date the property is offered for sale. An offer received during the 3-day holding period is not considered until the 4th day, and is evaluated with any other offers actually received on the 4th day.

(5) *Priority of offers received the same day.*

(i) Offers received on the same business day are selected in the following order:

(A) Offers from program-eligible applicants, with a request for credit on program terms. All offers are evaluated as if they were submitted at the listed price, regardless of the offering price.

(B) Offers from nonprofits or public bodies for conversion to use as transitional housing or for other special purposes as specified in paragraph (d)(4) of this section.

(C) Cash offers, from highest to lowest.

(D) NP credit offers, from highest to lowest.

(ii) Acceptable offers of equal priority received on the same business day are selected by lot.

(iii) REO properties are not held off the market pending the outcome of an appeal of RHS rejection of a request for financing.

(6) *Sale by sealed bid or auction.* RHS may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government. RHS will publicly solicit requests for sealed bids and publicize auctions. If a successful bidder is unable to settle the transaction under the terms of the offer, except for the financing contingency, any required bid deposit may be retained by RHS. If the highest bid is lower than the minimum acceptable bid established by RHS, or if no acceptable bids are received, RHS may negotiate a sale without further public notice.

(d) *Special purposes.*

(1) REO property may be purchased for conversion to multiple family housing.

(2) When a nonprofit organization or public body notifies RHS in writing of its intent to buy an REO property to provide transitional housing for the homeless, RHS may withdraw the property from the market for up to 30 days to give the entity an opportunity to execute a purchase contract. The listed price may be discounted for offers on a nonprogram REO property at any time, and on a program REO property after the 60-day reservation period. No down payment is required, and the loan term will be for a maximum of 30 years. Until RHS executes a sales agreement, an offer from a program-eligible applicant will receive priority, regardless of a nonprofit's interest in purchasing the REO property for use as transitional housing.

(3) NP properties may be leased to a nonprofit organization or public body to provide transitional housing for the homeless at an annual cost of one dollar. When an REO property is to be leased as transitional housing, RHS will make repairs needed to put the property in decent, safe, and sanitary condition. The lessee is responsible for all future repairs and maintenance.

(4) REO property may be sold under special provisions to nonprofit organizations or public bodies for the purpose of providing affordable housing to very low- and low-income families.

§ 3550.252 Debt settlement policies.

(a) *Applicability.* Debt settlement procedures may be initiated to collect any amounts due to RHS including:

(1) Balances remaining on loan accounts after all liquidation proceeds or credits have been applied;

(2) Subsidy recapture or grant amounts due; and

(3) Unauthorized assistance due.

(b) *Judgment.* RHS may seek a judgment whenever a judgment might enable RHS to collect all or a significant portion of an amount owed.

(c) *Multiple loans.* RHS does not settle debts for one loan while other RHS loans on the same security property remain active.

(d) *Cosigners and claims against estates.* RHS may use any and all remedies available under law to collect from any cosigner and from a deceased borrower's estate.

(e) *Reporting.* RHS will report to the Internal Revenue Service and credit reporting agencies any debt settled through cancellation, compromise, or adjustment.

(f) *Settlement during legal or investigative action.* Cases that are under investigation for fiscal irregularity or have been referred to the Office of the Inspector General, the Office of the General Counsel, or the U.S. Attorney will not be considered for debt settlement until final action by the investigating or prosecuting entity has been taken.

(g) *Offsets.* RHS may request offsets as described in § 3550.210 to collect amounts owed.

(h) *Escrow funds.* At liquidation all funds held in escrow or unapplied funds will be applied against the debt.

§ 3550.253 Settlement of a debt by compromise or adjustment.
Compromise or adjustment offers may be initiated by the debtor or by RHS. RHS will approve only those compromises and adjustments that are in the best interest of the Government.

(a) *Compromise.* A compromise is an agreement by RHS to release a debtor from liability upon receipt of a specified lump sum that is less than the total amount due.

(b) *Adjustments.* An adjustment is an agreement by RHS to release a debtor from liability generally upon receipt of an initial lump sum representing the maximum amount the debtor can afford to pay and periodic additional payments over a period of up to 5 years.

(c) *Timing of offers.*

(1) For a settlement offer to be considered, secured debts must be fully matured under the terms of the debt instrument or must have been accelerated by RHS.

(2) Unsecured debts owed after the sale of the security property may be proposed for compromise or adjustment

at any time. Debts that were never secured may be proposed for compromise or adjustment when they are due and payable.

(d) *Retention of security property.* The debtor may retain the security property if the compromise payment is at least equal to the net recovery value, and it is in the best interest of the Government to allow the debtor to retain the security property.

§ 3550.254-3550.299 (Reserved)

§ 3550.300 OMB control number.

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suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250-7602.

Dated: November 14, 1996.

Jill Long Thompson,
Undersecretary, Rural Development.

Dated: November 15, 1996.

James W. Schroeder,
Acting Undersecretary, Farm and Foreign
Agricultural Services

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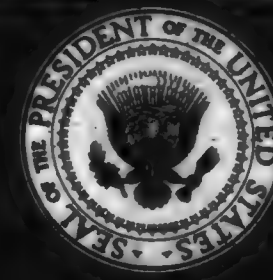
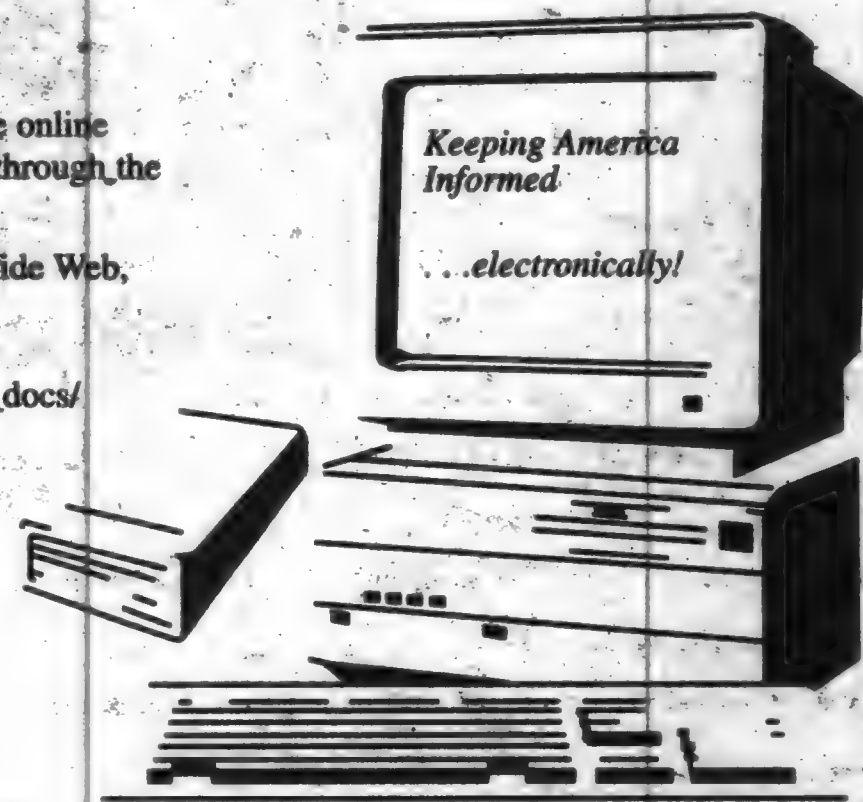
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- ★ Title 40 (Almost complete)—Protection of Environment (Environmental Protection Agency)

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FOR:	Any person who uses the Federal Register and Code of Federal Regulations.
WHO:	Sponsored by the Office of the Federal Register.
WHAT:	Free public briefing (approximately 3 hours) to present: 1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations. 2. The relationship between the Federal Register and Code of Federal Regulations. 3. The important elements of typical Federal Register documents. 4. An introduction to the finding aids of the FR/CFR system.
WHY:	To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN:	December 10, 1996 at 9:00 a.m.
WHERE:	Office of the Federal Register Conference Room 800 North Capitol Street, NW. Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202-523-4538

AUSTIN, TX

WHEN:	December 10, 1996 9:00 a.m. to 12:00 p.m.
WHERE:	Atrium Lyndon Baines Johnson Library 2313 Red River Street Austin, TX
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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202-275-1538 or 275-0920.

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The President

Proclamation 6957 of November 21, 1996

National Great American Smokeout Day, 1996

By the President of the United States of America

A Proclamation

Every day, nearly 3,000 young Americans become regular smokers, falling victim to negative influences and provocative advertisements and putting themselves at risk of diseases caused by nicotine addiction. Nearly 1,000 of these children will die prematurely and be among the more than 400,000 Americans who lose their lives to tobacco-related illnesses each year. Smoking is the single greatest cause of preventable illness and premature death in our society. The use of tobacco is responsible for nearly one in five deaths in the United States, and we anticipate that, unless smoking rates decline immediately, more than 5 million people under the age of 18 today will die from a smoking-related disease. For a country so deeply devoted to the protection of our children, such numbers are a national tragedy.

Recognizing the urgent need to reverse these devastating statistics, my Administration has announced tough, unprecedented measures to limit children's access to tobacco products and to reduce tobacco's appeal to children. In support of these efforts, I am pleased to join the millions of caring citizens who are observing the "Great American Smokeout," an annual, nationwide effort to help millions of Americans give up tobacco and to raise awareness of nicotine addiction and the deadly risks associated with tobacco use.

Twenty years ago the American Cancer Society organized the first nationwide Great American Smokeout. Through the Society's leadership, the event has helped millions of Americans to stop smoking by proving to them that, if they can quit for a day, they can quit for a lifetime. In recent years the focus of the Great American Smokeout has broadened to include efforts to help our young people understand that they should never start smoking in the first place.

Since the inception of the Great American Smokeout, the smoking rate of American adults has dropped from 38 percent to 25 percent. Nonetheless, tobacco use continues to take an unacceptable toll. This year, 177,000 new cases of lung cancer will be diagnosed. Moreover, even as the number of adult smokers has declined, the use of tobacco among children is rising.

On this 20th anniversary of the Smokeout, local offices of the American Cancer Society are hosting a variety of events, including the Great American SmokeScream for middle school students, the Great American Smokeout Pledge for high school students, and the launching of an exciting and interactive Internet web page for teenagers.

The Great American Smokeout is an opportunity for all Americans to renew their commitment to a smoke-free environment for themselves and particularly for their children. Working together on this day and every day throughout the year, we can create a brighter, healthier future for all Americans— young and old.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 21, 1996, as National Great American Smokeout Day. I call upon all Americans to

join together in an effort to educate our children about the dangers of tobacco use, and I urge smokers and nonsmokers alike to take this opportunity to begin healthier lifestyles that set a positive example for young people.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William Clinton

[FR Doc. 96-30201
Filed 11-22-96; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Presidential Determination No. 97-2 of November 11, 1996

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately \$383 million in connection with the purchase of the nonnuclear balance of plant equipment and services for the Qinshan III nuclear power plant in Zhejiang Province, the People's Republic of China.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.

William Clinton

THE WHITE HOUSE,
Washington, November 11, 1996.

[FR Doc. 96-30220
Filed 11-22-96; 8:45 am]
Billing code 4710-10-M

Presidential Documents

Presidential Determination No. 97-3 of November 11, 1996

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately \$409 million in connection with the purchase of U.S. equipment and services for the Yangcheng coal-fired power plant in Shanxi Province, the People's Republic of China.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

William Clinton

THE WHITE HOUSE,
Washington, November 11, 1996.

[FR Doc. 96-30221
Filed 11-22-96; 8:45 am]
Billing code 4710-10-M

Presidential Documents

Presidential Determination No. 97-4 of November 12, 1996

Designation of Jordan as a Major Non-NATO Ally

Memorandum for the Secretary of State

I hereby designate the Hashemite Kingdom of Jordan a major non-NATO ally of the United States pursuant to section 517 of the Foreign Assistance Act of 1961, as amended, for the purposes of the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act.

You are authorized and directed to publish this determination in the Federal Register.

William J. Clinton

THE WHITE HOUSE,
Washington, November 12, 1996.

[FR Doc. 96-30222
Filed 11-22-96; 9:45 am]
Billing code 4710-10-M

Rules and Regulations

Federal Register

Vol. 61, No. 238

Monday, November 25, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

5 CFR Ch. XXVIII

28 CFR Part 45

RIN 2209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Justice

AGENCY: Department of Justice (Department).

ACTION: Interim rule, with request for comments.

SUMMARY: The Department of Justice, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for Department employees as a supplement to the uniform standards of ethical conduct for employees of the executive branch (Uniform Standards) issued by OGE. The regulations established by the interim rule are a necessary supplement to the Uniform Standards because they address statutory requirements and issues that are unique to the Department.

DATES: Interim rule effective November 25, 1996. Comments are invited and must be received on or before January 9, 1997.

ADDRESSES: Send comments to the U.S. Department of Justice, Justice Management Division, Departmental Ethics Office, Main Justice Building, Room 6316, 950 Pennsylvania Avenue, NW, Washington, DC 20530, Attention: Mary Braden.

FOR FURTHER INFORMATION CONTACT:

Mary Braden, U.S. Department of Justice, Justice Management Division, Departmental Ethics Office, (202) 514-8196.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Uniform Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965-42970 (as corrected at 61 FR 48733) and 61 FR 50689-50691, with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952. The Uniform Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct for executive branch personnel. Pursuant to E.O. 12674 (54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306) and 5 CFR 2635.105, executive branch agencies may issue agency-specific regulations, with the concurrence of OGE, that supplement the Uniform Standards. After considering its unique operations, the Department, with the concurrence of OGE, has determined that the regulations established by the interim rule are necessary to implement the Department's ethics program successfully.

II. Analysis of the Regulations

The interim rule establishes the following regulations in new 5 CFR XXVIII:

Section 3801.101 General

Section 3801.101 of the interim rule explains that the regulations established by the interim rule apply to all Departmental Employees and are supplemental to the Uniform Standards, and that all employees must comply with the regulations established by the interim rule as well as the Uniform Standards. In addition employees are subject to the regulations regarding conduct in part 735 of the title and part 45 of chapter I of 28 CFR as revised in this document.

Section 3801.102 Detailed or Assigned Special Agents of Certain Departmental Components

Section 2635.104 of the Uniform Standards sets forth certain circumstances under which an employee detailed or assigned to

another entity may be subject to the conduct regulations of that entity rather than those of his employing agency. However, special agents of the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA), even if on detail or special assignment usually retain their special law enforcement powers, are generally subject to recall to their department components at all times, and are sometimes required to provide services on an occasional or overtime basis to those components. See, e.g., 5 U.S.C. 5545(c); 5 CFR 550.151-550.164; and DOJ Order No. 1551.4A (available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component). Where a detail or assignment of these special agents does not explicitly sever the obligations of service to their Department components, § 3801.102 of the interim rule makes clear that these special agents who become subject to the conduct regulations of another entity pursuant to § 2635.104 (a) or (b) of this title shall also remain subject to the supplemental regulations established by the interim rule. In particular, the standards governing outside employment and activities of these special agents must conform to the same standards that are required of other agents of their employing components with whom they may continue to work side-by-side on an occasional or overtime basis. To do otherwise would undermine the efficiency of the service and would create unnecessary internal discipline and administrative efficiency problems.

Section 3801.103 Designation of Separate Departmental Components

Pursuant to § 2635.203(a) of the Uniform Standards, an executive department, with the concurrence of OGE, may designate any component that exercises distinct and separate functions as a separate agency for the purpose of applying the rules governing the solicitation or acceptance of gifts from prohibited sources or given because of official position. See 5 CFR 2635.201-2635.205. Pursuant to § 2635.807(a)(2)(ii) of the Uniform Standards, any component so designated is also considered a separate agency for the purpose of applying the rules governing the receipt of compensation by an employee for

teaching, speaking, and writing. The Department has determined that the divisions and offices ("components") set forth in section 3801.103 of the interim rule exercise distinct and separate functions for purposes of applying §§ 2635.201-2635.205 and § 2635.807(a)(2)(ii).

Employees serving in positions within the Department but outside of the components designated by this section serve in positions or offices with cross-component duties and responsibilities. This section of the interim rule makes clear that those employees must continue to treat the entire department as their employing agency for purposes of applying the gifts and the teaching, speaking and writing provisions of the Uniform Standards.

Section 3801.104 Purchase or Use of Certain Forfeited and Other Property

Section 3801.104(a) of the interim rule is a slight revision of the prohibition contained in the Department's former conduct regulations at 28 CFR 45.735-18. The chief principle served by that prohibition—that performance of official duties and the use of nonpublic information should not further an employee's private interests—is also found in two related provisions of the Uniform Standards. See 5 CFR 2635.702 and 2635.703. The Department's unique role in asset forfeiture and the public sale of forfeited property has led it to determine, on the basis of significant concerns about internal discipline, the possible appearance of misuse of nonpublic information and official position, administrative efficiency, and the enforcement of the Departmental conduct regulations, that any Departmental employee seeking to buy forfeited property from the Department or its agents (or to use such property if it was purchased from the Department or its agents by his spouse or dependent) should first obtain written approval from his agency designee. Consequently, § 3801.104(a) bars any employee who does not have such prior written approval from purchasing forfeited property from the Department or its agents, and from using any such property if it was purchased from the Department or its agents by his spouse or minor child. Additionally, § 3801.104(a) sets forth the criteria to be applied in determining whether or not to approve a request to purchase or use such property.

Section 3801.104(b) of the interim rule is an extension of the principle that performance of official duties and the use of nonpublic information should not further an employee's private interests.

The Department has determined that the employees of the United States Marshals Service (USMS), FBI, and DEA typically have a high degree of control over valuable property used by their components. To address significant Departmental concerns about the actual or apparent use of nonpublic information regarding the condition of the property at the time of sale and the use of position in that property's maintenance in anticipation of its sale, § 3801.105(b) prohibits any USMS, FBI or DEA employee from purchasing from his component, the General Services Administration (GSA), or the agents of either of them, any property formerly used by his component, and from using any such property if it was purchased from his component, GSA, or the agents of either of them, by his spouse or minor child.

Section 3801.105 Personal Use of Government Property

Section 3801.105 references Department of Justice internal policy issued by the Designated Agency Ethics Official on April 21, 1995, which authorized limited personal use of Department of Justice office and library equipment and facilities by its employees. Employees with questions concerning this policy may seek advice and obtain a copy of the policy from their agency designee, who for this purpose, shall be the Deputy Designated Agency Ethics Official for the employee's component. This section is included strictly for ease of reference. The Department does not require OGE's concurrence when exercising its authority under 5 U.S.C. 301 to prescribe regulations for the use of Department property.

Section 3801.106 Outside Employment

The Uniform Standards, at 5 CFR 2635.802, provide that an employee shall not engage in outside employment if it is prohibited by agency supplemental regulation. To much the same effect, 5 CFR 2635.403 permits an agency, by supplemental regulation, to prohibit compensated outside employment on the same basis that it may prohibit employees from holding other financial interests. Under the Department's previous standards of conduct regulations at 28 CFR part 45, a Department employee has been prohibited from engaging in "the private practice of his profession, including the practice of law * * *." Despite this prohibition those regulations also stated that "employees are encouraged to provide public interest professional services so long as such services do not interfere with their official

responsibilities." Also, such services were required to be uncompensated. Pursuant to § 45.735-9 of those regulations, Justice Department employees were also prohibited from engaging "in any professional practice or any other outside employment if [t]he activity involves any criminal matter or proceeding whether Federal, State or local * * *."

Section 3801.106(b)(1) has the effect of continuing substantially similar prohibitions, based on the Department's determination that it is necessary to ensure public confidence in the impartiality and objectivity with which the Department carries out its mission, and to avoid any appearance of misuse of position. In addition to continuing the tradition of generally prohibiting outside employment that involves the practice of law, and prohibiting participation in criminal or habeas corpus matters, whether Federal, State or local, paragraph (b)(1) further prohibits Department employees from participating, even behind the scenes, in a matter in which the Department is, or represents, a party.

While the provisions in § 3801.106(b)(1) prohibiting the practice of law by Departmental attorneys is based generally upon the public perception that the Department is the Federal Government's "law firm," and the primary loyalty of Department attorneys should lie only with the Government as client, the section also recognizes the professional obligations of attorneys to the community. Since 1980, each Department of Justice Appropriations Act has contained a provision which states, "None of the sums authorized to be appropriated by this Act may be used to pay the compensation of any person employed after the date of the enactment of this Act as an attorney (except foreign counsel employed in special cases) unless such person shall be duly licensed and authorized to practice as an attorney under the laws of a State, territory or the District of Columbia." The State bars of thirty-four States have a goal or official statement urging members to devote time to the provision of pro bono legal services, some stipulating 50 hours a year of such service in accord with the American Bar Association's Model Rule 6.1. On March 6, 1996, the Attorney General issued a policy statement on pro bono legal and volunteer services in order to encourage Department attorneys to meet the goals of the bar in which they are licensed. That policy also responds to Executive Order 12968 of February 5, 1996, in which the President required all Federal agencies to develop appropriate

programs to encourage and facilitate pro bono legal and other volunteer services by Government employees.

Consequently, § 3801.106(b) of the interim rule contains an exception for the uncompensated practice of law in the nature of community service as well as continuing an exception for practicing law on behalf of certain family members. In order that such practice not otherwise violate any statute or Federal regulation, § 3801.106(c) requires that prior approval must be obtained for all practice of law under this exception.

Where the restrictions of § 3801.106(b)(1) would cause undue personal or family hardship, unduly prohibit an employee from completing a professional obligation entered into prior to government service, or unduly restrict the Department from securing necessary and uniquely specialized services, particularly from a special Government employee, the restrictions may be waived in writing if it is determined that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation. While the waiver standard of such a restriction normally would only require a finding that the activity would not otherwise be expected to violate the interim rule, part 2635 or a statute, waivers under section 3801.106(b)(2) will also suffice as prior approval under paragraph (c) of § 3801.106 and therefore must meet the standard of that paragraph which requires consideration of any Federal regulation.

In order to further ensure against the kinds of conflicts addressed by the prohibition of paragraph (b), paragraph (c) requires a Justice Department employee to obtain written approval before engaging in outside employment not otherwise prohibited that involves: (1) The practice of law; or (2) a subject matter, policy, or program that is in his component's area of responsibility. The approval requirement will supplement the prohibitions in paragraph (b)(1) by allowing managers and ethics officials an additional check to ensure that employees do not engage in outside employment related to the Department's mission that would violate applicable laws and regulations.

28 CFR Part 45

By a separate instrument in this rulemaking document, the Department is repealing those of its agency conduct regulations, currently found at 28 CFR part 45, which are superseded by the Uniform Standards, the regulations established by the interim rule, DOJ Order 1735.1 on procedures for

complying with ethics requirements, and the uniform, executive branch financial disclosure regulations (Uniform Financial Disclosure Regulations) at 5 CFR part 2634. Sections 45.735-4,¹ 45.735-5(b), and 45.735-7a of 28 CFR of the Department's old conduct standards are being preserved and redesignated and a new cross-reference section to the current ethics provisions is being added.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Assistant Attorney General for Administration of the Department of Justice, I have found good cause for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the thirty-day delay in entry into effect of the interim rule and repeal. This determination is based on the fact that: (1) The rulemaking is related to the internal organization, procedure, and practice of the Department of Justice; (2) the rulemaking pertains to agency management and personnel; and (3) there is a need for a smooth and speedy transition to the Uniform Standards from the prior Departmental conduct regulations, which were essentially superseded on February 3, 1993, when the Uniform Standards entered into effect. As a result of this supersession and the recent expiration of the extended grace period for certain regulatory prohibited financial interest and prior approval for outside employment/activities provisions, the Department currently has no agency-specific standards of conduct in place that address statutory requirements and issues unique to the Department. Given the special nature of the Department's functions, it is imperative that the Department issue supplemental conduct regulations to fill this void as soon as possible. Because this is an interim rulemaking, with provision for a forty-five day public comment period, the Department of Justice will review all comments received during the comment period and, with the concurrence of the Office of Government Ethics, will consider any modifications that may

¹ Pursuant to 28 U.S.C. 526, the Department is obligated to issue regulations that require an employee to disqualify himself from participation in certain investigations or prosecutions if such participation may result in a financial, political, or personal conflict of interest. Section 45.735-4 of title 28 CFR satisfies the requirements of 28 U.S.C. 526 relating to political or personal conflicts and is being retained. However, in the Department's view, subparts D and F of 5 CFR part 2635 satisfy the requirements of the statute relating to financial conflicts of interest. Therefore, the Department is repealing § 45.735-5(a) of title 28 of the CFR.

appear to be appropriate in adopting the rule as final.

Executive Order 12866

In promulgating this interim regulation, the Department of Justice has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under the Executive order, it deals with agency organizational, management, and personnel matters and is not in any event, deemed "significant" thereunder.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. chapter 6, as Assistant Attorney General for Administration of the Department of Justice, I have determined that this regulation will not have a significant economic impact on a substantial number of small entities, because it affects only Department of Justice employees.

Paperwork Reduction Act

As Assistant Attorney General for Administration of the Department of Justice, I have determined that the Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to the regulation established by the interim rule, because the regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 3801 and 28 CFR Part 45

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: November 12, 1996.

Stephen E. Coigate,
Assistant Attorney General for
Administration, Department of Justice.

Approved: November 15, 1996.

Stephen D. Poits,
Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of Justice, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and is also amending title 28 of the Code of Federal Regulations as follows:

TITLE 5—(AMENDED)

1. A new chapter XXVIII, consisting of part 3801, is added to 5 CFR to read as follows:

CHAPTER XXVII—DEPARTMENT OF JUSTICE

PART 3801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF JUSTICE

Sec.
3801.101 General.
3801.102 Detailed or assigned special agents of certain Departmental components.
3801.103 Designation of separate Departmental components.
3801.104 Purchase or use of certain forfeited and other property.
3801.105 Personal use of Government property.
3801.106 Outside employment.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15150, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; E.O. 12968, 61 FR 4729; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.701–2635.705, 2635.803, 2635.807(a)(2)(ii); and DOJ Order 1735.1.

§ 3801.101 General.

In accordance with § 2635.105 of this title, the regulations in this part apply to employees of the Department of Justice and supplement the Standards of Ethical Conduct for Employees of the Executive Branch in part 2635 of this title. In addition to the regulations contained in part 2635 of this title and in this part, employees are subject to the conduct regulations contained in part 735 of this title and 28 CFR part 45.

§ 3801.102 Detailed or assigned special agents of certain Departmental components.

Notwithstanding a detail or assignment to another entity, any special agent of the Federal Bureau of Investigation or Drug Enforcement Administration who is subject to the regulations or standards of ethical conduct of that entity pursuant to § 2635.104 of this title shall also remain subject to the regulations in this part.

§ 3801.103 Designation of separate Departmental components.

(a) Pursuant to § 2635.203(a) of this title, each of the following components is designated as a separate agency for purposes of the regulations contained in subpart B of part 2635 of this title governing gifts from outside sources, and, accordingly, § 2635.807 of this title governing teaching, speaking, and writing:

Antitrust Division
Bureau of Prisons (including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division

Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for Immigration Review
Executive Office for United States Attorneys
(The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.)

Executive Office for United States Trustees
(The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.)

Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service
Independent Counsel appointed by the Attorney General
INTERPOL
National Drug Intelligence Center
Justice Management Division
Office of Information and Privacy
Office of Intelligence Policy and Review
Office of Community Oriented Policing Services

Office of Justice Programs
Office of the Pardon Attorney
Office of Policy Development
Offices of the United States Attorney (94)
(Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.)

Offices of the United States Trustee (21)
(Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.)

Tax Division
United States Marshals Service
United States Parole Commission

(b) Employees serving in positions within the Department but outside of the components designated in paragraph (a) of this section must continue to treat the entire Department of Justice as their employing agency for purposes of the gift rules of subpart B of part 2635 of this title and the application of the teaching, speaking and writing provisions found in § 2635.807 of this title.

§ 3801.104 Purchase or use of certain forfeited and other property.

(a) In the absence of prior approval by the agency designee, no employee shall purchase, directly or indirectly, from the Department of Justice or its agents property forfeited to the United States and no employee shall use property forfeited to the United States which has been purchased, directly or indirectly, from the Department of Justice or its agents by his spouse or minor child. Approval may be granted only on the basis of a written determination by the agency designee that in the mind of a

reasonable person with knowledge of the circumstances, purchase or use by the employee of the asset will not raise a question as to whether the employee has used his official position or nonpublic information to obtain or assist in an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. A copy of the written determination shall be filed with the Deputy Attorney General.

(b) No employee of the United States Marshals Service, Federal Bureau of Investigation, or Drug Enforcement Administration shall purchase, directly or indirectly, from his component, the General Services Administration, or the agent of either, property formerly used by that component and no such employee shall use property formerly used by his component which has been purchased, directly or indirectly, by his spouse or minor child from his component, the General Services Administration, or the agent of either.

§ 3801.105 Personal use of Government property.

Employees are prohibited by part 2635 of this title from using Government property for other than authorized purposes. On April 21, 1995, the Department issued an internal policy authorizing limited personal use of Department of Justice office and library equipment and facilities by its employees. Employees with questions concerning this policy may seek advice and obtain a copy of the policy from their agency designee, who for this purpose shall be the Deputy Designated Agency Ethics Official for the employee's component.

§ 3801.106 Outside employment.

(a) *Definition.* For purposes of this section, outside employment means any form of employment, business relationship or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner. Speaking, writing and serving as a fact witness are excluded from this definition, so long as they are not combined with the provision of other services that do fall within this definition, such as the practice of law. Employees who wish to engage in compensated speaking and writing should review § 2635.807 of this title.

(b) Prohibited outside employment.

(1) No employee may engage in outside employment that involves:

(i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or minor children;

(ii) Any criminal or habeas corpus matter, be it Federal, State, or local; or

(iii) Litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker.

(2) Where application of the restrictions of paragraph (b)(1) of this section will cause undue personal or family hardship; unduly prohibit an employee from completing a professional obligation entered into prior to Government service; or unduly restrict the Department from securing necessary and uniquely specialized services, the restrictions may be waived in writing based upon a determination that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation. Employees should refer to DOJ Order 1735.1 on obtaining waivers. The Order is available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component.

(c) *Prior approval for outside employment.* (1) An employee must obtain written approval before engaging in outside employment, not otherwise prohibited by paragraph (b) of this section that involves:

(i) The practice of law; or

(ii) A subject matter, policy, or program that is in his component's area of responsibility.

(2) Employees should refer to DOJ Order 1735.1 for procedures on obtaining prior approval. A waiver granted pursuant to paragraph (b)(2) of this section will be sufficient to satisfy this prior approval requirement.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct that is prohibited by statute or Federal regulation.

TITLE 28—[AMENDED]**CHAPTER I—DEPARTMENT OF JUSTICE****PART 45—[AMENDED]**

2. The authority citation for part 45 is revised to read as follows:

Authority: 5 U.S.C. 301, 901, 7301; 18 U.S.C. 207, 208; 28 U.S.C. 503, 528; DOJ Order 1735.1.

§§ 45.735–1–45.735–3, 45.735–6–45.735–45 and the Appendix [Removed]; § 45.735–5 [Amended].

3. Part 45 is amended by revising the part heading to read “Employee Responsibilities” and removing the following sections:

§§ 45.735–1 through 45.735–3
§ 45.735–5(a)
§§ 45.735–6 through 45.735–7
§§ 45.735–8 through 45.735–27
Appendix

§ 45.735–4 [Redesignated as § 45.2 and amended]

4. Section 45.735–4 is redesignated as § 45.2

§ 45.735–5(b) [Redesignated as § 45.3 and amended]

5. Section 45.735–5(b) is redesignated as § 45.3 and the section heading is revised to read “Financial interest exemptions.”

§ 45.735–7a [Redesignated as § 45.4]

6. Section 45.735–7a is redesignated as § 45.4.

7. A new § 45.1 is added to read as follows:

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Justice regulations at 5 CFR part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

[FR Doc. 96–29932 Filed 11–22–96; 8:45 am]
BILLING CODE 4410–AR–21

NATIONAL SCIENCE FOUNDATION**5 CFR Ch. XLIII**

RINs 3209–AA15, 3145–AA20

Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation

AGENCY: National Science Foundation (NSF or Foundation).

ACTION: Interim rule, with request for comments.

SUMMARY: The National Science Foundation, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NSF that supplement the Standards of Ethical Conduct for

Employees of the Executive Branch (Standards) issued by OGE. The rule is a necessary supplement to the Standards, and addresses ethical issues unique to NSF. It restricts employee participation in certain proposals and awards; provides for clearance for participation in NSF-supported conferences and in certain other outside activities, and prescribes certain ethics restriction on Members of the National Science Board.

DATES: Interim rule effective November 25, 1996. Comments are invited and must be received on or before January 24, 1997. Comments will then be evaluated in order to determine what changes, if any, may be needed.

ADDRESSES: Send comments to the Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Charles S. Brown, Designated Agency Ethics Official, Office of the General Counsel, National Science Foundation, telephone 703–306–1080, FAX 703–306–0149.

SUPPLEMENTARY INFORMATION:**I. Background.**

On August 7, 1992, the Office of Government Ethics published Standards of Ethical Conduct for Employees of the Executive Branch (Standards) that are now codified at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733) and 61 FR 50689–50691, with additional grade period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards took effect on February 3, 1993, and set uniform standards of ethical conduct for all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to properly implement agency ethics programs. The Foundation, with OGE's concurrence, has determined that the following supplemental rule, being codified in new chapter XLIII of 5 CFR, consisting of part 5301, is necessary to successfully implement NSF's ethics program in light of NSF's unique programs, structure, and operations. Today NSF also published in the Federal Register regulations that repeal portions of its conflict of interest and standards of conduct regulations that are superseded by 5 CFR part 2635 and by these supplemental regulations.

II. Analysis of the Regulations

Section 5301.101 General

Section 5301.101(a) explains that the regulations contained in the interim rule apply to all NSF employees, including members of the National Science Board (NSB), and that they supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635.

Section 5301.101(b) sets forth definitions that apply to the interim rule. While the rule contains provisions applicable to special Government employees, including Members of the NSB, particular substantive provisions apply to special Government employees and NSB Members only when the substantive language specifically makes that provision applicable. Thus, for purposes of the NSF supplemental regulations only, the definitional language in paragraph (b)(2) defines the term "employee" to exclude special Government employees, including Members of the NSB. Exclusion of NSB Members from this definitional language facilitates the adoption of slightly different supplemental standards for NSB Members than those applicable to other NSF employees. The definition at § 5301.101(b)(2) has no effect on the manner in which 5 CFR part 2635 applies to NSB Members or other special Government employees. They continue to be covered by the definition of an employee at 5 CFR 2635.102(h) and to be subject to the standards in part 2635 applicable to all employees of the executive branch, including special Government employees.

The definition of "award" in paragraph (b)(1) is intended to make it clear that, for purposes of interpreting the standards set forth in §§ 5301.102 through 5301.105 of this interim rule, the term is to be broadly construed to cover financial arrangements made by the Government including, but not limited to, those that are in the nature of a grant, contract, cooperative agreement, or loan. The definition of a "proposal" in paragraph (b)(4) is included to make it clear that, for similar purposes, the term covers any application for such a financial arrangement, even though it is not technically denominated a "bid" or "proposal."

A definition of "institution" is provided in paragraph (b)(3). Since NSF awards are ordinarily made to "institutions," paragraph (b)(3) makes it clear that this term is to be interpreted broadly. In accordance with OGE formal advisory opinion 82 OGE 1, regarding the breadth of the term "organization," as used in 18 U.S.C. 208 and applied to

State colleges, universities, and higher education systems, the definition applies to all parts of multi-institution State or city university systems. (See pp. 851-857 of the bound volume available from the Government Printing Office entitled *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979-1986)*.) However, the definition treats consortia as separate "institutions" from the colleges and universities that belong to them.

Section 5301.102 Participation in Proposals and Awards

Section 5301.102(a) supplements subpart E (Impartiality in Performing Official Duties) of 5 CFR part 2635 with additional standards to be used in determining whether NSF employees should or should not participate as part of their official duties in proposals and awards. Where disqualification is not mandated by 18 U.S.C. 208, subpart E creates a mechanism for determining whether employees should be disqualified on grounds of lack of impartiality from participation in proposals, awards, and other particular matters involving specific parties. With the exception of party matters that affect the financial interests of a member of the employee's household, the mechanism in subpart E is specifically triggered only when a person with whom the employee has a covered relationship is a party or represents a party to the matter. The definition of a "covered relationship" in 5 CFR 2635.502(b)(1), however, does not cover all the affiliations and relationships that NSF believes should be considered in determining whether an NSF employee's participation in a proposal or award is appropriate.

Paragraph (a)(3) of § 5301.102 lists the additional relationships that are likely to raise questions about an NSF employee's ability to participate with complete impartiality in proposals and awards involving the persons with whom the employee has the affiliation or relationship. As provided in paragraph (a)(1) of § 5301.102, one effect of paragraph (a)(3) is to create additional categories of covered relationships for NSF employees that are to be addressed under all or part of the mechanism set forth in subpart E. For certain relationships, paragraph (a)(2) eliminates the discretion an employee is otherwise given by 5 CFR 2635.502(a) to make the initial judgment call as to whether his or her participation would cause a reasonable person to question the employee's impartiality in the matter. Paragraph (a)(2) provides that

where an affiliation listed in paragraph (a)(3) is denoted as "automatically disqualifying," the employee is disqualified from participating in a proposal or award to which the institution or person is a party unless the employee's participation is authorized by the agency designee with the concurrence of the Office of the General Counsel.

The Foundation has long recognized that prospective, current, and recent NSF employees are likely to be perceived as having an unfair advantage in obtaining NSF awards. Section 5301.102(b) continues NSF's current practice of making sure that employees disclose the involvement or likely involvement of prospective, current, or recent NSF employees in a proposal or award to an appropriate official who, in turn, will ensure that the proposal is fairly evaluated or the award is fairly administered.

Section 5301.102(b) also requires employees to disclose the involvement or likely involvement of current Members of the NSB. These Members are special Government employees, but because they constitute NSF's governing body, they too may be perceived as benefiting from an unfair advantage in obtaining NSF awards. Nonetheless, Members of the NSB are appointed by the President and are not "recruited" by NSF in the same manner as are prospective NSF employees. For this reason, NSF has decided not to require the reporting of the involvement or likely involvement of "prospective" NSB Members. Section 5301.102(b) also does not impose a reporting requirement with respect to "recent" NSB Members. Members work at NSF for so few days a year that recent NSB Members are unlikely to have developed close ties with NSF employees who might handle a proposal or award to which the recent NSB Member is a party.

Section 5301.103 Outside Employment and Activities

Pursuant to 5 CFR 2635.802(a), § 5301.103(a) of this interim rule imposes restrictions on NSF employees engaging in certain outside employment and activities. It prohibits them from receiving any form of compensation or reimbursement from an NSF award, serving as principal investigator or project director under an NSF award, and receiving compensation or expenses for participating in conferences and other events supported by NSF funds. The prohibitions are imposed on the basis of NSF's determination that employees' participation in such activities would be likely to raise questions as to whether they were

improperly using their official positions for private gain.

Under 5 CFR 2635.803, an agency may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities where it determines that such a requirement is necessary or desirable for the purpose of administering its ethics program. The Foundation has made that determination with respect to the requirements for prior approval of outside employment and activities set forth in § 5301.103(b).

Section 5301.103(b)(1) requires NSF employees to obtain prior approval from an agency designee to engage in compensated outside employment with any institution or person doing or expected to do business with NSF, or to serve, with or without compensation, on such an institution's visiting committee. This is a new requirement intended to help protect employees from inadvertent violation of substantive ethics laws and regulations.

Section 5301.103(b)(2)(i) is similar to a previous NSF rule requiring a permission from an ethics counselor in the Office of the General Counsel to hold a policymaking office in a research institution, scientific society, or professional association. It is intended to ensure that NSF employees wishing to hold such positions receive appropriate assistance from an ethics official in dealing with the complex issues that arise from affiliations of this character.

Section 5301.103(b)(2)(ii) imposes an approval requirement for NSF employees who wish to participate, in their personal capacities, in NSF-funded events where the participation takes the form of presenting a paper, or serving as organizer, director, proceedings editor, or session chairperson. The Foundation is concerned that some may perceive NSF employees to be in a better position than others to enhance their personal professional credentials by such participation in NSF-supported events. This approval requirement is therefore intended to ensure that employees actually do not misuse their official positions in participating in NSF-supported events in their personal capacities.

Section 5301.103(b)(3) sets forth the standard to be used by officials who review and approve requests to engage in the outside activities specified in paragraph (b). This standard is intended to ensure that these determinations are not made arbitrarily, but on the basis of applicable statutes part 2635, and this supplemental regulation.

Section 5301.104 Participation in NSF-Supported Conferences

For employees who wish to participate in their personal capacities in NSF-supported events, § 5301.104(a) provides cross-references to the relevant prohibitions and approval requirements contained in § 5301.103.

Section 5301.104(b) addresses the concern that some may perceive NSF employees to be in a better position than others to enhance their professional standing by participating in NSF-sponsored events. Very often, those presenting papers, chairing sessions, editing proceedings, or serving as directors or organizers at conferences or other scientific events will take credit for that participation on their resumes with the expectation that they will be accorded some recognition for these professional activities. The fact that the employee's participation takes place in an official rather than a personal capacity is unlikely to have a bearing on the degree to which that participation enhances his or her credentials and professional standing.

Paragraph (b)(1) thus serves as a corollary to the prohibitions and prior approval requirements in § 5301.103 (a)(3) and (b)(2)(iii) that apply to personal participation in NSF-supported events. With an exception for events that primarily serve NSF purposes, it requires prior approval for certain forms of participation in NSF-funded events when undertaken by NSF employees as part of their official duties. The approval standard set forth in § 5301.104(b)(2) requires a balancing of the importance of the employee's official participation against the likelihood that his or her participation may be viewed as use of official position to enhance the employee's professional credentials.

Section 5301.105 Restrictions Applicable to Members of the National Science Board

Much like § 5301.102(a), § 5301.105(a) supplements subpart E of 5 CFR part 2635 with additional standards to be used in determining whether National Science Board (NSB) Members should or should not participate as part of their official duties in proposals and awards. As with § 5301.102(a), the definition of a "covered relationship" in 5 CFR 2635.502(b)(1) does not cover all the affiliations and relationships that NSF has determined need to be considered in deciding whether an NSF Member's participation in a proposal or award is appropriate.

Paragraph (a)(3) lists the additional relationships that are likely to raise

questions about the Member's ability to participate with complete impartiality in proposals and awards involving the persons with whom the Member has the affiliation or relationship. Paragraphs (a)(3)(i)(A) and (a)(3)(ii) denote relationships as "automatically disqualifying." Here the Member is disqualified from participating unless the NSB Chairman or the Designated Agency Ethics Official authorizes the Member to participate in accordance with paragraph (a)(2). Affiliations not identified as "automatically disqualifying" in paragraph (a)(3)(i) will be addressed in the same manner as covered relationships described in subpart E of 5 CFR part 2635.

Section 5301.105(b)(1) maintains the NSF's previous rule barring Members from representing themselves or others in dealings with NSF staff. National Science Board Members are special Government employees who ordinarily work at NSF for so few days per year that they are not covered by the sixty-one-day threshold on the agency-wide representation restriction contained in 18 U.S.C. 205. Yet unlike most special Government employees, NSB Members have significant decisionmaking responsibility for management of the agency. The Foundation has found that a prohibition on NSB Members negotiating with NSF staff prevents even the appearance that they are in a position to misuse their official positions to improperly influence normal decisionmaking processes.

Section 5301.105(b)(2) maintains the NSF's previous restrictions on Members' receipt of compensation from NSF awards made during their terms of service and, in so doing, strikes a balance between their role as NSB Members and their continuing outside careers in science, engineering, and education.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The National Science Foundation has found that good cause exists under 5 U.S.C. 553 (b) and (d) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this final rule. Similar regulations have been applicable to NSF employees under the now suspended NSF regulations contained in 45 CFR parts 680, 681, 682, 683, and 684. An immediate effective date is necessary to effect a smooth regulatory transition and minimize any lapse in applicable procedural and substantive rules relating to prior approval of outside activities due to the

expiration of "grandfathering" provisions contained in the OGE Standards.

Moreover, the rulemaking requirements of the Administrative Procedure Act are not applicable to this final rule because it deals with agency organization, procedure, or practice, 5 U.S.C. 553(b), and relates to matters of agency management and personnel, 5 U.S.C. 553(a)(2). The final rule also contains substantive provisions that grant or recognize an exemption or relieve a restriction such that an immediate effective date is permitted under 5 U.S.C. 553(d)(1).

Executive Order 12966

In promulgating this interim rule, the National Science Foundation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed a significant rule thereunder.

Regulatory Flexibility Act

The National Science Foundation has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities, because it primarily affects NSF employees, as well as prospective and former NSF employees.

Paperwork Reduction Act

The National Science Foundation has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 5301

Conduct standards, Conflict of interests, Ethical standards, Executive Branch Standards of Conduct, Government employees, National Science Foundation.

Dated: November 14, 1996.

Lawrence Rudolph,
General Counsel, National Science Foundation.

Approved: November 18, 1996.

Stephen D. Potts,
Director, Office of Government Ethics.

For the reasons set forth in the preamble, the National Science Foundation, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XLIII, consisting of part 5301, to read as follows:

CHAPTER XLIII—NATIONAL SCIENCE FOUNDATION

PART 5301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL SCIENCE FOUNDATION

Sec.

5301.101 General.

5301.102 Participation in proposals and awards.

5301.103 Outside employment and activities.

5301.104 Participation in NSF-supported conferences.

5301.105 Restrictions applicable to Members of the National Science Board.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1870(a); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.106, 2635.502, 2635.802(a), 2635.803.

§ 5301.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Science Foundation (NSF), including Members of the National Science Board. They supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Definitions.* For purposes of this part, unless a provision plainly indicates otherwise:

(1) *Award* means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(2) *Employee* has the meaning set forth in 5 CFR 2635.102(b), except that, for purposes of this part, it shall not include a special Government employee.

(3) *Institution* means any university, college, business firm, research institute, professional society, or other organization. It includes all parts of a university or college, including all institutions in a multi-institution State or city system. It includes any university consortium or joint

corporation, but not the individual universities that belong to such a consortium. Those universities shall be considered separate institutions for purposes of this part.

(4) *Proposal* means an application for an award and includes a bid.

§ 5301.102 Participation in proposals and awards.

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether an employee or a special Government employee, other than a Member of the National Science Board, should participate as part of his official duties in a proposal or award, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered additional "covered relationships" for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as "automatically disqualifying," an employee shall not participate in a proposal or award in which the institution or other person with whom the employee has a covered relationship is or represents a party unless participation is authorized in accordance with 5 CFR 2635.502(d) by the agency designee, with the concurrence of an ethics counselor in the Office of the General Counsel.

(3) An employee has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution with which the employee is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award;

(B) Current enrollment of the employee or a member of the employee's household as a student;

(C) Receipt and retention of an honorarium or other form of compensation, award, or off-duty travel payment from the institution within the last twelve months. The relationship is automatically disqualifying, unless the payment or award was received before beginning Government service; and

(ii) A person who is an investigator or project director on or who otherwise is identified in a proposal as a party to the

proposal or award and with whom the employee has:

(A) A family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying;

(B) Associated, in the past or currently, as thesis advisor or thesis student;

(C) Collaborated on a project, book, article, report, or paper within the last 48 months; or

(D) Co-edited a journal, compendium, or conference proceedings within the last 24 months.

(b) *Reporting involvement of prospective, current, or recent employees.* (1) When an employee who is participating in a proposal or award becomes aware that a prospective, current, or recent NSF employee or current National Science Board member is or is likely to become a member of the research group or project staff under that proposal or award, the employee shall bring that circumstance to the attention of an agency designee. For purposes of this paragraph:

(i) A "recent NSF employee" is any former NSF employee who left the NSF within the year before submission of the proposal at issue or on which the award was based.

(ii) A "prospective NSF employee" is any person being recruited by an NSF official for a specific opening and from whom the official has received an indication of mutual interest. Such a person is a "prospective NSF employee" even though those recruiting have not extended an offer and even though the person might not accept an offer if it were extended.

(2) The agency designee shall review the circumstances to determine what action, if any, should be taken to assure that the proposal or award is administered impartially and otherwise in compliance with applicable laws and regulations, including this part, 5 CFR part 2635, 18 U.S.C. 207 and 208, and 45 CFR part 680.

§ 5301.103 Outside employment and activities.

(a) *Prohibited outside employment and activities.* (1) An NSF employee may not receive, directly or indirectly, any salary, consulting fee, honorarium, or other form of compensation for services, or reimbursement of expenses, from an NSF award.

(2) An NSF employee may not serve as principal investigator or project director under an NSF award.

(3) An NSF employee may not receive, directly or indirectly, any honorarium or any other form of compensation, or reimbursement of

expenses from anyone, other than the United States, for participating in an event supported by NSF funds.

(b) *Prior approval of outside employment and activities.* (1) An employee shall obtain written approval from an agency designee before:

(i) Engaging in compensated outside employment with any person or institution (including any for-profit, non-profit, or governmental organization) which does business or may reasonably be expected to do business with the NSF. For these purposes, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement for publication of the written product; or

(ii) Serving, with or without compensation, on a visiting committee with any institution that does business or may reasonably be expected to do business with NSF.

(2) In addition to any prior approval required in paragraph (b)(1) of this section, an employee shall obtain prior written approval:

(i) From an ethics counselor in the Office of the General Counsel before participating, with or without compensation, as a policymaking officer of any research or educational institution or any scientific society or professional association; and

(ii) From his Assistant Director or Office head before serving in a personal capacity as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar event supported by NSF funds, or before presenting a paper at such an event.

(3) The approvals required by paragraphs (b)(1) and (b)(2) of this section shall be granted only upon a determination by the appropriate NSF official that the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.

§ 5301.104 Participation in NSF-supported conferences.

An NSF employee may participate in conferences, workshops, and similar events supported by NSF funds provided that:

(a) Where the employee's participation is undertaken in a personal capacity, his participation does

not violate the restrictions on outside employment and activities of § 5301.103(a), and the approval requirements of § 5301.103(b) have been met.

(b) Where the employee's participation is undertaken as part of his official duties as an NSF employee:

(1) The employee shall obtain prior written approval from his Assistant Director or Office head before serving as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar event sponsored by NSF funds, or before presenting a paper at such an event. However, prior approval is not required where the primary purpose of the event is to plan, assess, or publicize NSF programs or needs, or where the subject of the paper or session to be presented focuses on NSF programs or needs.

(2) The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the importance of the employee's participation outweighs any appearance of use of official position to enhance his personal credentials.

§ 5301.105 Restrictions applicable to Members of the National Science Board.

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether a Member of the National Science Board (Board) should participate as part of his official duties in a proposal or award coming before the Board or any of its committees, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered "covered relationships" for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as "automatically disqualifying," a Member of the National Science Board shall not participate in a proposal or award in which the institution or other person with whom the Member has a covered relationship is or represents a party, unless participation is authorized in accordance with 5 CFR 2635.502(d) by the Chairman of the National Science Board or by the Designated Agency Ethics Official.

(3) A Member of the National Science Board has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution or other person with which the Member is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award; or

(B) Current enrollment of the Member or a member of his household as a student; and

(ii) A person who is an investigator or project director or who is otherwise identified in a proposal as a party to the proposal or award and with whom the Member has a family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying.

(b) *Outside employment and activities.* (1) A Member of the National Science Board shall not represent himself, herself, or any other person in negotiations or other dealings with an NSF official on any proposal, award, or other particular matter, as defined in 5 CFR 2635.402(b)(3).

(2) A Member of the National Science Board may not receive compensation from any award made while serving on the Board. However, unless prohibited by law, an award may be charged, and a Member may be reimbursed, for actual expenses incurred by the Member in doing work supported by the award. If a Member was an investigator or consultant under an award before appointment to the Board, the award may be charged and the Member may continue to receive compensation to the extent established before the Member's nomination.

[FR Doc. 96-29991 Filed 11-22-96; 8:45 am]
BILLING CODE 7550-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96-906-3 FIR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of Pack and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with minor modification, the provisions of an interim final rule

revising pack requirements for grapefruit and certain types of oranges under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas to allow larger sizes of fruit to be marketed in fresh channels. This rule also reduces current minimum size requirements for Texas grapefruit. These actions were recommended by the Texas Valley Citrus Committee (TVCC), the agency responsible for local administration of the marketing order. These changes will enable the industry to market a wider range of sizes of citrus fruit in fresh market channels, thereby meeting consumer demand, increasing sales, and improving returns to growers.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522-S, Washington, DC 20090-6456, telephone (202) 690-3670, Fax # (202) 720-5698; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone (210) 682-2833, Fax # (210) 682-5942. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12865.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of oranges and grapefruit subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. The majority of Texas orange and grapefruit handlers and producers may be classified as small entities.

This final rule revises pack requirements for grapefruit and certain varieties of oranges to allow larger sizes to be marketed in fresh channels. Pack requirements are stated in terms of certain size designations. Size designations are defined in terms of minimum and maximum diameter. Improved irrigation methods, technological advances, and improved cultural practices have resulted in the Texas citrus industry growing larger, good quality fruit. Pack regulations preclude this fruit from being marketed in fresh market channels (with the exception of small amounts allowed to exceed the maximum specific diameters), and it is generally directed to the processing market. The

processing market is currently in an oversupply situation and yields low returns to growers. Providing for additional supplies (an additional 5 to 10 percent) to be marketed fresh should enhance grower returns.

This final rule also reduces the minimum size requirements for grapefruit by allowing a broader range of sizes of grapefruit to be marketed. This final rule provides that pack size 112 grapefruit (if it grades at least U.S. No. 1) may be shipped throughout the entire season. This has been done in recent seasons. There is a market for this smaller grapefruit particularly in juice bars, health food stores, and other types of outlets that use smaller fruit for juicing. Some markets, such as Canada, prefer smaller fruit. Also, current drought conditions can lead to an abundance of smaller sizes. This rule enables handlers to market a broader range of sizes of citrus fruit in fresh market outlets, thereby meeting consumer demand, increasing fresh fruit sales, and enhancing returns to handlers and producers.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was issued on August 16, 1996, and published in the Federal Register (61 FR 43139, August 21, 1996), with an effective date of August 22, 1996. That rule amended § 906.340 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended September 20, 1996. No comments were received.

This action is in accordance with § 906.40(a) of the order. This section authorizes the Secretary to limit the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of fruit during a specified period or periods. Currently, minimum grade and size requirements, as well as pack and container requirements, are in effect for both grapefruit and oranges throughout the season. Shipments for certain purposes, including processing, are exempt from these requirements.

The TVCC met on May 29, 1996, and unanimously recommended changes in pack and minimum size requirements. The TVCC meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. TVCC meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews TVCC recommendations and information, as well as information from other sources, and determines whether

modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Revision of Pack Requirements

Pack requirements for oranges and grapefruit are in effect under § 906.340 of the order's rules and regulations. These requirements provide, among other things, that oranges and grapefruit be packed in accordance with certain size designations. These size designations are defined in terms of minimum and maximum diameters.

Oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia and similar late-type oranges, and (2) all other oranges. Navel, Valencia and similar late-type oranges must be packed in accordance with 13 size designations. The smallest of these is Size 324, which ranges from 2 1/16 to 2 3/16 inches in diameter. The largest size defined is Size 46, which ranges from 4 1/16 to 5 inches in diameter. Prior to issuance of the interim final rule, oranges other than navel, Valencia and similar late-type oranges were required to be packed in accordance with the various pack sizes in § 51.691(c) of the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the "orange standards."

The orange standards define seven pack sizes, from Size 324 (2 1/16 to 2 3/16 inches in diameter) to Size 100 (3 1/16 to 3 3/16 inches in diameter). To allow for variations incident to proper packing, a tolerance for undersized and oversized fruit is provided. The tolerance is in terms of the number of fruit in a sample that may be off-size—with the actual number increasing as the sample size increases. Otherwise oversized oranges other than navel, Valencia and similar late-type oranges would be diverted to exempt outlets, such as processing.

The TVCC recommended revising the orange pack regulations to allow all types of oranges to be packed in the full range of sizes—from Size 324 to Size 46. Thus, this rule finalizes a revision of § 906.340(a)(2)(i)(a), which specified pack requirements for oranges other than navel, Valencia and similar late-type oranges, to define the 13 size designations authorized for such oranges. The 7 smallest sizes are defined in the same way they are in the orange standards. (The minimum diameters are 1/16 inch larger than those specified for navels, Valencias and similar late-type oranges, while the maximum diameters are the same). The 6 sizes added for these oranges are defined similarly (that

is, the minimum diameters differ, but the maximum diameters are the same). The differences in the minimum diameters take into account varietal differences between these two categories of oranges and current industry practice.

Grapefruit are required to be packed within the diameter limits specified for the various pack sizes defined in § 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the grapefruit standards. Exceptions are that the minimum diameter for pack size 96 grapefruit is 3 1/16 inches, and for pack size 112 grapefruit, the minimum diameter is 3 3/16 inches.

The grapefruit standards define 8 pack sizes. The smallest is Size 125/126, which ranges from a minimum of 3 inches to a maximum of 3 1/16 inches in diameter. The largest is Size 46 which ranges from 4 1/16 to 5 inches in diameter. This rule adds a new, larger Size 36 grapefruit, which ranges in size from 4 3/16 to 5 1/16 inches in diameter.

Improved irrigation methods, technological advances, and improved cultural practices have resulted in the Texas citrus industry growing larger, good quality fruit. Pack regulations preclude this fruit from being marketed in fresh channels (with the exception of small amounts allowed to exceed the maximum specified diameters), and it is generally diverted to the processing market. The processing market is currently in an oversupply situation and yields low returns to growers. Providing for additional supplies (an estimated 5 to 10 percent) to be marketed fresh should, therefore, enhance grower returns.

Additionally, the TVCC indicated that there has been increased demand from consumers in recent years for a broader range of sizes of oranges and grapefruit. Providing that these larger sizes may be shipped will provide greater supplies and more choices to consumers. It should also make the Texas citrus industry more competitive with other citrus-growing areas, which have adapted their marketing efforts to meet consumer demands.

Finally, varying growing conditions in Texas result in diverse size distributions of oranges and grapefruit from season to season. Severe drought conditions may cause a season's crop to be 5 to 10 percent small sizes. Conversely, a rainy season may result in 5 to 10 percent large sizes. These changes in pack requirements to approve the shipment of all commercial sizes of oranges and grapefruit will provide handlers with the flexibility to market available

supplies in light of existing market conditions.

Revisions of Minimum Size Requirements for Grapefruit

Minimum size requirements for grapefruit are in effect under § 906.365 of the order's rules and regulations. During the period November 16 through January 31 each season, grapefruit must be at least pack size 96, with a minimum diameter of 3 1/4 inches. At other times, grapefruit that is pack size 112 (with a minimum diameter of 3 1/4 inches), may be shipped if it grades at least U.S. No. 1. Otherwise, the minimum grade requirement for grapefruit is Texas Choice. The smaller fruit is subject to a higher grade requirement because experience indicates that a market exists for this smaller fruit only if it meets a higher quality standard.

This final rule provides that pack size 112 grapefruit (if it grades at least U.S. No. 1) may be shipped throughout the entire season. This has been done in recent seasons. The Texas citrus industry has found that there is a market for this smaller grapefruit, particularly in juice bars, health food stores, and other types of retail outlets that use smaller fruit for juicing. In addition, some markets, such as Canada, prefer smaller fruit.

Also, as previously indicated, drought conditions can lead to an abundance of smaller sizes. Such conditions currently exist in the Lower Rio Grande Valley in Texas. The expected small sized grapefruit, which cannot be marketed profitably in processing outlets, will be made available to meet fresh market needs through this rule. This action is expected to result in improved grower returns.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 will enable Texas grapefruit handlers to meet market needs and compete with similar size grapefruit expected to be shipped from Florida.

These changes in pack and size requirements for Texas oranges and grapefruit are intended to broaden the range of sizes and increase the amount of fruit available to consumers and increase grower returns. An alternative to this rule is to leave the current regulations in place. However, that would result in more of the larger oranges and grapefruit and the smaller grapefruit going to processors, and less fruit going to the more lucrative fresh market, which yields higher returns to growers.

In the interim final rule, a conforming change to all references to "Table I" of paragraph (a)(2)(i)(c) of § 906.340 was

inadvertently omitted. The interim final rule did not specifically request that all references to "Table I" be revised to read "Table II." The final rule will be modified by revising the phrase "Table I" each time it appears to read "Table II."

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, with modification, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 61 FR 43139 on August 21, 1996, is adopted as a final rule with the following change:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 906.340 [Amended]

2. In § 906.340, paragraph (a)(2)(i)(c), the phrase "Table I" is revised to read "Table II" each time it appears.

Dated: November 15, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.
(FR Doc. 96-30033 Filed 11-22-96; 8:45 am)
BILLING CODE 3410-02-P

7 CFR Parts 997 and 998

[Docket No. FV96-096-2 FIR]

Assessment Rate for Domestically Produced Peanuts Handled by Persons Not Subject to Peanut Marketing Agreement No. 146 and for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established an assessment rate for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1996-97 and subsequent crop years. The Committee is responsible for local

administration of the marketing agreement which regulates the handling of peanuts grown in 16 States. Authorization to assess peanut handlers who have signed the agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. Public Law 103-86 requires the Department to impose an administrative assessment on farmers' stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to the agreement. Therefore, this same assessment rate established under the agreement also must be applied to all non-signatory handlers.

EFFECTIVE DATE: Effective on July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-6918, FAX 202-720-5698, or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770, FAX 941-299-5168. Small businesses may request information on compliance with this regulation by contacting: Jay Guerbet, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-2491, FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and as further amended December 12, 1989, hereinafter referred to as the "Act"; Public Law 101-220, section 4(1)(2), 103 Stat. 1878, December 12, 1989; Public Law 103-86, section 8b(b)(1), 107 Stat. 312, August 10, 1993; and under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to assessments. It is intended that the assessment rates issued herein

will be applicable to all assessable peanuts beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the agreement and, thus, will be subject to the regulations specified herein. Also, there are approximately 47,000 producers of peanuts in the 16 States covered under the agreement and approximately 32 handlers subject to regulation under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. A majority of the producers and the non-signatory handlers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

The peanut marketing agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the peanut agreement program are derived from signatory handler assessments. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs of goods and services in their local area and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The Committee met on March 19, 1996, and unanimously recommended

1996-97 administrative expenditures of \$1,025,500 and an administrative assessment rate of \$0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee met again on May 23, 1996, and with 17 favorable votes and one abstention voted not to recommend an assessment rate for indemnification for handler losses due to aflatoxin contamination. Adequate funds are included in the Committee's indemnification reserve for such expenses during the 1996-97 crop year. In comparison, last year's budgeted administrative expenditures were \$1,067,500. The assessment rate of \$0.70 is the same as last year's initially established rate. An interim final rule was published on June 13, 1996 (61 FR 29926) increasing last year's administrative assessment rate to \$0.83 per ton.

The finalization of that rule was published on August 20, 1996 (61 FR 42993).

Major expenditures recommended by the Committee for the 1996-97 year include \$112,450 for executive salaries, \$131,500 for clerical salaries, \$296,700 for field representatives salaries, \$42,000 for payroll taxes, \$148,000 for employee benefits, \$40,000 for Committee members travel, \$5,000 for staff travel, \$110,000 for field representatives travel, \$9,800 for insurance and bonds, \$46,200 for office rent and parking, \$14,000 for office supplies and stationery, \$13,200 for postage and mailing, \$15,000 for telephone and telegraph, \$6,000 for repairs and maintenance agreements, \$10,400 for the audit fee, and \$10,250 for the contingency reserve. Budgeted expenses for these items in 1995-96 were \$145,051, \$138,856, \$304,344, \$44,000, \$148,000, \$40,000, \$5,000, \$110,000, \$9,500, \$44,380, \$14,000, \$13,200, \$15,000, \$6,000, \$10,400, and \$4,789, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31 (c) and (d), are subject to the assessments. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Peanut shipments for the year under the agreement are estimated at 1,465,000 tons, which should provide \$1,025,500 in assessment income. Approximately 95 percent of the

domestically produced peanut crop is marketed by handlers who are signatory to the agreement.

Public Law 101-220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Public Law 103-66 (107 Stat. 312) provides for mandatory assessment of farmers' stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

An interim final rule regarding this action was published in the July 8, 1996, issue of the Federal Register (61 FR 35594). That interim final rule added §§ 997.101 and 998.409 to establish assessment rates for the Committee and non-signatory handlers. That rule provided that interested persons could file comments through August 7, 1996. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. This administrative assessment is required by law to be applied uniformly to all non-signatory handlers and should be of benefit to all. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings

are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the *Federal Register* because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) Pub. L. 103-66 requires the Department to impose an administrative assessment on peanuts received or acquired for the account of non-signatory handlers; (3) the 1996-97 crop year began on July 1, 1996, and the marketing agreement and Pub. L. 103-66 require that the rate of assessment for the crop year apply to all peanuts handled during the crop year; (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (5) an interim final rule was published on this action which provided a 30-day comment period, and no comments were received.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

Note: These sections will appear in the Code of Federal Regulations.

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published at 61 FR 35594 on July 8, 1996, is adopted as a final rule without change.

Dated: November 19, 1996.

Sharon Romer Lauritsen,
Acting Director Fruit and Vegetable Division.
[FR Doc. 96-30035 Filed 11-22-96; 8:45 am]
BILLING CODE 3410-02-F

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1748-96; AG Order No. 2063-96]

RIN 1115-AE27

Periods of Lawful Temporary Resident Status and Lawful Permanent Resident Status To Establish Seven Years of Lawful Domicile

AGENCY: Immigration and Naturalization Service (INS), Executive Office for Immigration Review (EOIR), Justice.
ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends Department of Justice regulations that limit discretion to grant an application for relief under section 212(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(c), by expanding the class of aliens eligible for section 212(c) relief. This interim rule allows an alien who has adjusted to lawful permanent resident status pursuant to section 245A, 8 U.S.C. 1255a, or section 210, 8 U.S.C. 1160, of the Act to use the combined period of his or her status as a lawful temporary resident and lawful permanent resident to establish seven (7) years of lawful domicile in the United States for purposes of eligibility for section 212(c) relief. This interim rule will provide uniformity between the regulation and case law.

DATES: This interim rule is effective November 25, 1996. Written comments must be submitted on or before December 26, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS number 1748-96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike,

Falls Church, Virginia 22041, telephone (703) 305-0470; David M. Dixon, Chief Appellate Counsel, Immigration and Naturalization Service, Suite 309, 5113 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 766-8257.

SUPPLEMENTARY INFORMATION: Under recent case law, an alien who has acquired lawful permanent resident status under section 245A of the Act may accrue the seven (7) years of lawful domicile required for purposes of section 212(c) relief from the date of his or her application for temporary resident status. See *Robles v. INS*, 58 F.3d 1355 (9th Cir. 1995); *Avelar-Cruz v. INS*, 58 F.3d 338 (7th Cir. 1995); *Castellon-Contreras v. INS*, 45 F.3d 149 (7th Cir. 1995). The current regulation allows an alien to apply for section 212(c) relief only if he or she has established at least seven consecutive years of lawful permanent resident status immediately prior to filing the application. See 8 CFR 212.3(f)(2). The Board of Immigration Appeals (BIA) has determined that, in cases arising in the Ninth Circuit, an alien may use the period of temporary resident status to establish the requisite seven years. See *In re Carlos Cazares-Alvarez*, Interim Decision 3262 (BIA 1996). However, in cases arising in circuits without such a temporary resident status rule, the BIA has determined that the current regulation requires seven years of lawful permanent resident status. See *In re Hector Ponce de Leon-Ruiz*, Interim Decision 3261 (BIA 1996). The BIA has referred these cases to the Attorney General pursuant to 8 CFR 3.1(h)(1)(ii) to resolve the issue. The issue raised in *White v. INS*, 75 F.3d 213 (5th Cir. 1996) (whether 8 CFR 212.3(f)(2) is consistent with 8 U.S.C. 1182(c) and therefore is entitled to deference), has been addressed and rendered moot by section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996) (repealing section 212(c) and substituting other relief), effective April 1, 1997, codified at section 240A of the Immigration and Nationality Act as amended. The *White* court computed the years of lawful unrelinquished domicile (including the years of lawful temporary resident status) rather than lawful permanent residence in determining eligibility for relief.

This interim rule will permit an alien to demonstrate lawful domicile for section 212(c) relief purposes by combining his or her status as a lawful temporary resident and as a lawful permanent resident under section 245A or section 210 of the Act. This rule,

which is necessary for consistency between the regulation and case law, will become effective immediately.

The Department's implementation of this rule as a interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d)(3). The reasons and necessity for immediate implementation of this interim rule are as follows: (1) To resolve the conflict among the circuits regarding this issue; (2) to respond to the controversy raised by the BIA decisions; (3) to render moot the decisions referred to the Attorney General by the BIA; and (4) to provide a benefit to those aliens who meet its criteria. An abbreviated comment period of 30 days is necessary because of the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, supra, which repeals the provision for section 212(c) relief and substitutes other relief, effective April 1, 1997. This regulation thus will be applicable only in the case of aliens in proceedings and who have filed an application for section 212(c) relief as of the effective date. Nothing in this regulation is intended to affect, nor will it affect, the operation of the Illegal Immigration Reform and Immigrant Responsibility Act, supra, to applications for relief pending on the general effective date of that act.

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. It will affect certain individual aliens, not small entities. This rule does not constitute significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6(b) of Executive Order 12812.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.3 paragraph (f)(2) is revised to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(f) * * *
(2) The alien has not maintained lawful domicile in the United States, as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the Act, for at least seven consecutive years immediately preceding the filing of the application;

Dated: November 19, 1996.

Janet Reno,
Attorney General.
[FR Doc. 96-29996 Filed 11-22-96; 8:45 am]
BILLING CODE 4410-10-M

8 CFR Part 245

[INS No. 1373-95]

RIN 1115-AD12

Adjustment of Status to That of Person Admitted for Permanent Residence: Interview

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule published in the *Federal Register* by the Immigration and Naturalization Service (the Service) on November 2, 1992, which allows the Service to determine when interviews are needed to adjudicate applications for adjustment of status to that of a lawful permanent resident alien. This action is considered necessary to promote more efficient adjudications and convenience to the public.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

Section 245 of the Immigration and Nationality Act (the Act) provides that the status of certain aliens in the United States may be adjusted to that of lawful permanent residents at the discretion of the Attorney General under such regulations as she may prescribe. This

process, known as adjustment of status, is governed by section 245 of the Act and 8 CFR part 245. Pursuant to 8 CFR 245.6, an applicant over the age of 14 is generally required to be interviewed by an officer of the Service.

On November 2, 1992, the Service published an interim rule with request for public comments in the *Federal Register*, at 57 FR 49374-49375. The rule revised 8 CFR 245.6 to allow the Service to conduct interviews only in cases where it determines that an interview is necessary. The rule also eliminated a provision allowing interviews to be waived for persons who had applied before November 20, 1990, for adjustment of status under the Cuban Adjustment Act of November 2, 1996, since that specific provision was no longer needed.

The interim rule became effective on November 2, 1992. Interested persons were invited to submit written comments regarding the interim rule on or before December 2, 1992. The Service received five written comments regarding the rule. Since the closing of the period for public comment, no new factors have affected the stated basis for the interim rule. Meanwhile, significant increases in total application receipts have underscored the need for promoting efficient use of adjudications resources. The following discussion summarizes the issues involved in the interview determination rule, including those raised by the commenters, and the conclusions reached by the Service.

Fraud

Traditionally, the interview of applicants for adjustment of status has been seen as an important element in the Service's ability to detect and deter fraud. On that account, one commenter opposed the change to selective interviewing. Citing reports indicating a significant number of fraudulent marriages connected with petitions for immigration benefits, he concluded that the prospect of an interview deters additional persons from fraudulently claiming eligibility for lawful permanent resident status. The Service shares this interest in avoiding the creation of opportunities for fraud. However, the conversion to select interviewing does not assure any particular applicants that they will not be interviewed and does not limit the Service's ability to interview a particular applicant for permanent resident status. Interviews of a significant number of applicants, particularly those claiming eligibility based on a recent marriage, will continue. In fact, the Service intends to conduct interviews in all cases in which

it is likely that the interview would disclose a basis for ineligibility.

The possibility that fraudulent claims would be increased by the combination of selective interviewing and the direct mailing of adjustment applications to the four service centers was another consideration. A commenter suggested that service center adjudicators, who do not conduct interviews, lack the experience of working on suspect cases and the knowledge of fraud patterns prevalent in particular localities, and therefore would be unable to identify those applications for which an interview is needed. The Service's view is that adjudicators at the service centers have sufficient experience and training in the detection of fraudulent claims to eligibility for immigration benefits and that they will continue to apply this knowledge in determining when interviews are not necessary. For example, when processing petitions to remove the conditions imposed on persons who obtained permanent residency based on a recent marriage during the past several years, the responsibility for assessing the risk of fraud has been assigned to service center adjudicators, who refer suspect cases to local offices for interview. Service center adjudicators also recently handled a large number of applications for adjustment of status under the Chinese Student Protection Act of 1992 in a similar manner.

Impact of the Interview Determination Program on the Adjustment Application Filing Fee

Another issue raised by the interview determination program is whether its efficiencies should result in a reduction in the current fee for adjustment of status applications. One commenter reasoned that a decrease in the number of interviews would result in the Service spending less to process applications for adjustment of status, yielding savings that should be passed to the public in the form of a lower filing fee. However, the Service does not intend that the elimination of some interviews will lessen the total resources devoted to adjudication of applications for adjustment of status; rather, the change will shift some workloads and costs from the district offices to the service centers. Officer time and other resources formerly devoted to interviewing clearly eligible applicants will be dedicated to uncovering fraud in high-risk adjustment of status cases. Also, a previously discussed, a significant number of applicants will continue to be interviewed. Therefore, while the decrease in the percentage of cases

interviewed will benefit many applicants, the Service does not expect it to change significantly the overall cost of adjudicating adjustment applications.

Processing Time

As far as maintenance of adjudications standards allows, the Service has an abiding interest in minimizing the time required to complete action on adjustment of status applications. One commenter saw the interim rule as an example of Service efforts to alleviate adjudications backlogs and make the most of existing resources, while another recommended that the Service issue a decision within 90 days of receipt of the application.

Timely adjudication of requests for benefits is a Service goal, and selective waiving of interviews will allow decisions to be issued more quickly in routine and non-suspect adjustment of status cases. The Service has recently introduced Customer Service Standards which aim at completing action on adjustment applications within a shorter time. However, since some Service offices currently have heavier caseloads in relation to available personnel, they may incur backlogs longer than those of other offices. Caseloads are also subject to unanticipated surges in the number or type of applications received. Final processing may be delayed in individual cases for other reasons outside the adjudicator's control, as when additional time is required to await an immigrant visa priority date, the receipt of supplementary information from the applicant, or the completion of an investigation regarding a questionable claim.

Applicant Request for Waiver of Interview

A question whether there would be a procedure allowing an applicant to request a waiver of the interview has been considered. The determination whether an interview is necessary involves evaluation of all relevant factors concerning the application, including any special circumstances. However, the decision will be made on the basis of the evidence of eligibility and not an applicant's desire to avoid an interview. The Service cannot assure an applicant in advance that no interview will be required, since information may be received which discloses the need for interview of an application who initially did not appear to require it. Consequently, the INS will not adopt a procedure to entertain advance requests to waive the interview.

The Selection of Cases

Each adjustment of status application will be reviewed on a case-by-case basis to determine whether an interview is needed. The Service will monitor fraud trends and the use of the interview determination provision to provide guidelines for adjudicators.

Concern was expressed as to how the interview determination decision would be reached, particularly if it would result in interviews being called merely to address minor documentary deficiencies. A minor deficiency is not, in itself, an indicator of fraud. The Service does not plan to interview an applicant solely because he or she neglected to submit a document which can be more easily requested and submitted by mail.

A commenter suggested that the Service adopt a nationwide list of specified adjustment application categories which, in her opinion, presented a low risk of fraud and yet were consuming nearly half of the staff time devoted to adjustment interviews in a large district office; the time freed by waiving interviews of such cases could then be re-directed to fraud deterrence and reduction of the waiting time for processing applications. The Service recognizes that at any point in time there are categories of applications which pose a generally lower risk of fraud than others. However, it does not follow that the rule must be altered on that account. A regulation prescribing fixed categories of applications for which interviews must be waived would hamper the Service's flexibility in adjusting to changes in fraud profiles and caseloads. The existing rule, which neither specifies nor limits the types of adjustment cases on which the interview determination may be made, affords the Service and its adjudicating offices the widest freedom of action to balance local needs and priorities.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors: This rule merely adopts as final an interim rule which has been in effect since November 2, 1992. By removing the interview requirement, the rule has eliminated an inconvenience to a number of individual applicants for adjustment of status who otherwise would have been required to appear in

person at a Service office to be interviewed by an immigration examiner. This rule does not have impact on small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12812

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 245 which was published at 57 FR 49374-49375 on November 2, 1992, is adopted as a final rule without change.

Dated: October 28, 1996.

Deris Melander,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96-29971 Filed 11-22-96; 8:45 am]

BILLING CODE 4110-10-M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505-AA71

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Amendments to interim rule.

SUMMARY: The Department of the Treasury is issuing revisions to the interim regulations for the Bank Enterprise Award (BEA) Program published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and

February 29, 1996. The BEA Program was authorized by the Community Development Banking and Financial Institutions Act of 1994. The program is designed to encourage insured depository institutions to make equity investments in or otherwise support Community Development Financial Institutions and/or increase lending and other services provided within distressed communities.

DATES: This interim rule is effective November 25, 1996. Comments must be received on or before December 26, 1996.

ADDRESSES: All questions or comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund at (202) 622-8862. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. General

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Moreover, the Department of the Treasury finds that any economic or other consequences of this interim rule are a direct result of the implementation of statutory provisions.

Administrative Procedures Act

Pursuant to 5 U.S.C. 553(a)(2), these amendments are not subject to the provisions in 5 U.S.C. 553(b) concerning notice and public comment or the delayed effective date provisions of 5 U.S.C. 553(d). Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. These revisions are intended to amend the interim regulations for the BEA Program that were published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996. The purpose of the revisions is to give applicants greater flexibility as to the type of instruments that will be considered Equity Investments, reduce the burden

associated with reporting certain Eligible Development Activities, and permit applicants that achieved less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of their projected activities to receive a partial, pro-rated award.

Catalog of Federal Financial Assistance Number Bank Enterprise Award Program—21.021.

II. Background

On October 19, 1995, the Department published interim regulations in the Federal Register for the Bank Enterprise Award Program (12 CFR part 1806). These interim regulations were amended pursuant to revisions published in the Federal Register on January 23, 1996 and corrections to these revisions published in the Federal Register on February 29, 1996. Subsequent to the publication of such interim regulations, as amended, the Department has developed policies designed to clarify several existing provisions in the interim regulations. The purpose of these amendments is to give applicants greater flexibility as to the type of instruments that will be considered Equity Investments, reduce the burden associated with reporting certain Eligible Development Activities, and permit applicants that achieved less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of their projected activities to receive a partial, pro-rated award.

III. Bank Enterprise Award Program

Under the Bank Enterprise Award Program (12 CFR Part 1806), the Department will provide awards to selected Applicants that successfully carry out certain community development activities. The following summarizes the amendments to the interim regulations.

Definitions

The term "Equity Investment" is amended in Section 1806.103(g) to give Applicants greater flexibility as to the type of instruments that will be considered Equity Investments. An Equity Investment shall be considered new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), a purchase of any type of partnership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an equity investment by the Fund.

Measuring Activities

Section 1806.202(a) is revised to give an Applicant the option of reporting their activities in all categories of Qualified Activities or providing an explanation satisfactory to the Fund for not reporting in all categories and providing any certifications reasonably deemed necessary by the Fund, including, without limitation, a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund.

Actual Award Amounts

Section 1806.205 is revised to permit any Applicant that achieves less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of its projected Qualified Activities to receive a partial award based upon (among other things) the Applicant's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro-rata basis to reflect the activities actually performed.

List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Economic development, Grant programs—community development, Housing, Savings associations, Small businesses.

For the reasons set forth in the preamble, Part 1806 of Chapter XVIII of Title 12 of the Code of Federal Regulations is amended as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

1. The authority citation for Part 1806 continues to read as follows:

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104-19, 100 Stat. 237 (12 U.S.C. 4703 note).

2. Section 1806.103 (g) is revised to read as follows:

§ 1806.103 Definitions.

(g) *Equity Investment* means new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), a purchase of any type of partnership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency),

or any other investment deemed to be an equity investment by the Fund.

3. Section 1806.202(a) is revised to read as follows:

§ 1806.202 Measuring activities.

(a) *General*. Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. Applicants shall report their activities in all categories of Qualified Activities in which they engage for the Baseline Period and Assessment Period or provide an explanation satisfactory to the Fund for not reporting in all categories and provide any certification reasonably deemed necessary by the Fund, including, without limitation, a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in the NOFA for each funding round.

4. Section 1806.205(c)(1) is revised to read as follows:

§ 1806.205 Actual award amounts.

(c) *Partial achievement*—(1) *General*. If an Awardee carries out less than 90 percent of its projected Qualified Activities, it may be deemed to have partially achieved those activities. In such cases, the Fund may, in its sole discretion, provide a partial award based upon (among other things) the Awardee's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro-rata basis to reflect the activities actually performed.

Dated: November 18, 1996.

Kirsten S. May,
Director, Community Development Financial Institutions Fund.
[FR Doc. 96-29993 Filed 11-22-96; 6:45 am]
BILLING CODE 4810-70-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 96-ANE-41; Amendment 39-3834, AD 96-24-09]

RIN 2120-AA64

Airworthiness Directives; Allison Engine Company Model 250-C47B Turbohaft Engines

AGENCY: Federal Aviation Administration, DOT.
ACTION: Final rule; Request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company Model 250-C47B turbohaft engines. This action supersedes priority letter AD 96-21-12, applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters, that currently prohibits further flight, due to uncommanded inflight engine shutdowns. This action requires replacing the engine main electrical harness assembly with an improved assembly, disabling the overspeed solenoid, inspecting the engine control unit (ECU) internal PW10 voltage to determine electrical noise characteristics, and replacing units not considered serviceable. In addition, this AD requires adding a placard to the helicopter instrument panel notifying the pilot that the overspeed protection system is disabled and removes a placard which was required by priority letter AD 96-21-12; revises the BHTC Model 407 Rotorcraft Flight Manual (RFM); and requires maintenance actions to clear the engine electronic control unit (ECU) of faults prior to each flight. Accomplishment of these actions will enable operators to resume flight operations. This amendment is prompted by investigation into the causes of the inflight engine shutdowns. The actions specified by this AD are intended to prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter. **DATES:** Effective November 25, 1996, except effective upon receipt to all persons receiving a copy of this AD directly from the FAA.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 1996.

Comments for inclusion in the Rules Docket must be received on or before January 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-41, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P-40A, Indianapolis, IN 46206-0420; telephone (317) 230-2720, fax (317) 230-3381. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294-7134, fax (847) 294-7834.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 96-21-12, applicable to Bell Helicopter Textron, a Division of Textron Canada Ltd. (BHTC) Model 407 helicopters, which prohibits further flight. That action was prompted by reports of uncommanded inflight engine shutdowns on Allison Engine Company Model 250-C47B turbohaft engines installed in those helicopters. In each case, the harness failed and caused the electronic control unit (ECU) to go into a fail fixed fuel flow condition. Subsequent pilot action (reduction in collective), caused the engine to reach the overspeed trip point, with resultant default to zero fuel flow and engine shutdown. That condition, if not corrected, could result in uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

Since the issuance of that priority letter AD, the investigation revealed that the cause of the uncommanded inflight engine shutdowns was an ECU hard fault to a fail fixed fuel flow condition, and subsequent main rotor and power turbine overspeed limit exceedances coincident with pilot collective input. These overspeed conditions activated the analog overspeed trip, which results in default to a zero fuel flow condition. The ECU fault resulted from a manufacturing defect in the engine main electrical harness assembly.

Additionally, in a related incident involving a not yet certificated Allison

Engine Company engine, an ECU hard fault to fail fixed fuel flow was attributed to the electrical noise characteristics of the ECU internal PW10 voltage, as affected by certain ECU power modulator subcomponents. This same power modulator Part Number (P/N) is currently in use on the Allison Engine Company Model 250-C47B engine application. The noted ECU power modulator problem can also lead to the overspeed condition and uncommanded engine shutdown described above, and is therefore addressed in this AD action.

The FAA has reviewed and approved the technical contents of Allison Engine Company Alert Commercial Engine Bulletin (CEB) No. CEB-A-73-6010, dated October 15, 1996, that describes procedures for replacing the engine main electrical harness assembly with an improved assembly; CEB-A-73-6011, dated October 31, 1996, that describes procedures for disabling the overspeed solenoid (thereby deactivating the engine overspeed protection system); and CEB-A-73-6012, dated October 31, 1996, that describes procedures for inspecting the ECU internal PW10 voltage to determine electrical noise characteristics.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 96-21-12, applicable to BHTC Model 407 helicopters, to require the following actions: replacing the engine main electrical harness assembly with an improved assembly, disabling the overspeed solenoid (thereby deactivating the engine overspeed protection system), inspecting the ECU internal PW10 voltage to determine electrical noise characteristics, and replacing units not considered serviceable due to excessive electrical noise. In addition, this AD requires adding a helicopter instrument panel placard notifying the pilot that the overspeed protection system is disabled; removes the placard required by AD 96-21-12 which prohibited further flight; and revises the BHTC Model 407 Rotorcraft Flight Manual (RFM) to clarify emergency flight procedures and to require maintenance actions to clear Full Authority Digital Engine Control (FADEC) fault annunciations prior to each flight. Accomplishment of these actions will enable operators to resume flight operations on an interim basis. Additional rulemaking may reactivate the engine overspeed protection system in conjunction with raising the overspeed trip speed, and require additional control system modification of going to minimum fuel flow as a

terminating action. The actions are required to be accomplished in accordance with the CEBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-ANE-41." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-24-09 Allison Engine Company: Amendment 39-9834. Docket No. 96-ANE-41. Supersedes AD 96-21-12, applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters.

Applicability: Allison Engine Company Model 250-C47B turboshaft engines, installed on but not limited to BHTC Model 407 helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the

request should include specific proposed actions to address it.

Compliance: Required prior to further flight, unless accomplished previously.

To prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter, accomplish the following:

(a) Replace the engine main electrical harness assembly, Part Number (P/N) 23061796, with an improved assembly, P/N 23061805, in accordance with Allison Engine Company Alert Commercial Engine Bulletin (CEB) CEB-A-73-8010, dated October 15, 1996.

(b) Disable the overspeed solenoid in accordance with Allison Engine Company CEB-A-73-8011, dated October 31, 1996.

(c) Inspect the electronic control unit (ECU) internal PW10 voltage to determine electrical noise characteristics, and replace ECUs not considered serviceable, in accordance with Allison Engine Company CEB-A-73-8012, dated October 31, 1996.

(d) Install the following placard on the instrument panel near the overspeed test switch, notifying the pilot that the engine overspeed protection system is disabled, "OVSPD SYSTEM INOP". The placard shall be manufactured of a material that cannot be easily defaced or erased, and the lettering shall be block-style and at least 2 inches in height, but not greater than 6 inches in height. Additionally, the color of lettering must contrast with the background (color of placard material) such that it is legible.

(e) Remove the placard required by AD 96-21-12, which states, "Flight Of This Helicopter Is Prohibited".

(f) Revise the FAA-approved Rotorcraft Flight Manual (RFM) by incorporating Appendix 1 of this AD in the Normal Procedures. This may be accomplished by inserting a copy of Appendix 1 of this AD in the RFM.

Appendix 1

Note: Operators must initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Rotorcraft Flight Manual (RFM) by incorporating the following Limitation placard to page 1-14A/14B.

OVSPD SYSTEM INOP

Location: Instrument panel near overspeed test switch

(2) Revise the FAA-approved RFM by incorporating the following to the Normal Procedures.

Section 2-4. INTERIOR AND PRESTART CHECK

18. Caution lights—ENG OUT, XMSN OIL PRESS, RPM, HYDRAULIC SYSTEM, GEN FAIL, FADEC DEGRADED, FADEC FAULT, L/FUEL BOOST, R/FUEL BOOST, L/FUEL XFR, and R/FUEL XFR will be illuminated.

NOTE

L/FUEL XFR and R/FUEL XFR will not be illuminated when forward fuel tank is empty.

16a. Throttle—Idle position.

NOTE

GPU or battery cart power, if being used, must be cycled when the BATT switch is OFF.

16b. BATT switch—Cycle OFF, ON.

NOTE

Observations of Step 16 will be repeated. FADEC DEGRADED and FADEC FAULT lights, that are due to the overspeed system being inoperative, will be extinguished.

16c. Throttle—Closed position.

16d. Horn Mute button—Press to mute.

Section 2-11. ENGINE SHUTDOWN

14. Delete

23. BATT switch—OFF.

CAUTION

Applicable maintenance action must be performed prior to further flight if a FADEC light has illuminated during the flight or on engine shutdown.

(3) Revise the FAA approved RFM by incorporating the following to the Emergency/Malfunction Procedures.

Section 3-3-J. DRIVE SHAFT FAILURE

7. Delete

PROCEDURE:

1. Maintain heading and attitude control.

1a. Throttle—idle

3-3-K. FADEC FAILURE

NOTE

Takeoff power may not be available in the MANUAL mode.

Maximum continuous power will be available for all ambient conditions.

INDICATIONS:

1. FADEC fail audio activated.
2. FADEC FAIL warning light illuminated.

PROCEDURE:

WARNING

Raising or lowering of the collective during a FADEC fail condition will result in rotor droop or engine overspeed, respectively.

If increasing the collective when the failure occurs, smoothly lower collective to eliminate the NR/NP droop while simultaneously retarding the throttle to the 90% bezel position.

If reducing the collective when the failure occurs, smoothly increase the collective to correct the overspeed while simultaneously retarding the throttle to the 90% bezel position.

1. Collective—Maintain position. (If steady state flight condition)

WARNING

Within 2 to 7 seconds after the FADEC FAIL warning, NR/NP may increase very rapidly, requiring positive movements of collective to control NR/NP.

2. Throttle—Immediately retard to approximately 90% bezel position. (If not previously accomplished)

3. FADEC MODE switch—Depress one time.

NOTE

Initial engine response to manual control of fuel flow with throttle may take up to 7 seconds.

4. NR/NP—Maintain 95 to 100% with the throttle and collective.

5. Land as soon as practical.

NOTE

It may be necessary to use FUEL VALVE switch to shutdown engine after landing.

6. Normal shutdown if possible.

NOTE

When throttle is repositioned to the idle stop (during engine shutdown) the PMA will go off-line and engine may flameout.

(g) After accomplishing all the actions of this AD, operators may resume flight operations of the BHTC Model 407 helicopter.

(h) An alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(i) The actions required by this AD shall be accomplished in accordance with the following Allison Engine Company Alert CEBs:

Document No.	Page	Revision	Date
CEB-A-73-8010	1-7	Original	Oct. 15, 1996.
Total pages: 7.			
CEB-A-73-8011	1-12	Original	Oct. 31, 1996.
Total pages: 12.			
CEB-A-73-8012	1-11	Original	Oct. 31, 1996.
Total pages: 11.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P-40A, Indianapolis, IN 46206-0420; telephone (317) 230-2720, fax (317) 230-3381. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment supersedes priority letter AD 96-21-12, issued October 11, 1996.

(k) This amendment becomes effective November 25, 1996, except effective upon receipt to all persons receiving a copy of this AD directly from the FAA.

Issued in Burlington, Massachusetts, on November 15, 1996.

Jay J. Fardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96-29861 Filed 11-21-96; 12:14 pm]

BILLING CODE 4910-13-U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

(Docket No. S-896)

RIN 1218-AA40

Safety Standards for Scaffolds Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; Corrections, Partial stay.

SUMMARY: This document makes corrections to the final rule on Safety Standards for Scaffolds Used in the Construction Industry, which was published in the Federal Register on August 30, 1996 at 61 FR 46026. The Agency is also issuing an administrative stay of the implementation of final rule § 1926.451(b)(2)(i) as it relates to roof bracket scaffolds.

EFFECTIVE DATE: The corrections take effect November 25, 1996. The administrative stay of § 1926.451(b)(2)(i) is effective November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Occupational Safety and Health Administration, Office of Information, Division of Consumer Affairs, Room N-3647, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 219-8191.

SUPPLEMENTARY INFORMATION: This document contains miscellaneous minor corrections to the final rule for Safety Standards for Scaffolds Used in the Construction Industry, which was published on August 30, 1996 (61 FR 46026).

This document also stays the implementation of the requirement in final rule § 1926.451(b)(2)(i) that roof bracket scaffolds be at least 12 inches wide. The Murray-Black Co., a manufacturer of roof bracket scaffolds, has filed a petition for review of final subpart L in the United States Court of Appeals for the Sixth Circuit with respect to the roof bracket width requirement. The Agency has received information from Murray-Black and

other manufacturers of roof bracket scaffolds which indicates that most roof bracket scaffolds currently in use are either 8 or 10 inches wide and that those roof brackets function adequately. The original requirements of subpart L do not set a minimum width for such scaffolds.

OSHA has concluded that the submissions by Murray-Black and other scaffold manufacturers raise reasonable concerns regarding the minimum width requirements for roof bracket scaffolds. In final rule § 1926.451(b)(2)(i). The Agency believes that further rulemaking is needed to determine what minimum width would be appropriate for roof bracket scaffolds. Accordingly, OSHA is staying § 1926.451(b)(2)(i), as regards roof bracket scaffolds, and will act expeditiously to initiate notice and comment rulemaking that addresses the minimum width of roof bracket scaffolds.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of November 1996.

Joseph A. Dear,
Assistant Secretary of Labor.

Accordingly, the publication of August 30, 1996 of Safety Standards for Scaffolds Used in the Construction Industry (61 FR 46026) is hereby corrected as set forth below.

Summary and Explanation—[Corrected]

1. On page 46085, the reference to 1926.451(e)(1) in the first full paragraph in the middle column is corrected to read 1926.451(g)(1).

§ 1926.451 [Corrected]

2. On page 46107, in the first column, § 1926.451(a)(2) is corrected by removing the word "either" in the sixth line of the paragraph.

3. On page 46108, in the first column, § 1926.451(c)(2) is corrected to read:

(c) . . .

(2) Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates and mud sills or other adequate firm foundation.

4. On page 46109, in the first column, § 1926.451(d)(13) is corrected to read:

(d) . . .

(13) Suspension scaffold power-operated hoists and manual hoists shall be tested by a qualified testing laboratory.

5. On page 46119, the chart in § 1926.451(f)(6) is corrected to read:

INSULATED LINES

Voltage	Minimum distance	Alternatives
Less than 300 volts.	3 feet (0.9 m).	
300 volts to 50 kv.	10 feet (3.1 m).	
More than 50 kv.	10 feet (3.1 m) plus 0.4 inches (1.0 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

UNINSULATED LINES

Voltage	Minimum distance	Alternatives
Less than 50 kv.	10 feet (3.1 m).	
More than 50 kv.	10 feet (3.1 m) plus 0.4 inches (1.0 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

6. On page 46110, in the first column, the introductory language of the Exception is corrected to read:
Exception to Paragraph (f)(6):

§ 1926.453 [Corrected]

7. On page 46117, in the first column, at the end of paragraph (b)(2)(v) the following note is added:

Note to paragraph (b)(2)(v): As of January 1, 1996, subpart M of this part (§ 1926.502(d)) provides that body belts are not acceptable as part of a personal fall arrest system. The use of a body belt in a tethering system or in a restraint system is acceptable and is regulated under § 1926.502(e).

Non-mandatory Appendix E—
[Corrected]

8. On page 46124, a caption is added below the drawing to read:
HOISTS MUST BE ELECTRONICALLY ISOLATED FROM SCAFFOLD

PART 1926—(AMENDED)

9. The authority citation for subpart L of part 1926 continues to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 1-90 (55 FR 9033); and 29 CFR Part 1911.

10. Section 1926.451(b)(2)(i) is amended by adding a note at the end of the paragraph to read as follows:

§ 1926.451 General Requirements.

(b) * * *

Note to paragraph (b)(2)(i): pursuant to an administrative stay effective November 29, 1996 and published in the Federal Register on November 25, 1996, the requirement in paragraph (b)(2)(i) that roof bracket scaffolds be at least 12 inches wide is stayed until November 25, 1997 or until rulemaking regarding the minimum width of roof bracket scaffolds has been completed, whichever is later.

[FR Doc. 96-30016 Filed 11-22-96; 8:45 am]
BILLING CODE 4810-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-5655-2]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On June 17, 1996, the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD) requested that EPA delegate authority for implementation and enforcement of additional categories of the New Source Performance Standards (NSPS). Since EPA's review of the State of Georgia's pertinent laws, rules, and regulations showed them to be adequate and effective procedures for the implementation and enforcement of these Federal standards, EPA has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is September 30, 1996.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:
Environmental Protection Agency,
Region 4, Air Planning Branch, 100

Alabama Street NE., Atlanta, GA 30303

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, Georgia 30354.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address: Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, United States Environmental Protection Agency, Region 4, 100 Alabama Street NE., Atlanta, Georgia 30303, (404) 582-9036.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On May 3, 1976, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the State of Georgia. On June 17, 1996, the State of Georgia, through GA EPD, requested a delegation of authority for implementation and enforcement of the following NSPS categories found in 40 CFR part 60.

The following 40 CFR part 60 categories are newly delegated:

Subpart Dc—Small Industrial-Commercial-Institutional Steam Generating Units, as amended, except § 60.48c(a)(4).

Subpart Ee—Municipal Waste Combustors, as amended.

Subpart RRR—Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Process, as amended, except § 60.703(e).

Subpart UUU—Calciners and Dryers in Mineral Industries, as amended.

The following 40 CFR part 60 categories have been previously delegated, but resubmitted to incorporate any revisions:

Subpart D—Fossil-fuel Fired Steam Generators, as amended.

Subpart Da—Electric Utility Steam Generating Units, as amended, except § 60.45a.

Subpart Db—Industrial-Commercial-Institutional Steam Generating Units, as amended, except § 60.44b(f), § 60.44b(g), and § 60.49b(a)(4).

Subpart E—Incinerators, as amended.

Subpart F—Portland Cement Plants, as amended.

Subpart G—Nitric Acid Plants, as amended.

Subpart H—Sulfuric Acid Plants, as amended.

Subpart I—Asphalt Concrete Plants, as amended.

Subpart J—Petroleum Refineries, as amended, except § 60.105(a)(13)(iii) and § 60.108(i)(12) (revised in 10/2/90 FR, was § 60.108(g)(12)).

Subpart K—Storage Vessels for Petroleum Liquids, as amended.

Subpart Ka—Storage Vessels for Petroleum Liquids, as amended, except § 60.114a.

Subpart Kb—Volatile Organic Liquid Storage Vessels, as amended, except § 60.111b(f)(4), § 60.114b,

§ 60.116b(e)(3) (iii) and (iv), and § 60.116b(f)(2)(iii).

Subpart L—Secondary Lead Smelters, as amended.

Subpart M—Secondary Brass and Bronze Ingot Production Plants, as amended.

Subpart N—Iron and Steel Plants, as amended.

Subpart Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983, as amended.

Subpart O—Sewage Treatment Plants, as amended, except § 60.153(e).

Subpart P—Primary Copper Smelters, as amended.

Subpart Q—Primary Zinc Smelters, as amended.

Subpart R—Primary Lead Smelters, as amended.

Subpart S—Primary Aluminum Reduction Plants, as amended.

Subpart T—Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants, as amended.

Subpart U—Phosphate Fertilizer Industry: Superphosphoric Acid Plants, as amended.

Subpart V—Phosphate Fertilizer Industry: Diammonium Phosphate Plants, as amended.

Subpart W—Phosphate Fertilizer Industry: Triple Superphosphate Plants, as amended.

Subpart X—Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities, as amended.

Subpart Y—Coal Preparation Plants, as amended.

Subpart Z—Ferrous Alloy Production Facilities, as amended.

Subpart AA—Steel Plants: Electric Arc Furnaces, as amended.

Subpart AAs—Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, as amended.

Subpart BB—Kraft Pulp Mills, as amended.

Subpart CC—Glass Manufacturing Plants, as amended.

Subpart DD—Grain Elevators, as amended.

Subpart EE—Surface Coating of Metal Furniture, as amended, except § 60.316(d).

Subpart GC—Stationary Gas Turbines, as amended, except § 60.334(b)(2) and § 60.335(f)(1).

Subpart HH—Lime Manufacturing Plants, as amended.

Subpart KK—Lead-Acid Battery Manufacturing Plants, as amended.

Subpart LL—Metallic Mineral Processing Plants, as amended.

Subpart MM—Automobile and Light-Duty Truck Coating Operations, as amended.

Subpart NN—Phosphate Rock Plants, as amended.

Subpart PP—Ammonium Sulfate Manufacture, as amended.

Subpart QQ—Performance for Graphic Arts Industry: Publication Rotogravure Printing, as amended.

Subpart RR—Pressure Sensitive Tape and Label Surface Coating Operations, as amended, except § 60.446(c).

Subpart SS—Industrial Surface Coating: Large Appliances, as amended, except § 60.456(d).

Subpart TT—Metal Coil Surface Coating, as amended, except § 60.466(d).

Subpart UU—Asphalt Processing and Asphalt Roofing Manufacture, as amended, except § 60.474(g).

Subpart VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, as amended, except § 60.482-1(c)(2) and § 60.484.

Subpart WW—Beverage Can Surface Coating Industry, as amended, except § 60.496(c).

Subpart XX—Bulk Gasoline Terminals, as amended, except § 60.502(e)(6).

Subpart BBB—Rubber Tire Manufacturing Industry, as amended, except § 60.543(c)(2)(ii)(B).

Subpart DDD—VOC Emissions from the Polymer Manufacturing Industry, as amended, except § 60.562-2(c).

Subpart FFF—Flexible Vinyl and Urethane Printing and Coating, as amended.

Subpart GGG—Equipment Leaks of VOC in Petroleum Refineries, as amended.

Subpart HHH—Synthetic Fiber Production Facilities, as amended.

Subpart III—Volatile Organic Compounds (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes, as amended, except § 60.613(e).

Subpart JJJ—Petroleum Dry Cleaners, as amended.

Subpart KKK—Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, as amended.

Subpart LLL—Onshore Natural Gas Processing, as amended.

Subpart NNN—Volatile Organic Compounds (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operation, as amended, except § 60.663(e).

Subpart OOO—Nonmetallic Mineral Processing Plants, as amended.

Subpart PPP—Wool Fiberglass Insulation Manufacturing Plants, as amended.

Subpart QQQ—VOC Emissions from Petroleum Refinery Wastewater Systems, as amended.

Subpart SSS—Magnetic Tape Coating, as amended, except § 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), and § 60.716.

Subpart TTT—Plastic Parts for Business Machine Coatings, as amended, except § 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), and § 60.725(b).

Subpart VVV—Polymeric Coating of Supporting Substrates Facilities, as amended, except § 60.743(a)(3)(v) (A) and (B), § 60.743(e), § 60.745(a), and § 60.746.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of May 3, 1976. The State of Georgia sources subject to the requirements of these subparts will now be under the jurisdiction of the State of Georgia.

Since review of the pertinent Georgia laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source categories listed above on September 30, 1996. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12865.

Authority: This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412, and 7601).

Dated: November 7, 1996.

A. Stanley Medburg,
Acting Regional Administrator.

[FR Doc. 96-30040 Filed 11-22-96; 8:45 am]

BILLING CODE 4310-06-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[FWS-330-1020-00-24 1A]

RIN 1004-AB89

Grazing Administration, Exclusive of
Alaska; Development and Completion
of Standards and Guidelines;
Implementation of Fallback Standards
and GuidelinesAGENCY: Bureau of Land Management,
Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is adopting amendments to the livestock grazing, regulations of the Bureau of Land Management (BLM) to allow the Secretary of the Interior (Secretary) discretion to postpone implementation of the fallback standards and guidelines beyond February 12, 1997, but not to exceed the 6-month period ending August 12, 1997. The final rule will allow the Secretary to provide additional time for BLM to collaborate with resource advisory councils (RACs) and the public to develop State or regional standards and guidelines. Without this change to the regulations, fallback standards and guidelines would go into effect on February 12, 1997, despite the fact that work on State or regional standards and guidelines might be nearly complete.

EFFECTIVE DATE: This rule will take effect December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Tim Salt, (202) 208-4896.

SUPPLEMENTARY INFORMATION:

I. Background

The current regulations at 43 CFR § 4180.2 require the BLM State Director to develop State or regional standards and guidelines. These standards and guidelines are being developed at the State or regional level, in consultation with affected RACs to reflect local resource conditions and management practices. The standards and guidelines will reflect properly functioning conditions, or those conditions which must be met to ensure sustainability and healthy productive ecosystems and

outline best management practices to achieve standards. They will provide the basis for evaluation of rangeland health and subsequent corrective actions. The regulations further provide that in the event State or regional standards and guidelines are not completed and in effect by February 12, 1997, fallback standards and guidelines described in the regulations will go into effect.

This revision of 43 CFR § 4180.2(f) gives the Secretary discretion to postpone the implementation of the fallback standards and guidelines for up to 6 months. The Department is making this change because it has become apparent that development of State or regional standards and guidelines might, in some instances, require longer than the 18-month period provided in the regulation.

The discretion to grant up to a 6 month extension will ensure that BLM State Directors, working with RACs and the public, will have adequate time to develop appropriate State or regional standards and guidelines. In adopting this final rule, the Department considered the benefits of efficient rangeland administration, effective public participation, and possible impacts resulting from a minor delay. The Department has concluded that 6 months is an appropriate maximum period of extension. Postponing implementation of the fallback standards and guidelines will enhance the efficient administration and promote the long-term health of public rangelands for two primary reasons. First, where locally developed standards and guidelines are nearly complete, implementation of the more general fallback standards and guidelines on a short-term interim basis would be likely to create confusion and increased administrative costs. Second, postponing implementation of the fallback measures will allow the Department to achieve its commitment to improving public land management through a collaborative process that utilizes RAC recommendations, local public input, and consideration of State or regional public rangelands issues. The Department has concluded that the final rule will not have a significant impact on the environment since postponement of the fallback standards and guidelines would be for a limited period of no more than 6 months. Furthermore, the Department does not anticipate that every BLM State Director would need a postponement.

In determining whether to grant a postponement, the Secretary will evaluate whether the requested postponement will promote

administrative efficiencies and long-term rangeland health. Factors relevant to this evaluation will include, among others, when the State or regional standards and guidelines are scheduled for completion and whether the delay would promote the efficient administration, use, and protection of the public rangelands.

The final rule will permit the Secretary the flexibility to postpone implementation of the fallback standards and guidelines when the State or regional standards and guidelines are nearly complete. Implementing different sets of standards and guidelines in rapid succession will produce confusion, uncertainty, and increased administrative costs. Furthermore, the Secretary will retain discretion to deny a postponement and implement the fallback standards and guidelines when the State or regional standards and guidelines are far from completion or when a postponement would not promote long-term rangeland health.

II. Response to Comments

The Department received five letters in response to the proposed rule which was published in the *Federal Register* on August 29, 1996 (61 FR 45385). All five letters supported the proposal to provide the Secretary discretion to postpone implementation of fallback standards and guidelines for up to 6 months. One commentator also suggested that if RACs needed additional time after the Secretary granted a postponement of 6 months, another postponement should be granted. The final rule allows the Secretary discretion to postpone implementation of the fallback standards and guidelines beyond February 12, 1997, but not to exceed the 6-month period ending August 12, 1997. The Department believes that 6 months is an appropriate maximum period of extension. The standards and guidelines are key elements of the new grazing, regulations. Postponing implementation of fallback standards and guidelines until August 12, 1996, provides nearly 2 years since the final rule was published to develop standards and guidelines. To further delay implementing standards and guidelines and realize the anticipated improvement in rangeland health would be inconsistent with the intent of the original regulations.

III. Procedural Matters

National Environmental Policy Act

BLM analyzed the impacts of this final rule in accordance with section 102(2)(C) of the National Environmental

Policy Act of 1969 [42 U.S.C. 4332(C)]. BLM has concluded that the final rule will not have a significant impact on the quality of the human environment, and therefore, preparation of an Environmental Impact Statement is not necessary. The characteristics and magnitude of predicted impacts of the amended regulations are unchanged from those identified in the Final Rangeland Reform '94 EIS, except that attaining some management objectives could be delayed slightly in the long term because of the postponement provided by the final rule. Resources would continue to be managed under current practices during that period, including the requirements of 43 CFR 4180.1, Fundamentals of Rangeland Health. This section requires the BLM to take appropriate action upon determining that existing grazing management needs to be modified to ensure conformance with the fundamentals. While the fundamentals are more general than either the fallback or State and regional standards and guidelines, they do require management action and will afford some measure of resource protection and result in improvement in rangeland conditions.

At the same time, implementing the final rule would provide for more public involvement in developing State or regional standards and guidelines. Additionally, where locally developed standards and guidelines are nearly complete, implementation of the more general fallback standards and guidelines on a short term interim basis would be likely to create confusion and increased administrative costs.

Unfunded Mandates Reform Act

Amendment of 43 CFR part 4180.2(f) will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more in any one year.

Executive Order 12860

BLM has analyzed the takings implications and concluded that this final rule does not present a risk of a taking of constitutionally protected private property rights.

Executive Order 12866

BLM has determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order.

Regulatory Flexibility Analysis

The final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this final rule is Tim Salt, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

List of Subjects for 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1740, subpart 4180, part 4100, Group 4100, Subchapter D, of subtitle B of Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: November 18, 1996.

Sylvia V. Baca,
Acting Assistant Secretary of the Interior.PART 4100—GRAZING
ADMINISTRATION—EXCLUSIVE OF
ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

Subpart 4180—Fundamentals of
Rangeland Health and Standards and
Guidelines for Grazing Administration

2. Section 4180.2(f) introductory text is revised to read as follows:

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section. However,

the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February 12, 1997, fallback standards and guidelines implementation date, not to exceed the 6-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long-term rangeland health and administrative efficiencies.

[FR Doc. 96-30036 Filed 11-22-96; 8:45 am]
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NATIONAL SCIENCE FOUNDATION

45 CFR Parts 680, 681, 682, 683 and
684

RIN 3145-AA29

Repeal of Standards of Ethical
Conduct for Employees of the National
Science Foundation and Rules of
Practice for the Foundation

AGENCY: National Science Foundation.
ACTION: Interim rule, with request for
comments.

SUMMARY: The National Science Foundation is repealing most of its conflict-of-interest rules and standards of conduct regulations. This action is necessary, because they were largely superseded by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by the Office of Government Ethics (OGE) and by the NSF's Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation (Supplemental Standards), issued by NSF, with OGE's concurrence. The NSF is also promulgating rules of practice, under authority independent of 5 CFR part 2635, which generally maintain and, in some instances, replace current NSF practices. In addition the NSF is temporarily retaining its regulatory waivers issued under 18 U.S.C. 208(b)(2).

DATES: Interim rule effective November 25, 1996. Comments are invited and must be received on or before January 24, 1997. Comments will then be evaluated to determine what changes, if any, are needed.

ADDRESSES: Send comments to the Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Charles S. Brown, Designated Agency Ethics Official, Office of the General

Counsel, National Science Foundation, telephone (703) 306-1080, FAX (703) 306-0149.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published Standards of Ethical Conduct for Employees of the Executive Branch that are now codified at 5 CFR part 2635. Today, with OGE's concurrence, the NSF has published in the Federal Register Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation. These Supplemental Standards are being codified in new chapter XLIII of 5 CFR, consisting of part 5301.

The Government-wide Standards and NSF's Supplemental Standards are intended to replace most of the NSF's conflict-of-interest rules and standards of conduct. Therefore, this interim rule repeals most of NSF's previous conflict-of-interest and standards of conduct regulations. This interim rule also prescribes additional rules of practice necessary to maintain public confidence in the integrity of NSF's procedures, as permitted in 5 CFR 2635.105(c)(93). The rules of practice are based on authority independent of 5 CFR part 2635.

Finally, as permitted in 5 CFR 2635.402(d)(1), this interim rule retains NSF's regulatory waivers issued under old 18 U.S.C. 208(b)(2) (1988 edition).

II. Analysis of the Regulations

The National Science Foundation is repealing the old subpart A of 45 CFR part 680, superseded by the Standards and Supplemental Standards, and replacing it with rules of agency practice for NSF (new 45 CFR 680.10-680.13, as discussed below).

45 CFR 680.10 Definitions; Cross-References to Employee Ethical Conduct Standards and Financial Disclosure Regulations

Section (a) sets forth definitions that apply to the interim rule. For purposes of this final rule, paragraph (a)(2) defines "employee" to include anyone working at NSF under the Intergovernmental Personnel Act. But the definition excludes special Government employees, recognizing that § 680.11 of the final rule does not apply to special Government employees (as that term is defined in 18 U.S.C. 202(a)), and that § 680.12 applies differently to former special Government employees who worked for NSF on no more than sixty days in the previous year.

The definition of "award" in paragraph (a)(1) of § 680.10 is intended

to make it clear that, for purposes of interpreting the restrictions contained in §§ 680.11 and 680.12 of the interim rule, the term is to be broadly construed to cover financial arrangements made by the Government including, but not limited to, those that are in the nature of a grant, contract, cooperative agreement, or loan. The definition of "proposal" in paragraph (a)(4) of § 680.10 is included to make it clear that, for similar purposes, the term covers any application for such a financial arrangement, even though it is not technically denominated a "bid" or "proposal."

A definition of "institution" is provided in § 680.10(a)(3), since NSF awards are ordinarily made to "institutions." Paragraph (a)(3) makes it clear that the term is to be interpreted broadly, but the definition treats consortia as separate "institutions" from the individual universities that belong to them.

Paragraph (b) of § 680.10 is a cross referencing provision. It reminds employees of the need to refer to the OGE Standards (5 CFR part 2635), NSF's supplemental Standards (5 CFR part 5301), and the OGE financial disclosure regulations (5 CFR part 2634).

45 CFR 680.11 Staff Involvement With NSF Proposals and Awards

Section 680.11(a)(1) recognizes that many scientists, engineers, and educators interrupt active research and teaching careers to spend a year or two at NSF. They then return to research and teaching, usually at the same institution from which they came. Many of them, and a few NSF permanent employees, retain some interest or association with the NSF-supported work—for example, an employee may continue supervising the work of a graduate student who is completing a thesis or may retain intellectual connection with a laboratory or project to which he or she will be returning. Section 680.11 codifies current NSF rules of practice designed to prevent conflicts of interest in such situations. Section 680.11(a)(2) requires that a "substitute principal investigator" be appointed to take responsibility for the work and equipment and for representing the institution in dealings with NSF. Section 680.11(a)(3) provides that a substitute principal investigator need not be appointed when work on an award is to be suspended while an individual is employed at NSF.

Section 680.11(b) also codifies current restrictions on employee involvement in certain NSF proposals. It avoids asking active investigators to sacrifice established support for their work in

research or education as a price of public service. However, it also avoids any actuality or appearance that such service is undertaken in the expectation that it will result in new or increased support or favored treatment from NSF. Section 680.11(b)(1) requires that NSF not entertain any proposal in which a current NSF employee would be a senior investigator or the like, unless the proposal is for continuation or extension of work on which the employee was involved before coming to NSF. Section 681(b)(2) requires that any such proposal for continuation or extension of previous work be submitted by someone other than an NSF employee.

Sections 680.11(a) and (b) are published as part of 45 CFR part 680 rather than as part of the NSF's supplemental agency regulations at 5 CFR part 5301 because the limitations and obligations imposed apply mainly to grantees. They complement restrictions on employee conduct imposed by 5 CFR part 5301. Section 680.11(c) cross-references a provision in 5 CFR part 5301 barring employee receipt of compensation or reimbursements from NSF awards. The cross-referenced provision is contained in NSF's Supplemental Standards.

45 CFR 680.12 One-Year NSF Post-Employment Restrictions

Section 680.12(a) reaffirms NSF's longstanding one-year post-employment restriction on dealings with NSF officials on proposals, projects, and other particular matters. This prohibition also applies to former special Government employees who worked for NSF on more than 60 days in the previous twelve months.

Section 680.12(b) makes it clear that NSF's post-employment restriction is in addition to any statutory post-employment restrictions. This restriction is imposed on the basis of NSF's authority to regulate practice before it with respect to grants and other matter. This section permits the NSF General Counsel to grant limited exceptions to the rule, when such post-employment representation would not be barred by statute.

Section 680.12(c) makes it clear that the NSF post-employment restriction applies to all "particular matters," not just to those involving specific parties.

Section 680.12(d) explains that certain types of contacts by former NSF employees do not violate NSF's post-employment restriction—expression of personal views on policy issues, communications of a personal nature, litigation appearances on the former employee's own behalf, and

presentations of scientific or technical information.

Section 680.12(e) provides for appointment of a substitute negotiator to perform representational functions when a former employee is disqualified from doing so.

45 CFR 680.13 Purposes for "Substitute" Requirements

Section 680.13 explains the purposes underlying the requirements for appointment of substitute principal investigators and substitute negotiators. The requirements flag the proposals or awards affected by the applicable restrictions, and identify individuals with whom the NSF staff can appropriately deal. Designation of a substitute principal investigator to replace a current NSF employee also identifies an individual responsible for the work and equipment, and reminds all concerned that the NSF employee so replaced will be devoting his or her primary energy to the performance of his or her NSF duties.

Other Regulatory Actions

The National Science Foundation is also repealing one interpretive section in Subpart B of 45 CFR (old § 680.20), but leaving in effect, as newly redesignated § 680.20, NSF's current regulatory waivers issued under 18 U.S.C. 208(b)(2), as permitted in 5 CFR 2635.402(d)(1).

The National Science Foundation is also repealing the remaining former NSF conflict-of-interests rules and standards of conduct in parts 681, 682, 683, and 684. The Foundation expects to revise procedural and interpretive provisions and incorporate them as appropriate into internal NSF explanatory issuances as permitted in 5 CFR 2635.105(c).

III. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to section 553 (b) and (d) of title 5 of the United States Code, the National Science Foundation has found that good cause exists for waiving the general requirements of notice of proposed rulemaking and delayed effective date. These requirements are being waived because the interim regulations are rules of agency organization, procedure, and practice and because it is in the public interest that these new rules, which continue existing NSF restrictions and practices in many respects, become effective as soon as possible.

Executive Order 12866

In promulgating this interim rule, the National Science Foundation has adhered to the regulatory philosophy

and the applicable principles of regulation set forth in section 1 of Executive order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive Order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed a significant rule thereunder.

Regulatory Flexibility Act

The National Science Foundation has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it primarily affects NSF employees, as well as prospective and former NSF employees.

Paperwork Reduction Act

The National Science Foundation has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 45 CFR Parts 680, 681, 682, 683, and 684

Conduct standards, Conflict of interests, Ethical standards, Executive Branch Standards of Conduct, Government employees, National Science Foundation, Rules of practice.

Dated: November 14, 1996.

Lawrence Rudolph,
General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation is amending chapter VI of title 45 of the Code of Federal Regulations as follows:

1. The authority citation for part 680 is revised to read as follows:

Authority: 5 U.S.C. 7301; 18 U.S.C. 208 (1988); 42 U.S.C. 1870(a); 5 CFR 2635.105(c)(3), 2635.402(d)(1).

2. The heading of part 680 is revised to read as follows:

PART 680—NATIONAL SCIENCE FOUNDATION RULES OF PRACTICE AND STATUTORY CONFLICT-OF-INTEREST EXEMPTIONS

3. Subpart A of part 680 is revised to read as follows:

Subpart A—Rules of Practice for the National Science Foundation

Sec.

680.10 Definitions; cross-references to employee ethical conduct standards and financial disclosure regulations.
680.11 Staff involvement with NSF proposals and awards.
680.12 One-year NSF post-employment restrictions.
680.13 Purposes for "substitute" requirements.

§ 680.10 Definitions; Cross-references to employee ethical conduct standards and financial disclosure regulations.

(a) *Definitions.* Under this subpart, unless a provision plainly indicates otherwise:

(1) *Award* means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(2) *Employee* includes, in addition to any individual defined in 5 CFR 2635.102(h), any individual working at NSF under the Intergovernmental Personnel Act. It includes any part-time or intermittent employee, temporary consultant; but not a special Government employee, as defined in 18 U.S.C. 202(a).

(3) *Institution* means any university, college, business firm, research institute, professional society, or other organization. It includes all parts of a university or college, including all institutions in a multi-institution State or city system. It includes any university consortium or joint corporation; but not the universities that belong to such a consortium. Those universities shall be considered separate institutions for purposes of this part.

(4) *Proposal* means an application for an award and includes a bid.

(b) *Cross-references to employee ethical conduct standards and financial disclosure regulations.* Members of the National Science Board and other employees of the National Science Foundation (NSF), including special Government employees, should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the National Science Foundation's regulations at 5 CFR part 5301 which supplement the executive branch Standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 680.11 Staff involvement with NSF proposals and awards.

(a)(1) Many scientists, engineers, and educators interrupt active research and teaching careers to spend a year or two at NSF and then return to research and teaching, usually at the same institution from which they came. Many such visiting scientists, engineers, and

educators (and a few permanent employees) who have been principal investigators under NSF awards before coming to NSF, retain some interest of association with the work. If an individual is a principal investigator under an NSF award, the individual is not precluded from retaining ties to the work after becoming an NSF employee. The employee may stay in contact with those who are continuing the work in the employee's laboratory or on his or her project. The employee may continue to supervise graduate students. And the employee may visit and work in the laboratory on his or her own time for these and related purposes.

(2) Before a prospective employee comes to NSF, the prospective employee and the grantee institution must designate, subject to NSF approval, a "substitute principal investigator"—i.e., another scientist who will be responsible for the work and equipment and will represent the institution in any dealings with NSF officials while the prospective employee is at NSF.

(3) Appointment of a substitute principal investigator is unnecessary if all work under an award is to be completely suspended while the employee is at NSF. If the work is to be suspended, the employee and the grantee institution must inform the NSF in writing before the employee's employment begins. Work under the award may be resumed when the employee completes his or her NSF employment, and its term may be extended to account for the time lost during the employee's NSF employment.

(b)(1) NSF will entertain no proposal on which a current NSF employee would be a senior investigator or equivalent, unless it is a proposal for continuation or extension of support for work on which the employee served in that capacity before coming to NSF. Any proposal for continuation of NSF support at essentially the same level (with reasonable allowance for inflation) will normally be considered a proposal for continuation or extension if it would support the work of the same investigator and his or her laboratory or group (if any) in the same general field of science, engineering, or education, notwithstanding that the focus of the work may change in response to research opportunities or educational needs.

(2) Someone other than the current NSF employee must submit any such proposal for continuation or extension of work NSF previously supported and handle all negotiations with NSF, but the capacity in which the current NSF

employee will serve should be clearly spelled out in the proposal.

(c) In accordance with 5 CFR 5301.103(a)(1), an NSF employee may not receive, directly or indirectly, any salary, consulting fee, honorarium, or other form of compensation for services, or reimbursement of expenses, from an NSF award.

§ 680.12 One-year NSF post-employment restrictions.

(a) For one year after leaving NSF employment, a former NSF employee, including a special Government employee who has performed work for NSF on more than 60 days in the previous twelve months, shall not represent himself, herself, or any other person in dealings with any NSF official on any proposal, project, or other particular matter.

(b) The one-year restriction contained in paragraph (a) of this section is in addition to any post-employment restriction imposed by statute, including 18 U.S.C. 207 and 41 U.S.C. 423. To the extent that any disqualification required by paragraph (a) of this section is not also required by statute, written exceptions may be granted by the NSF's General Counsel, whose decisions shall be final. Exceptions will be rare and will be granted only where strict application of the rules would result in undue hardship for former short-term employees or for other former employees, and when granting an exception would not result in an unfair advantage to the former employee.

(c)(1) Paragraph (a) of this section applies to particular matters involving specific parties, such as grants, contracts, or other agreements; applications for permits, licenses, or the like; requests for rulings or similar official determinations; claims; investigations or audits; charges or accusations against individuals or firms; adjudicatory hearings; and court cases.

(2) For former employees, other than special Government employees, paragraph (a) of this section also applies to particular matters that do not involve specific parties, such as:

- (i) Determinations to establish or disestablish a particular program or set its budget level for a particular fiscal year;
- (ii) Decisions to undertake or terminate a particular project;
- (iii) Decisions to open or not open a contract to competitive bidding;
- (iv) General policy or rulemaking—including, for example, decisions on particular NSF rules or formal policy, such as adoption or amendment of a resolution by the National Science Board, promulgation or amendment of an NSF regulation or circular,

amendment of standard grant or contract terms, or changes to NSF manuals or policy documents; and

(v) Agency positions on particular legislative or regulatory proposals.

(d) Paragraph (a) of this section does not apply to:

(1) Any expression of a former employee's views on policy issues where the circumstances make it obvious that the former employee is only speaking as an informed and interested citizen, not representing any financial or other interests of his or her own or of any other person or institution with which he or she is associated;

(2) Any appearance or communication concerning matters of a personal or individual nature, such as the former employee's taxes, salary, benefits, possible Federal employment, rights as a former employee, or the application of conflict-of-interest rules to something the former employee proposes to do;

(3) Any appearance on the former employee's own behalf in any litigation or administrative proceeding; or

(4) Any presentation of scientific or technical information (at a site visit, for example) or any other communication of scientific or technical information on work being proposed or conducted.

(e) As soon as his or her NSF employment ceases, a former NSF employee (including any former special Government employee described in paragraph (a) of this section) may again be listed as principal investigator on an NSF award, may be listed as principal investigator in any proposal or award, and may sign a proposal as principal investigator. However, the former employee and the grantee institution shall formally designate, subject to NSF approval, a "substitute negotiator" who, though not principally responsible for the work, will represent the former employee and the institution in dealings with NSF officials on any proposal or project for as long as the former employee would be barred from representational contacts with NSF by paragraph (a) of this section or by statute.

§ 680.13 Purposes for "substitute" requirements.

Appointment of a "substitute principal investigator" or "substitute negotiator" ensures against unthinking violation of the restrictions on dealings with NSF officials. It serves this purpose by flagging proposals or awards affected by the restrictions and by identifying someone else with whom NSF officials can properly discuss them or negotiate over them. Designation of a substitute principal investigator while an

employee is at NSF has two additional functions: it identifies another person to be responsible for the work and equipment, and it reminds all concerned that during an employee's NSF service his or her attentions should focus on NSF duties.

4. Subpart B of part 680 is amended by removing § 680.20 and redesignating § 680.21 as § 680.20.

5. Under the authority of 42 U.S.C. 1870(a), parts 681, 682, 683, and 684 are removed.

[FR Doc. 96-29990 Filed 11-22-96; 8:45 am]
BILLING CODE 7550-01-M

Proposed Rules

Federal Register

Vol. 61, No. 228

Monday, November 23, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

FON 0690-AF01, AE43

1997-Crop Peanut National Poundage Quota, 1996 and 1997-Crop Additional Peanut National Average Support Level and Minimum Commodity Credit Corporation (CCC) Export Edible Sales Price for the 1996 and 1997 Crops of Additional Peanuts

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.
ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, (the Act) as amended, requires that the national peanut poundage quota for the 1997 crop be announced by December 15, 1996. The Agricultural Act of 1949, (the 1949 Act), as amended, requires that the additional support levels be announced not later than February 15, 1997. The minimum CCC export edible sales price for additional peanuts is usually announced at the same time as the price support levels. This proposed rule would set a national poundage quota figure in the range between 1,111,000 short tons (st) and 1,155,000 st, proposes that the national average additional price support level for the 1997 crop peanuts be set between \$125 per st and \$140 per st, and that the minimum CCC sales price for 1997 and subsequent crops of additional peanuts for export edible use be set between \$375 to \$425 per st. Also, the rule would recodify certain determinations

made for peanuts for the 1996 marketing year.

DATES: Comments must be received by December 3, 1996, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, Room 5750 South Building, P.O. Box 2415, Washington, DC 20013-2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5750 South Building, 1400 Independence Avenue, SW, Washington, DC 20013-2415.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, Tobacco and Peanuts Division, USDA, STOP 0514, Room 5750 South Building, P.O. Box 2415, Washington, DC 20013-2415, telephone 202-720-9255. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12886.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither FSA nor CCC is required by 5 U.S.C. 553 or any other provision of law

to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1997-crop peanut national poundage quota, and 7 CFR part 1446 to set forth the 1996 and 1997-crop national average support level for additional peanuts and the minimum CCC sales price for 1996 and 1997 crop additional peanuts sold for export edible use.

A. National Poundage Quota

Section 358-1(a)(1) of the Act, as amended in 1996, requires that the Secretary set a basic national quota for peanuts for each of the 1996 through 2002 marketing years (MY) at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed) and related uses. As to seed, section 358-1(b)(2)(B) of the Act provides that a temporary allocation of quota pounds for the MY only in which the crop is planted shall be made to producers for each of the 1996 through 2002 MYs and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. Regulations implementing the 1996 amendments to the peanut quota provisions of the Act were published in the Federal Register on July 16, 1996 (61 FR 36997). The MY for 1997-crop peanuts will be from August 1, 1997 through July 31, 1998.

The national poundage quota for MY 1996 was 1,100,000 st. This rule proposes that the national poundage quota for MY 1997 be set between 1,111,000 st and 1,155,000 st based on the following data:

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 1997-CROP PEANUTS—Continued

On farm and local sales	8,500	8,500
Related Uses:		
Crushing residual	120,500	120,500
Shrinkage and other losses	36,500	36,500
Transfer to quota	5,000	5,000
Subtotal	1,063,500	1,063,500
Allowance for underproduction	27,500	71,500
Totals	1,111,000	1,155,000

The estimate of 1997 domestic food use was developed in two steps. First, total domestic edible utilization of 1,062,500 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 149,500 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358(e)(1) of the Act as being made from additional peanuts. MY 1997 farm use and local sales were estimated at 1 percent of ICEC's MY 1997 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspections data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, which is excluded from quota determinations under amendments to the Act made by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1997 domestic edible use production.

The allowances for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic edible use. This factor is the minimum shrinkage generally allowed for calculating obligations of handlers under section 358a(d)(2)(B)(iv) of the Act and is believed to be a fair estimate of such shrinkage for purposes

of this determination, taking into account all factors.

Segregation 2 and 3 loan transfers to quota loan represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas, yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support loans at a discounted quota loan rate.

In addition, an allowance has been made for underproduction. Historically, only 92 percent of the quota has been marketed. Since any quota pounds not marketed will be a loss of potential income for producers, it is expected that somewhat more than 92 percent of the quota will be marketed.

The lowest proposed 1997 quota level, as set forth above, reflects expected growth in domestic consumption of peanut products through new uses and a small increase in demand resulting from lower peanut support prices. This level essentially reflects the 1996 quota assumption that 97.5 percent of the quota will be produced and adds increased demand for edible peanuts. The higher range proposal takes into account the possibility that production of quota could fall below the 97.5 percent level.

A significantly larger quota option than those presented would lower the price received by first buyers and could reduce costs to consumers for peanut products slightly. However, it is assumed that a substantial increase in quota would be needed to lower the average grower price to a level near the average national support price. A quota in the neighborhood of 1,500,000 tons would likely result in sufficient quantities and quantities of peanuts delivered at the right time and place such that the average price would be only slightly higher than \$610 per ton.

This option only becomes viable if one assumes greater responsiveness in demand to additional supplies. One must assume a significant growth in

demand because of a lower price to justify this option.

The cost of overestimating demand would be high. Assuming the demand for greater supplies of peanuts is slight, this level of quota could result in a surplus and a loss on loan placements for more than 300,000 tons of peanuts. These peanut losses would be around \$400 a ton. Losses of up to \$120 million would occur and result in producer assessments of over \$100 per ton the following year. This level of assessment would lower the effective price received by producers for quota peanuts in MY 1996 to near \$500 per ton or less.

USDA will attempt to increase the accuracy and quantity of price data (quota and additional) over the next years to enhance analytical capacity and reduce the uncertainty associated with different options.

Buybacks have worked well in MY 1996. Buyback is a term used to describe a marketing transaction in which a producer places additional peanuts under loan at the additional loan rate and a handler simultaneously purchases such peanuts from the marketing associations for domestic edible use. To bolster stocks in MY 1996, the peanut industry has bought back over 100,000 tons of additional peanuts.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1996 price support level for additional peanuts was announced at \$132 per st on February 15, 1996. The national average price support rate for

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 1997-CROP PEANUTS

Domestic Edible Use:		
Domestic food	Short Tons	
	913,000	913,000

quota peanuts, for each of the 1990 through 2002 crops, was set at \$610 per st by the 1996 Act and is codified at 7 CFR § 1446.103.

The regulation pertaining to price support loan levels for additional peanuts is being moved in 7 CFR from part 1421 to part 1446.

The range for the MY 1997 price support level for additional peanuts is recommended to be between \$125 per st and \$140 per st to ensure no losses to CCC from the sale or disposal of additional peanuts. Peanuts are pledged as collateral for price support loans. The peanuts are then sold out of inventory in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is strong, there is enough uncertainty in the market to suggest caution.

In making this determination, the following market information will be considered:

1. The domestic use of peanut oil during MY 1997 is forecast to be 92,500 st, unchanged from MY 1996 projected domestic use. MY 1997 peanut oil beginning stocks are expected to be 18,500 st, down 44 percent from MY 1996. The MY 1997 average peanut oil price is expected to be \$0.380 per pound, down \$0.015 per pound from MY 1996.

2. The domestic use of peanut meal during MY 1997 is forecast to be 140,000 st, up 5,000 st from MY 1996 projected domestic use. MY 1997 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1996. The MY 1997 average peanut meal price is expected to be \$227.50 per st, down \$2.50 per st from MY 1996.

3. The domestic disappearance of soybean oil during MY 1997 is forecast to be 6,850,000 st, up 1.1 percent from projected MY 1996 domestic disappearance. MY 1997 soybean oil beginning stocks are expected to be 1,117,500 st, up 11.2 percent from MY 1996. The MY 1997 average soybean oil price is expected to be \$0.230 per pound, down \$0.005 per pound from MY 1996.

4. The domestic disappearance of cottonseed oil during MY 1997 is forecast to be 517,500 st, up 2 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed oil beginning stocks are expected to be 55,000 st, up 10 percent from MY 1996. The MY 1997 average cottonseed oil price is expected to be \$0.260 per pound, down \$0.0025 per pound from MY 1996.

5. The domestic disappearance of soybean meal during MY 1997 is forecast to be 27,000,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 soybean meal beginning stocks are expected to be 225,000 st, up 12.5 percent from MY 1996. The MY 1997 average soybean meal price is expected to be \$227.50 per st, down \$7.50 per st from MY 1996.

6. The domestic disappearance of cottonseed meal during MY 1997 is forecast to be 1,690,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed meal beginning stocks are expected to be 40,000 st, unchanged from MY 1996. The MY 1997 average cottonseed meal price is expected to be \$182.50 per st, down \$7.50 per st from MY 1996.

7. The world use of peanuts for MY 1996 is expected to be 26.36 million metric tons, up slightly from MY 1995. World peanut production for MY 1996 is forecast to be 26.36 million metric tons, up 1.7 percent from MY 1995. Ending stocks for MY 1996 are forecast at 0.46 million metric tons, unchanged from 1995.

C. Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

A minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is expected to be announced on or before February 15, 1997, the same time that the quota and additional peanut support levels for the 1997 crop are announced. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts.

It is proposed that the minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established within the range of \$375 to \$425 per st. This range should encourage exports while providing price stability for additional peanuts sold under contract. It will also help assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for

export edible sale below the minimum sales price.

D. Technical Amendments

Due to recent amendments to 7 CFR parts 729 and 1421, it has become necessary to recodify the 1996 quota determination and the 1996 additional peanut support determination. The latter has been moved to part 1446.

Accordingly, comments are requested with respect to the foregoing issues.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, it is proposed that 7 CFR parts 729 and 1446 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 shall continue to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375, and 1371.

2. Section 729.216 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 729.216 National poundage quota.

(c) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(d) The national poundage quota for quota peanuts for marketing year 1997 will be set between 1,111,000 and 1,155,000 short tons.

PART 1446—PEANUTS

3. The authority citation for 7 CFR part 1446 shall continue to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

§ 1446.103 [Amended]

4. Section 1446.103 is amended in paragraph (1) of the definition of "Support rate" by adding the words "as set out in section 1446.310" after "announced by the Secretary".

5. Two new §§ 1446.310 and 1446.311 are added to subpart C to read as follows:

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is \$132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop will be between \$125 per short ton and \$140 per short ton.

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is \$400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 and subsequent crops will be between \$375 and \$425 per short ton.

Signed at Washington, DC, on November 20, 1996.

Grant Buntrock,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96-30066 Filed 11-20-96; 4:47 pm]

BILLING CODE 3410-05-P

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011 and 1046

[Docket No. AO-388-A9, et al.; DA-96-08]

Milk in the Carolina and Certain Other Marketing Areas; Notice To Reopen Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1005	Carolina	AO-388-A9
1007	Southeast	AO-388-A38
1011	Tennessee Valley	AO-251-A40
1046	Louisville-Lexington-Evansville	AO-123-A67

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice to reopen public hearing on proposed rulemaking.

SUMMARY: This notice announces a reopening of the hearing initially held on May 15-16, 1996, in Charlotte, North Carolina, to consider supplemental testimony and record evidence regarding the proposal to incorporate transportation credits for bulk milk that is imported for fluid use into 4 Southeastern milk orders. The reopened hearing, to be held on December 17, 1996, in Atlanta, Georgia, will receive supplementary data, testimony, and

arguments concerning the operation and impact of the interim amendments since their inception on August 10, 1996, in the 4 orders.

The Department has received many comments from dairy farmers who have expressed concerns about the impact of the currently implemented transportation credits. Any changes to the interim amendments resulting from the impact of the credits must be based upon evidence placed in the record of the hearing. Accordingly, the Department has decided to reopen the hearing to receive such evidence.

Testimony on a related proposal submitted by Carolina-Virginia Milk Producers' Association (CVMPA) and Mid-America Dairymen, Inc., to incorporate a "dairy farmer for other markets" provision to help ensure an adequate milk supply for the seasonally-deficit markets of the southeastern United States will also be heard.

DATES: The hearing will convene at 9:00 a.m. on December 17, 1996.

ADDRESSES: The hearing will be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia 30354, telephone (404) 767-9000.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12868.

Notice is hereby given of a reopened public hearing to be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia, beginning at 9:00 a.m. on December 17, 1996, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the reopened hearing is to receive supplemental testimony and evidence with respect to the economic and marketing conditions which relate to the interim amendments, one new proposed amendment, hereinafter set forth, and

any appropriate modifications of these amendments to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 6c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7

CFR Part 900), in Charlotte, North Carolina, on May 15-18, 1996. Notice of such hearing was issued on May 1, 1996, and published May 3, 1996 (61 FR 19861).

Interested parties were given until May 28, 1996, to file post-hearing briefs on the proposals as published in the Federal Register and as modified at the hearing. Information also was requested on whether the proposals should be considered on an emergency basis.

Based upon the record of this hearing, an emergency tentative decision was issued on July 12, 1996, proposing amendments to the 4 orders. The amendments provided transportation credits for handlers to offset costs in importing supplemental milk for fluid use to these seasonally deficit markets. Having been approved by more than two-thirds of the producers in each of the respective marketing areas, the amendments became effective on an interim basis on August 10, 1996. The initial comment period for filing exceptions to the tentative decision was extended twice, based upon industry requests, and is now set to expire on November 30, 1996.

The Department has decided to reopen the hearing in this matter on December 17, 1996. Based upon the comments that it has already received, the Department is reasonably certain that it will be asked to modify the interim amendments based upon experience with these provisions during the past 3 months. Any modifications to the interim amendments may be based only on factual information that is in the hearing record of this proceeding. In view of these considerations, the Department sees no point in waiting until the expiration of the current comment period to call for a reopened hearing.

Interested parties who are planning to make an appearance at the reopened hearing need not send in written comments by November 30, 1996, as requested in the Department's tentative decision and the two subsequent extensions of time; but instead should enter their statements into the record of the hearing. Although written comments may still be submitted concerning this matter, interested parties should understand that the Department cannot make any changes to the interim amendments based upon events that have occurred while the interim amendments were in effect unless the events are documented in the hearing record.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with four copies of such exhibits for the

Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

The May 15-18 hearing also considered a second proposal which concerned costs which are the responsibility of the plant operator. That proposal, and any modifications thereof, is being considered on a non-emergency basis and there is no indication that further evidence needs to be received on that issue. Hence, that issue will be outside the scope of the reopened hearing.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Rules: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Notice of Extension of Time for Filing Comments to Tentative Partial Decision: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Notice of Extension of Time for Filing Comments to Tentative Partial Decision: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

List of Subjects in 7 CFR Parts 1005, 1007, 1011 and 1046

Milk marketing orders.

The authority citation for 7 CFR Parts 1005, 1007, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601-674.

In addition to receiving testimony concerning the interim amendments, the Department will hear the following related proposal submitted by Carolina-Virginia Milk Producers' Association. This proposal, as set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by Carolina-Virginia Milk Producers' Association and Mid-America Dairymen, Inc.: Proposal #4

Add a new subparagraph to paragraph 100X.12(b) of each of the four orders to read as follows:

100X.12 Producer

* * * * *

(b) Producer shall not include:

* * * * *

() Any person with respect to milk produced by him during the months of February through May that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during the immediately

preceding months of July through November more than 40 percent of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of grade A approval or the application of Section 100X.13), unless such pool plant was a nonpool plant during any of such immediately preceding months.

Provided however, that for the purpose of determining the percentage of a person's milk that was pooled during the previous months of August through November, deliveries of the person's milk to plants as producer milk under Federal orders 100X, 100X or 100X shall be considered as deliveries of producer milk under this order.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: November 19, 1996.

Len Hatamiya,

Administrator.

[FR Doc. 96-30034 Filed 11-22-96; 8:45 am]
BILLING CODE 3410-26-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 584

[Docket No. 95N-0313]

Standards for Animal Food and Food Additives in Standardized Animal Food

AGENCY: Food and Drug Administration, HHS.
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to remove its animal food standards regulations. This action is in response to the administration's "Reinventing Government" initiative, which seeks to streamline government to ease the burden on regulated industry and consumers, and it is intended to remove an unnecessary regulation.

DATES: Comments by February 24, 1997. The agency is proposing that any final rule that may be issued based upon this proposal become effective 30 days after date of publication of the final rule.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1724.
SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton announced plans for the reform of the Federal regulatory system as part of the administration's "Reinventing Government" initiative. As part of this initiative, the President ordered all Federal agencies to conduct a page-by-page review of all of their regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." The first results of FDA's efforts in implementing the President's plan were published in the Federal Register of October 13, 1995 (60 FR 53480).

In this document, FDA is proposing to remove the regulations in part 584 (21 CFR part 584) Definitions and Standards for Animal Food, of subchapter E, Animal Drugs, Feeds, and Related Products. Part 584 contains procedural regulations for establishing standards for animal food in subpart A, and regulations applicable to food additives in standardized animal food in subpart B. Because the procedures set out in

part 584 have never been used and because the agency does not believe that there is any interest in developing a regulatory standard, part 584 is unnecessary. If in the future there were ever to be a request from the industry or elsewhere to develop an animal food standard regulation, the agency could determine whether procedural regulations are necessary and issue such procedures through the notice and comment rulemaking process as the standard was being developed.

II. Analysis of Impacts

FDA has examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would remove a regulation that is not being applied, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Request for Comments

Interested persons may, on or before February 24, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the

docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 584

Animal foods, Food additives. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21 chapter I be amended as follows:

PART 584—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

Part 584 [Removed]

Part 584 is removed.

Dated: October 23, 1996.

William E. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96-30052 Filed 11-22-96; 8:45 am]
BILLING CODE 4160-01-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Clarification of Application of ERISA to Insurance Company General Accounts

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Request for information.

SUMMARY: This document requests information from the public concerning issues which the Department has under consideration in developing regulations to clarify the application of the Employee Retirement Income Security Act of 1974 as amended (ERISA), to insurance company general accounts. Pursuant to section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188), section 401 of ERISA has been amended. Section 401 now provides that no later than June 30, 1997, the Department must issue proposed regulations to: Provide guidance for the purpose of determining, where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of the insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of part 4 of Title I of ERISA and section 4075 of the Internal Revenue Code of 1986; and provide

guidance with respect to the application of Title I to the general account assets of insurers. The information provided to the Department in response to this document will assist the Department in developing the proposed regulations.

DATES: Comments must be received on or before January 24, 1997.

ADDRESSES: Comments (preferably, at least three copies) should be addressed to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, 200 Constitution Ave., N.W., Washington, D.C. 20210. Attention: "General Account Contracts".

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219-8971 (not a toll-free number) or Timothy Hauwer, Plan Benefits Security Division, Office of the Solicitor, (202) 219-8637 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Life insurance companies issue a variety of group contracts for use in connection with employee pension benefit plans, some of which provide benefits the amount of which is guaranteed, some of which provide benefits that may fluctuate with the investment performance of the insurance company, and some of which offer elements of both. Under section 401(b)(2) of ERISA, if an insurance company issues a "guaranteed benefit policy" to a plan, the assets of the plan are deemed to include the policy, but do not solely by reason of the issuance of the policy, include any of the assets of the insurance company. Section 401(b)(2)(B) defines the term "guaranteed benefit policy" to mean an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. In addition, in paragraph (b) of ERISA Interpretive Bulletin 75-2, 29 CFR 2509.75-2 (1975), the Department stated that if an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets.¹

On December 13, 1993, the Supreme Court rendered its decision in *John*

Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank, 114 S. Ct. 517 (1993) (*Harris Trust*) which interpreted the meaning of "guaranteed benefit policy". In its decision, the Court held that a contract qualifies as a guaranteed benefit policy only to the extent it allocates investment risk to the insurer.

(We) held that to determine whether a contract qualifies as a guaranteed benefit policy, each component of the contract bears examination. A component fits within the guaranteed benefit policy exclusion only if it allocates investment risk to the insurer. Such an allocation is present when the insurer provides a genuine guarantee of an aggregate amount of benefits payable to retirement plan participants and their beneficiaries.

Accordingly, under the Supreme Court's decision, an insurer's general account includes plan assets to the extent it contains funds which are attributable to any nonguaranteed components of contracts with employee benefit plans. Because John Hancock's contract provided for a return that varied with the insurer's investment performance, the Court concluded that John Hancock held plan assets, and was, therefore, a fiduciary with respect to the management and disposition of those assets. Under the reasoning of the Court's decision, a broad range of activities involving insurance company general accounts are subject to ERISA's fiduciary standards.

Because of the retroactive effect of the Supreme Court decision, numerous transaction engaged in by insurance company general accounts may have violated ERISA's prohibited transaction and general fiduciary responsibility provisions. The insurance industry believed that, absent legislative or administrative action, it would be subject to significant additional litigation and potential liability with respect to the operation of its general accounts.

If the underlying assets of a general account include plan assets, persons who have engaged in transactions with such general account may be viewed as parties in interest under section 3(14) of ERISA and disqualified persons under section 4975 of the Code, including fiduciaries with respect to plans which have interests as contractholders in the general account. For example, insurance companies are a source of loans for smaller and mid-sized companies. Many of these companies have party in interest relationships with plans that have purchased general account contracts. Application of the prohibited transaction rules to the general account of an insurance company as a result of the *Harris Trust* decision could call

such loans into question under ERISA. Lastly, the underlying assets of an entity in which a general account acquired an equity interest may include plan assets as a result of the *Harris Trust* decision.

On March 25, 1994, the American Council of Life Insurance (ACLI) submitted an application for a class exemption from certain of the restrictions of sections 406 and 407 of ERISA and from certain excise taxes imposed by section 4975 (a) and (b) of the Code. The ACLI requested broad exemptive relief for transactions which included the following: all internal operations of general accounts, all investment transactions involving general account assets, including transactions with parties in interest with respect to plans that have purchased general account contracts, and the purchase by the general account of securities issued by, and real property leased to, employers of employees covered by plans that have purchased general account contracts.

On August 22, 1994, the Department published a notice of proposed Class Exemption for Certain Transactions Involving Insurance Company General Accounts. (59 FR 43134). Although the ACLI requested exemptive relief for activities in connection with the internal operation of general accounts, the Department determined that it did not have sufficient information regarding the operation of such accounts to make the findings required by section 408(a) of ERISA. Accordingly, the proposed class exemption did not provide relief for transactions involving the internal operation of an insurance company general account. The final exemption (Prohibited Transaction Exemption (PTE) 95-80, 60 FR 35925) was published in the Federal Register on July 12, 1995.

B. Public Law 104-188

In response to the Supreme Court decision in *Harris Trust*, Congress amended section 401 of ERISA by adding a new subsection 401(c) which clarifies the application of ERISA to insurance company general accounts. Pub. L. 104-188, § 1460. This statutory provision requires that the Department, not later than June 30, 1997, issue proposed regulations providing guidance for the purpose of determining, in cases where an insurer issues one or more policies (supported by the assets of the insurer's general account) to or for the benefit of an employee benefit plan, which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of part 4 of Title I and section 4975 of the

Code and to provide guidance with respect to the application of Title I to an insurer's general account assets. The proposed regulations must be subject to public notice and comment until September 30, 1997, and final regulations shall be issued not later than December 31, 1997.

The regulations will only apply to those general account policies which are issued by an insurer on or before December 31, 1996. In the case of such policies, the regulations will take effect at the end of the 18 month period following the date the regulations become final. Pub. L. 104-188, however, authorizes the Secretary to issue additional regulations designed to prevent avoidance of the regulations described above. These additional regulations, if issued, may have an earlier effective date.

The Department must ensure that the regulations issued under Pub. L. 104-188 are administratively feasible, and protect the interests and rights of the plan and of its participants and beneficiaries. In addition, the regulations must require, in connection with any policy (other than a guaranteed benefit policy) issued by an insurer to or for the benefit of an employee benefit plan, that: (1) an independent plan fiduciary authorize the purchase of the policy (unless the purchase is exempt under ERISA section 408(b)(5)); (2) the insurer provide information on an annual basis to policyholders (as prescribed in such regulations), disclosing the methods by which any income and expenses of the insurer's general account are allocated to be policy and the actual return to the plan under the policy and such other financial information as the Department determines is appropriate; (3) the insurer disclose to the plan fiduciary the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available, whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right, and the extent to which support by assets of the insurer's general account and support by assets of the insurer's separate accounts might pose differing risks to the plan; and (4) the insurer must manage general account assets prudently, taking into account all obligations supported by such general account.

Compliance with the regulations issued by the Department will be deemed compliance by such insurer with sections 404, 406 and 407 of ERISA. In addition, under this statutory provision, no person will be liable under part 4 of Title I or Code section

4975 for conduct which occurred before the date which is 18 months following the issuance of the final regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. The limitation on liability is subject to three exceptions: (1) the Department may circumscribe this limitation on liability in regulations intended to prevent avoidance of the regulations which it is required to issue under the statutory amendment; (2) the Department may bring actions pursuant to paragraph (2) or (5) of section 502(a) for breaches of fiduciary responsibilities which also constitute violations of Federal or State criminal law; and (3) civil actions commenced before November 7, 1995 are exempt from the amendment's coverage.

Issues Under Consideration

The Department is publishing this notice to provide interested persons with an opportunity to submit information and comments which will be considered by the Department in developing the regulations mandated by Pub. L. 104-188.²

In order to assist interested parties in responding, this notice contains a list of specific questions designed to elicit information that the Department believes would be especially helpful in developing a notice of proposed rulemaking. The questions developed by the Department may not address all issues relevant to the development of the regulation. Therefore, the Department further invites interested parties to submit comments on other matters that they believe are pertinent to the Department's consideration of the regulation.

Annual Disclosures

- (1) What information relating to the financial soundness of an insurer do plan fiduciaries currently rely upon in selecting an insurer?
- (2) Should additional information be required to be disclosed to plan fiduciaries prior to selecting an insurer? What would be the cost of supplying this information? To what extent would these costs be passed on to the contractholders?
- (3) What annual information would plan fiduciaries find helpful in evaluating the appropriateness of an existing general account contract?

² Section 1460 of Pub. L. 104-188 does not distinguish between welfare plans and pension plans that purchase general account contracts from insurers. Accordingly, the Department urges interested persons to submit information and comments which are relevant to welfare plans that have purchased general account contracts.

(4) Is there any information which should be disclosed more frequently than annually? Should this information be provided or available upon request?

(5) Do insurers currently disclose to potential contractholders the availability of alternative insurance arrangements supported by separate accounts, the right to transfer funds under a general account contract to a separate account, and the terms governing any such right?

(6) In general, what are the comparative risks and benefits of general account contracts vis-a-vis separate account contracts?

(7) To what extent, and in what format, should insurers be required to disclose information concerning the following:

- (a) The expenses allocated to the contract and the basis for the allocation;
 - (b) The investment income allocated to the contract and the basis for the allocation;
 - (c) The mortality or morbidity experience attributed to the contract and the basis for the attribution;
 - (d) The allocation of any other aspect of the insurance company's financial performance which has an impact on the contract's return, and the basis for the allocation;
 - (e) The timing of the allocation of expenses, investment income, mortality or morbidity experience, and of any other factors affecting the contract's return;
 - (f) Any charges or provisions attributable to the contract for risks or profits, and the basis for the charges or provisions;
 - (g) Comparative data concerning the return, expenses, investment income, profit and risk charges attributable to other contracts, and an explanation of any disparities;
 - (h) The particular investment income allocation methodology or methodologies employed by the insurer, and any departures from the general methodologies in the actual allocation of investment income to the contract;
 - (i) Financial or familial relationships or transactions between (1) the insurer, its officers, or directors, and (2) the plan, the plan sponsor, or plan fiduciaries;
 - (j) Financial transactions between the insurer and any person or entity in which the insurer, its officers, or directors have a financial interest or familial relationship.
- Do different formats have different cost implications? Which items are costly to produce, or involve confidential or proprietary information? What professional skills are required to prepare the required information?

(8) Should the insurer be required to retain documentation supporting the required disclosures, and to make the supporting documentation available to the Secretary of Labor, plan sponsors, plan fiduciaries, or plan participants and beneficiaries? To what extent are these documents retained as part of current business practice? What are the estimated costs of retaining and producing these documents to the appropriate parties?

(9) How should the insurer calculate the actual return to the plan for purposes of any disclosure requirement? In particular,

(a) Should the insurer be required to take into account any market value adjustments, termination expense adjustments, withdrawal charges, or surrender charges in stating the contract's return?

(b) Should the regulations permit different approaches for calculating the rate of return for contracts requiring the issuance of annuities as opposed to those in which benefit payments are made without the issuance of an annuity?

(c) Should the regulations require that dividends that are anticipated or declared but not yet paid, be included in determining the contract's return?

(d) To what extent should the regulations permit the return to be reported on a gross basis (i.e., before expenses or charges)?

(10) Under what circumstances would regulations requiring disclosure of the contractholder's return apply to general account contracts before the end of the 18 month period following the issuance of the final regulations?

Market Value Adjustments Upon Termination of General Account Contracts

(1) In what ways is discretion exercised by insurers under general account contracts in imposing market value adjustments or in determining the amount of such adjustments?

(2) What standards should the Department adopt to assure that market value adjustments reflect market conditions at the time of contract termination?

(3) Should the Department require general account contracts to set forth in "plain English" the method for calculating market value adjustments that can be objectively verified by the contractholder pursuant to standards set forth in the contract? In this regard, should the Department require that the method used for calculating market value adjustments only use parameters that can be independently verified by the contractholder?

(4) Should the Department limit or forbid the imposition of termination expense adjustments, withdrawal charges, or surrender charges pursuant to general account contracts?

(5) Under what circumstances should regulations regarding market value adjustments and other termination charges be applicable to general account contracts prior to the end of the 18 month period following the issuance of the final regulations?

State Regulatory Requirements

(1) To what extent do State regulatory requirements parallel or conflict with some or all of the requirements imposed by section 1460 of Pub. L. 104-188?

(2) Should the Department of Labor regulation take into account any State regulatory requirements that serve as a protection to contractholders? If so, please describe the nature of such requirements and the state's enforcement mechanism to assure compliance with such requirements.

Impact on Small Entities

(1) In responding to the questions above, please address the anticipated annual impact of any regulatory proposals on small insurers, (insurers with annual receipts of less than \$5 million, see Small Business Administration Size Standards, 61 FR 3280, Jan. 31, 1996) and small plans, (plans with fewer than 100 participants).

(2) Statistically, what are the sizes of the plans using insurance company general accounts? What is the volume of assets held in these accounts, and what percent is held by small plans? Is there an estimate of how many small plans may be affected by the regulations?

(3) How many small insurance companies offer products that may be subject to the regulations? Is there an anticipated effect on those small companies' competitiveness due to such a regulation?

(4) What would be the most economical and efficient method of compliance with the requirements imposed by the amendment for small insurance companies?

(5) In responding to the questions above, please state whether the insurance companies' costs of complying with any regulatory proposals are likely to be passed on to the contractholders. If so, what are the projected costs? Are large insurance companies more likely to absorb the costs, leaving their contractholders in better positions? If costs are passed on, will small plans be able to absorb the increase?

(6) How can the disclosed materials be provided in formats useful to small plans? How can these materials be structured in "plain English," or must they require the assistance of professional service providers to be valuable?

Miscellaneous

(1) The regulations will apply only to "policies which are issued by an insurer on or before December 31, 1998." To what extent should the regulations treat pre-existing policies which are amended after December 31, 1998 as policies issued on or before December 31, 1998?

(2) To what extent should the Department regulate transactions between the insurer and its subsidiaries; between the insurer and entities in which the insurer's officers or directors have a financial interest?

(3) To what extent can insurers exercise discretion to the detriment of plan contractholders in the allocation of income, expenses, dividends, and other financial costs and benefits? How should a limitation on that discretion be formulated? For example, should the Department require that income, expenses and surplus be allocated in a manner directly proportionate to the plan's actual contribution to each of these categories?

(4) What constraints, if any, should be placed on insurers' ability to unilaterally amend contract terms which affect the value of the plan's policy (e.g., terms concerning minimum interest rate guarantees, expense charges, and annuity purchase rates)?

(5) Do insurance companies and persons engaging in transactions with such companies believe that guidance is necessary regarding which general account contracts constitute "guaranteed benefit policies" within the meaning of section 401(b)(2) of ERISA in light of the *Harris Trust* decision? In this regard, what types of policies raise significant issues post *Harris*?

All submitted responses and comments will be made a part of the record of the proceeding referred to herein and will be available for public inspection.

Signed at Washington, DC this 20th day of November, 1996.

Olma Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96-30030 Filed 11-22-96; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010-AB57

Amendments to Gas Valuation Regulations for Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: MMS hereby gives notice that it is extending the public comment period on a Notice of proposed rule, which was published in the Federal Register on September 23, 1996 (61 FR 49694). The proposed rule would amend the regulations governing the valuation for royalty purposes of natural gas produced from Indian leases. In response to requests for additional time, MMS will extend the comment period from November 22, 1996, to December 3, 1996.

DATES: Comments must be submitted on or before December 3, 1996.

ADDRESSES: Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses.

For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado 80225-0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, MS 3101, Building 85, Denver Federal Center, Room A-212, Denver, Colorado 80225-0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, phone (303) 231-3432, FAX (303) 231-3194, e-Mail David_Guzy@smtp.mms.gov.

Dated: November 20, 1996.

James W. Shaw

Associate Director, for Royalty Management. [FR Doc. 96-30121 Filed 11-21-96; 12:47 pm]

BILLING CODE 4310-MR-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5653-4]

RIN 2060-AD-56

RIN 2060-AE-37

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins and Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The EPA intends to propose changes to the recently promulgated subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; and subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins. The proposed changes to subparts U and JJJ will parallel proposed changes to the National Emission Standards for Hazardous Air Pollutant Emissions for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks (commonly known as the Hazardous Organics NESHAP or HON).

Since HON regulations are directly referenced in subparts U and JJJ, the proposed changes to HON subparts F, G, and H will also apply to Group I and Group IV Polymers and Resins sources subject to subparts U and JJJ. In addition to direct cross-references, there are additional changes that the EPA plans to propose to subparts U and JJJ to provide consistency with the HON. The EPA also intends to extend the compliance date for heat exchange systems to September 5, 1999.

DATES: Comments. Comments on this ANPR must be received by the EPA on or before December 26, 1996.

ADDRESSES: Comments. Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (8102); Attention: Docket No. A-92-44 (for Polymers and Resins I) and/or A-92-45 (for Polymers and Resins IV), U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The dockets are located at the above address in room M-1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202)

260-7548. A reasonable fee may be charged for copying docket materials.

The EPA requests that a separate copy of the comments also be sent to the contact person listed in the FOR FURTHER INFORMATION CONTACT section below. Comments on this ANPR may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning this ANPR, contact Mr. Robert Rosensteel at (919) 541-5608, Organic Chemicals Group, Emission Standards Division (MD-13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Regulated entities. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by regulation discussed in this ANPR. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

Electronic Submission of Comments. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A-92-44 or A-92-45. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

I. Background

The HON was promulgated on April 22, 1994 (59 FR 19402) as subparts F, G, H, and I of 40 CFR part 63. The HON regulates emissions of certain organic hazardous air pollutants (HAP) from synthetic organic chemical manufacturing industry (SOCMI) production processes. Due to the

similarities in HAP emissions and emission controls at SOQMI facilities and at elastomer and thermoplastic production facilities, the HON provisions were used in the development of regulations for elastomer and thermoplastic production facilities (40 CFR part 63, subparts U and JJJ).

On March 29, 1996 (60 FR 18090), the EPA proposed standards for seven source categories collectively referred to as Group IV polymers and resins source categories. These source categories, which produce products generally called "thermoplastics," are (1) Acrylonitrile Butadiene Styrene Resin, (2) Styrene Acrylonitrile Resin, (3) Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, (4) Methyl Methacrylate Butadiene Styrene Terpolymers, (5) Polystyrene Resin, (6) Polyol (Ethylene Terephthalate) Resin, and (7) Nitrile Resin. These standards, which are contained in subpart JJJ of 40 CFR part 63, were promulgated on September 12, 1996 (61 FR 48207).

On June 12, 1996 (60 FR 30801), the EPA proposed standards for nine source categories collectively referred to as Group I polymers and resins source categories. These source categories, which produce products generally called "elastomers," are (1) Butyl

Rubber Production, (2) Epichlorohydrin Elastomers Production, (3) Ethylene-Propylene Rubber Production, (4) Hypalon™ Production, (5) Neoprene Production, (6) Nitrile Butadiene Rubber Production, (7) Polybutadiene Rubber Production, (8) Polysulfide Rubber Production, and (9) Styrene-Butadiene Rubber and Latex Production. These standards, which are contained in subpart U of 40 CFR part 63, were promulgated on September 5, 1996 (61 FR 48905).

On August 28, 1996 (61 FR 43698), in conformance with a settlement agreement reached with the Chemical Manufacturers Association (CMA) and the Dow Chemical Company, the EPA proposed revisions to the HON rule. Some of these proposed amendments are in sections which are referenced in subparts U and JJJ. Therefore, these proposed changes would also affect subparts U and JJJ, as discussed in the following sections of this ANPR. In addition, some of the HON proposal would add language to the rule, such as new definitions, and the EPA intends to propose the same changes to subparts U and JJJ where relevant.

II. Relationship of Subparts U and JJJ to the HON

Subparts U and JJJ each regulate seven HAP emission source types. For five

emission source types (storage vessels, continuous process vents, equipment leaks, heat exchange systems, and wastewater), both subpart U and subpart JJJ directly reference the HON rule. In addition, several HON definitions are referenced, as are the storage vessel and wastewater emission estimation equations used for emissions averaging.

Table 1 shows the specific sections of subparts F, G, and H referenced in subparts U and JJJ. Since subparts U and JJJ directly reference the HON provisions in these instances, any changes to the referenced HON sections will also affect subparts U and JJJ.

In addition to the direct reference to HON sections, some portions of subparts U and JJJ are modeled after the HON requirements. Specifically, the applicability and emissions averaging provisions, and the testing, monitoring, reporting, and recordkeeping requirements in subparts U and JJJ are based on the analogous HON provisions. Some changes were made to these provisions after proposal to make them unique to subparts U and JJJ; however, they continue to follow the HON approach. In these instances, the proposed changes to subparts F, G, and H will not directly impact subparts U and JJJ.

TABLE 1.—SECTIONS OF SUBPARTS F, G, AND H DIRECTLY REFERENCED IN SUBPARTS U AND JJJ

HON section referenced in subparts U and JJJ	Description of referenced provisions	Comment
Subpart F: 63.101	Definitions	Several definitions from 63.101 are incorporated by reference into subparts U and JJJ.
63.104	Heat exchange system requirements	Directly referenced in subpart U in § 63.502. Directly referenced in subpart JJJ with minor deviations noted in § 63.132b.
Subpart G: 63.111	Definitions	Several definitions from 63.111 are incorporated by reference into subparts U and JJJ.
63.113–63.118	Continuous process vent provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.119–63.123	Storage vessel provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.131–63.147	Wastewater provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.148	Leak inspection provisions	Minor deviations from the subpart G language are noted in subparts U and JJJ.
63.150(g)(3)	Procedures for determining emission debits from storage vessels	
63.150(g)(5)	Procedures for determining emission debits from wastewater	
63.150(h)(3)	Procedures for determining emissions credits from storage vessels	
63.150(h)(5)	Procedures for determining emissions credits from wastewater	
Subpart H 63.160–63.193	Equipment leak provisions	Subparts U and JJJ affected sources must comply with all requirements of subpart H.

However, the EPA intends to propose changes to many of these provisions, following a similar rationale to that used in developing the proposed HON changes.

III. Summary of Proposed Changes to Subparts F, G, and H

The proposed revisions to the HON consisted of amendments to subparts F, G, H, and I of 40 CFR part 63. The proposed revisions to the HON are intended to remove any ambiguity, to clearly convey the EPA's intent, to make the rule easier to read and implement, and to increase flexibility.

The wastewater sections of the rule were redrafted to improve organizational structure and clarity. The revised definition of "wastewater" incorporates the concept that only water that is discarded from a process is subject to the HON wastewater provisions. Additional changes were also proposed to the HON wastewater provisions to (1) ensure that streams traveling from one piece of process equipment to another would be handled appropriately to avoid emissions to the environment, and (2) ensure that the changes in the wastewater definitions would not permit sources to dilute their waste streams prior to the point at which the streams are determined to be wastewater (thus avoiding control requirements). The proposed revisions also include provisions that would allow the owner or operator of a HON affected source who wished to ship waste off-site for treatment to ship to a facility that has certified that it will treat the waste to the standard required by the HON.

In the proposed amendments to the HON, the EPA proposed new requirements for monitoring heat exchange systems for leaks of process fluids into cooling water. These revisions were proposed in order to address issues related to the availability of monitoring methods with sufficient analytical sensitivity, lack of flexibility in some of the requirements, and the burden associated with the monitoring requirements.

In contrast to the significant redrafting of the requirements for wastewater and heat exchange systems, minor changes were also proposed for other sections of the HON. In addition to removing ambiguity and increasing flexibility (e.g., through more flexible monitoring method requirements and sampling location requirements), some revisions would reduce the reporting and recordkeeping burden for sources. The reporting and recordkeeping revisions would include changes which reduce the number of copies of reports that

must be submitted to the EPA and the States; provide for alternative, less frequent recordkeeping of monitoring data where sources show no violations for prolonged stretches of time; and remove the requirement for most sources to file an Implementation Plan. The preamble to the proposed HON changes (61 FR 43698) provides a more in-depth explanation of the rationale behind these changes.

IV. Summary of Planned EPA Action

The proposed changes to the continuous process vent, storage vessel, wastewater, heat exchange system, and equipment leak requirements in the HON apply to subpart U and JJJ sources, due to the fact that subparts U and JJJ directly reference these requirements. The EPA intends to propose minor editorial and cross-referencing changes to these sections in subparts U and JJJ in order to parallel the revisions to the HON sections, and to seek public comment on such changes. In addition, the EPA plans to revise the compliance date in subpart U for heat exchange systems to be September 5, 1999 (three years after initial promulgation of subpart U).

The EPA is also planning to incorporate many of the continuous process vent revisions from the HON proposal into the batch process vent provisions in subparts U and JJJ, in order to take advantage of the increased clarity and flexibility that are represented in the proposed HON changes. Finally, the EPA is planning to incorporate the changes to the HON applicability, testing, reporting, and recordkeeping sections, which also provide increased clarity and flexibility, into the comparable sections in subparts U and JJJ.

V. Request for Comments

In this ANPR, the EPA is requesting comments on the proposed revisions to subparts F, G, and H, as they pertain to subparts U and JJJ. Specifically, the EPA is interested in receiving comments on whether the proposed changes to the HON are appropriate for the polymer and resin production facilities subject to subparts U and JJJ and, if these changes are not appropriate for these rules, recommendations for alternative approaches.

As mentioned earlier, some provisions in subparts U and JJJ were based on the HON provisions, even though the final rules do not directly reference these particular provisions in the HON. One example of this occurs in the testing, monitoring, recordkeeping, and reporting requirements for batch process vents. These provisions were

modeled after the HON provisions for continuous process vents, but these sections of the rules do not reference any section of the HON. The EPA requests comment on whether any of the changes made to the HON process vent testing, monitoring, reporting, and recordkeeping provisions are appropriate for the subpart U and JJJ batch process vent provisions. If commenters believe that some proposed changes made to the HON are needed for subparts U and JJJ, the EPA requests that the commenters identify the HON change, explain the reasons the same (or a similar) change is needed in subpart U and/or JJJ, and explain the section of subpart U or JJJ where they believe the change is necessary.

VI. Administrative Requirements

A. Docket

The dockets for the Polymers and Resins I and Polymers and Resins IV rules are A-92-44 and A-92-45, respectively. The dockets for the HON are A-90-19 through A-90-23. These dockets are complete, organized files of all the information submitted to, or otherwise considered by, the Agency in the development of these rules. These dockets are available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the ADDRESSES section of this notice.

B. Regulatory Requirements

This notice is not a rule, but an Advanced Notice of the Agency's preliminary intentions as it begins to work on revisions to subparts U and JJJ. The notice imposes no regulatory requirements or costs. Therefore, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, an economic impact analysis pursuant to Section 317, a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980), or a budgetary impact statement pursuant to the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances.

Dated: November 5, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96-29659 Filed 11-22-96; 8:45 am]
BILLING CODE 6950-02-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[FR Docket No. 89-652; FCC 96-448]

220 MHz Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on its tentative conclusion that the "40-mile rule" should be repealed, as recommended by the SMR Advisory Group L.C. This action is needed to establish a comprehensive record on which to base a final decision. **DATES:** Comments are due December 10, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Wireless Telecommunications Bureau, (202) 418-1310.

SUPPLEMENTARY INFORMATION:

Commission Seeks Supplemental Comment on Request To Eliminate 40-Mile Rule for 220 MHz Radio Service

Released: November 19, 1996.

1. Section 90.739 of the Commission's Rules stipulates that a licensee in the 220 MHz radio service may not hold more than one license within a 40-mile area, unless the licensee can justify the need for an additional license based on communications requirements.

2. On April 5, 1996, the SMR Advisory Group, L.C. (SMR Group) filed *ex parte* comments in the above-captioned proceeding, urging the Commission to eliminate Section 90.739 (the "40-mile rule"). In its comments, SMR Group suggests that elimination of the rule would enhance the competitive potential of the 220 MHz service, and would be consistent with Commission findings of regulatory parity between the 220 MHz service and other commercial mobile radio services. SMR Group also contends that the original purpose for the rule—i.e., to prevent spectrum warehousing—is no longer relevant in the context of today's mobile communications marketplace.

Subsequently, the American Mobile Telecommunications Association, Securicor Radiocom, Ltd., and SEA, Inc., also filed *ex parte* comments asking that the Commission eliminate this rule. Based on these filings, the Commission tentatively concludes that the rule should be repealed.

3. Pursuant to Section 1.415(d) of the Commission's Rules, 47 CFR § 1.415(d), the Commission seeks comment on this tentative conclusion. In particular, interested parties are invited to address any legal, factual, or policy considerations that may be associated with this issue. Comments must be filed no later than December 10, 1996. No reply comments will be accepted.

4. All comments should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street NW, Room 222, Washington, DC 20554, referencing PR Docket No. 89-652. The full text of the comments is available for inspection and duplication during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street NW, Room 239, Washington, DC 20554. Copies may also be obtained from the International Transcription Service, Inc. (ITS), 2100 M Street NW, Suite 140, Washington, DC 20037, (202) 857-3800.

Initial Regulatory Flexibility Analysis

5. For purposes of this Public Notice, the Initial Regulatory Flexibility Analysis adopted in the Third Notice of Proposed Rulemaking in PR Docket No. 89-652 (60 FR 46564, September 7, 1996) applies.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96-30002 Filed 11-22-96; 8:45 am]

BILLING CODE 6712-01-2

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961108316-6316-01; LD, 1017903]

RIN 0648-AH7

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 14 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would prohibit the use or possession of fish traps in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) beginning February 8, 2007; prohibit the use or possession of fish traps west of 85°30' W. long.; modify the procedure for retrieval of fish traps when a breakdown prevents a vessel with a trap endorsement from retrieving its traps; modify the restrictions on transfer of fish trap endorsements and reef fish permits; prohibit the harvest or possession of Nassau grouper in or from the EEZ of the Gulf; and clarify the authority of the Regional Administrator, Southeast Region, NMFS (RA), to reopen a prematurely closed fishery. In addition, NMFS proposes to extend the current prohibition on the possession of dynamite on board a permitted vessel to those vessels permitted in the South Atlantic golden crab fishery. The intended effects of this rule are to conserve and manage the reef fish resources of the Gulf and enhance enforceability of the regulations.

DATES: Written comments must be received on or before January 9, 1997.

ADDRESSES: Comments on the proposed rule or on the initial regulatory flexibility analysis (IRFA) must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirement contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory

Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 14, which includes an environmental assessment, a regulatory impact review (RIR), and an IRFA, should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609, PHONE: 813-228-2815; FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act).

Background and Rationale

The Council developed Amendment 14 to address various problems in the reef fish fishery. Most of the problems are associated with the fish trap fishery and the February 7, 1997, expiration of the existing moratorium on the issuance of additional fish trap endorsements.

Phaseout of the Use of Fish Traps in the Gulf

The Council established a moratorium on additional fish trap endorsements under Amendment 5 that will extend through February 7, 1997 (final rule implementing Amendment 5 was effective February 7, 1994; 59 FR 966). This moratorium was implemented to stabilize the number of participants in the fish trap fishery until the Council could obtain better information on the trap fishery's ecological impacts. This information was recently provided through completion of a NMFS observer study on the biological effects of the fish trap fishery. The study indicated that for the particular area where most of the study data were collected, fish traps can target the higher-value species (grouper and snapper) without major bycatch of non-targeted species. Because the study's duration and geographical extent were limited, the Council determined that the study data and conclusions may not be representative of the Gulf reef fish trap fishery as a whole.

Many of the Council members were concerned over the apparent lack of compliance with fish trap rules and believed that enforcement would never be adequate to assure compliance. The Council members were concerned over the impacts of incidental catch of non-

targeted species, increased unreported fishing effort, and long-term ghost fishing from abandoned or lost traps, with non-functioning escape panels. Because fish traps are completely submerged and can be fished without fishermen being present, they are difficult for enforcement officers to locate and, if being fished illegally without surface buoys, are difficult to identify. Regulations pertaining to trap construction specifications, including escape panels, prohibited areas, and tag requirements can only be enforced if the fisherman is intercepted during the relatively short periods of deployment or retrieval. The Council's Law Enforcement and Reef Fish Advisory Panels both recommended that the use of fish traps be banned in the Gulf EEZ.

After extensive deliberations and consideration of public comments, the Council proposed a 10-year phaseout of the fish trap fishery. Compared to an immediate prohibition, the 10-year phaseout period would spread the economic impact on the existing participants over a relatively long time. This phaseout period would allow fishermen to make a gradual transition to other fisheries without the disruption associated with an immediate termination of the fishery. The majority of fishermen in the fish trap fishery are only partially dependent on the fishery and can switch to other fisheries or fishing methods in which they are already participating.

Prohibition on the Use or Possession of Fish Traps West of Cape San Blas, FL

The Council proposes to prohibit the use of fish traps west of 85°30' W. long., the longitude of Cape San Blas, FL, consistent with the Council's intent to limit, reduce, and ultimately eliminate the use of fish traps. This measure would prevent an expansion of the fishery beyond its current geographical range and was supported by most persons who testified on this measure at the Council's public hearings. The measure would also limit potential enforceability problems by restricting the area where traps may be used. The immediate effects on fishermen would be limited since only one person who owns a vessel with a fish trap endorsement resides west of Cape San Blas, FL.

Modification of the Procedure for Retrieval of Fish Traps

In the event of a breakdown of a vessel with a fish trap endorsement, current regulations allow another vessel to retrieve its fish traps, if written authorization from the owner or operator of the vessel with the

endorsement is on board. Those authorizations do not have to be obtained from or registered with NMFS. This provision is being used in a manner not intended by the Council. Some owners of vessels with fish trap endorsements are providing such authorizations to the operators of other vessels without regard to vessel breakdowns. In this manner, vessels that do not have fish trap endorsements are being used to tend traps.

To provide greater accountability for retrieval of traps when vessel breakdown prevents retrieval by the vessel with the fish trap endorsement, the proposed measure would require that authorization to retrieve a disabled vessel's traps be obtained from NMFS' Office of Enforcement. Such authorizations would be specific as to vessel, individual(s), point of landing, and time period, and be issued only at the time that a disabling incident occurs. This measure would allow enforcement personnel, including U.S. Coast Guard and state enforcement officers, to check with NMFS' Office of Enforcement to verify the terms of authorization. The Office of Enforcement will accept phone calls around the clock; messages at certain times of the day will require a return call by office personnel.

Modification of the Restrictions on Transfer of Fish Trap Endorsements

During the first 2 years of the phaseout period, fish trap endorsements would be transferable among vessels with reef fish permits. This initial transfer period is intended to give fish trap fishermen an opportunity to exit the fishery and receive economic compensation by selling their endorsements. The Council limited the period for unrestricted transfers to 2 years to encourage a continued reduction in the number of fish trap endorsements for the remainder of the phaseout.

During the third through the tenth year of the phaseout period, fish trap endorsements would be transferable only to an immediate family member, another person upon death or disability of the endorsement holder, another vessel owned by the same entity, or any of the 56 individuals who were fishing traps after November 19, 1992, and were excluded by the current moratorium. The limitation on transfer of endorsements under these conditions would be expected to result in additional attrition during the last 6 years of the phaseout. Endorsements that expire and are not renewed would not be reissued.

Modification of the Restrictions on Transfer of Reef Fish Permits

The current regulations allow transfer of a permit between persons only when the owner of the vessel whose permit is being transferred has met the income-qualification for the permit. This prevents a vessel operator, whose earned income qualified a vessel for a permit, from acquiring the permit by transfer from the owner when buying the vessel from the owner. The Council proposed an exception to the general rule that only an owner-qualified permit may be transferred to another person by allowing the transfer when the recipient is the income-qualifying operator.

The Council also proposed to allow a non-income-qualifying owner who loses his income-qualifying operator to continue in the reef fish fishery for a limited time (grace period) in order to meet the income qualification for the vessel permit. Currently, upon transfer of a reef fish permit, an owner who does not meet the earned income requirement and who receives a trap permit by transfer may continue to operate the vessel in the fishery for one full calendar year in order to meet that requirement. An additional 3½ months (beyond the one full calendar year period) is provided for the new owner to document his/her earned income for the calendar year and apply for renewal of the permit and for NMFS to process the application and issue a renewed permit. However, an owner who loses his/her earned-income qualifying operator does not have the same grace period. The Council's proposal would grant the same grace period for meeting the earned income requirement to such owner.

Prohibition on the Harvest or Possession of Nassau Grouper

Nassau grouper is on the candidate list of threatened or endangered species under the Endangered Species Act. The species is classified by NMFS as over-utilized, with a current potential yield of zero. Harvest and possession of Nassau grouper is prohibited in Florida's waters, the South Atlantic EEZ, and the Caribbean EEZ, but not in the Gulf EEZ. A closure of the Gulf EEZ would provide consistent regulations for Nassau grouper in the U.S. EEZ. Economic impacts are expected to be limited, because Nassau grouper have comprised 0.5 percent of shallow-water grouper harvest in recent years.

Reopening of a Commercial or Recreational Fishery

The Council proposes to authorize the RA to reopen a commercial or

recreational fishery for a Gulf reef fish species or species group when needed to ensure that a commercial quota or recreational allocation may be reached. Such authorization would constitute a modification to the framework procedure of the FMP for making changes to management measures. As the closure provisions currently apply only to Gulf reef fish species or species groups that have commercial quotas, the proposed change would not be immediately applicable to the recreational fisheries for Gulf reef fish.

Availability of Amendment 14

Additional background and rationale for the measures discussed above are contained in Amendment 14, the availability of which was announced in the Federal Register (61 FR 55128, October 24, 1996).

Changes Proposed by NMFS

Current regulations prohibit the possession on board a permitted vessel of dynamite or similar explosive substance. To apply this prohibition to permitted vessels in the South Atlantic golden crab fishery, NMFS proposes to add, at § 622.31(a), a reference to § 622.17, which is the section that requires permits in the golden crab fishery.

Generally, a vessel permit or endorsement is not transferable. To correctly reflect the current exceptions to that general rule, NMFS proposes to add, at § 622.4(g), a reference to § 622.4(p) regarding transfers of red snapper endorsements.

NMFS proposes other minor language changes for consistency and clarity.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, NMFS has not determined that the provisions of Amendment 14 are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

As part of the RIR, the Council prepared an IRFA, summarized as follows. Since all participants in the fishery, including those in the fish trap sector, are small business entities, disproportionate effects on capital costs of compliance would not occur. A

substantial number of the 92 small business entities that use fish traps in the reef fish fishery would be affected by the proposed rule. These entities would not be able to use fish traps beginning February 8, 2007, and would incur a substantial reduction in income. The regulations are likely to result in a change in gross revenues of more than 5 percent. Performance standards are not practicable because the trap gear cannot be adequately monitored and enforced. Approximately 87 percent of these entities (80 in number) would be able to switch to other fisheries, but would incur substantial increases in costs to acquire and operate the alternative gear. Since the fish traps and related gear would not be marketable, all investments in the traps and gear would be lost. Approximately 13 percent of these entities (12 in number) would be unable to switch to other fisheries and would be forced to cease business operations. No duplicative, overlapping, or conflicting Federal rules have been identified regarding this action. Significant alternatives to the proposed action to eliminate the use of fish trap gear in ten years were considered including: Several related alternatives that would create a permanent fish trap license limitation system but differed in the number of allowed participants; an alternative that would extend the current permit moratorium until the year 2000; an alternative delaying any decisions for two years; and a status-quo alternative. The Council chose its preferred alternative (ten-year phase out of the trap fishery) based on a determination that this action would address its concerns about the adverse biological impacts of fish traps and the serious enforcement difficulties with this fishery, while providing affected trap fishermen sufficient time to plan for the termination of the fishery. The IRFA discusses the costs and benefits of all the alternatives considered by the Council for this action. The IRFA also identifies and assesses the alternatives for the other proposed measures of Amendment 14. A copy of the IRFA is available (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This rule contains a new collection-of-information requirement subject to the PRA—namely, the requirement that, when a vessel with a fish trap

endorsement has a breakdown that prevents the vessel from retrieving its traps, the owner or operator must notify the nearest NMFS Office of Enforcement and obtain authorization for another vessel to retrieve the traps. This requirement has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated at 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate, or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 13, 1996.

Roland A. Schmittgen,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.4, in paragraph (a)(2)(i), in the second sentence, the words "moratorium on" are removed; in paragraph (a)(2)(v), the last sentence is revised; in paragraph (g), the first sentence is revised; paragraphs (m) and (n) are revised; and in paragraph (p)(3)(i) the last, parenthetical sentence is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) * * * See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and paragraphs (m)(3) and (m)(5) of this section for limited exceptions to the earned income requirement for a permit.

(g) * * * A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, as provided in paragraph (n) of this section for a fish trap endorsement, or

as provided in paragraph (p) of this section for a red snapper endorsement.

(m) **Moratorium on commercial vessel permits for Gulf reef fish.** This paragraph (m) is effective through December 31, 2000.

(1) No applications for additional commercial vessel permits for Gulf reef fish will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (m)(2) through (m)(5) of this section, and are subject to the requirement for timely renewal in paragraph (m)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer the permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for Gulf reef fish for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may transfer the permit to the income qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the

original permit to the RD with an application for the changed permit.

(6) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(n) **Endorsements for fish traps in the Gulf.** The provisions of this paragraph (n) are effective through February 7, 2007.

(1) Only those fish trap endorsements that are valid on February 7, 1997, may be renewed. Such endorsements are subject to the restrictions on transfer in paragraphs (n)(2) and (3) of this section and are subject to the requirement for timely renewal in paragraph (n)(5) of this section. Effective February 8, 2007, no fish trap endorsements are valid.

(2) Through February 7, 1999, a fish trap endorsement may be transferred only to a vessel that has a commercial permit for reef fish.

(3) The provisions of this paragraph (n)(3) are effective February 8, 1999. A fish trap endorsement is not transferable except as follows:

(i) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity.

(ii) A fish trap endorsement is transferable upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(iii) When a change of ownership of a vessel with a fish trap endorsement is directly related to the disability or death of the owner, the RD may issue such endorsement, temporarily or permanently, with the commercial vessel permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Paragraphs (m)(3) and (m)(4) of this section apply for the transfer of a commercial vessel permit for Gulf reef fish upon disability or death of an owner.)

(iv) A fish trap endorsement may be transferred to a vessel with a commercial vessel permit for Gulf reef fish whose owner has a record of landings of reef fish from fish traps in the Gulf EEZ, as reported on fishing vessel logbooks received by the SRD from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for the vessel with the reported landings.

(4) The owner of a vessel that is to receive a transferred endorsement must return the originals of the endorsed commercial vessel permit for Gulf reef fish and the unendorsed permit to the RD with an application for a fish trap endorsement for his or her vessel.

(5) A fish trap endorsement that is not renewed or that is revoked will not be returned. Such endorsement is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(p) ***
(3) ***
(i) *** (Paragraphs (m)(3) and (m)(4) of this section apply for the transfer of a commercial vessel permit for Gulf reef fish upon disability or death of an owner.)

3. In § 622.31, in paragraph (a), the reference to "§ 622.4" is revised to read "§ 622.4 or § 622.17" and paragraph (c) is revised to read as follows:

§ 622.31 Prohibited gear and methods.

(c) *Fish traps.* (1) A fish trap may not be used in the South Atlantic EEZ.

(2) A fish trap may not be used or possessed in the Gulf EEZ west of 85°30' W. long. and, effective February 8, 2007, may not be used or possessed in the Gulf EEZ.

(3) A fish trap used other than where authorized in paragraph (c)(1) or (c)(2) of this section may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

4. In § 622.32, paragraph (b)(2)(iii) is revised to read as follows:

§ 622.32 Prohibited and limited harvest species.

(b) ***
(2) ***
(iii) Red drum and Nassau grouper may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

§ 622.37 [Amended]

5. In § 622.37(d)(4), the word "Nassau" is removed.

6. In § 622.40, paragraph (a)(2) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

(a) ***
(2) *Gulf EEZ.* A fish trap in the Gulf EEZ may be pulled or tended only by a person (other than an authorized officer)

aboard the vessel with the fish trap endorsement to fish such trap. If such vessel has a breakdown that prevents it from retrieving its traps, the owner or operator must immediately notify the nearest NMFS Office of Enforcement and must obtain authorization for another vessel to retrieve and land its traps. The request for such authorization must include the requested effective period for the retrieval and landing, the persons and vessel to be authorized to retrieve the traps, and the point of landing of the traps. Such authorization will be specific as to the effective period, authorized persons and vessel, and point of landing. Such authorization is valid solely for the removal of fish traps from the EEZ and for harvest of fish incidental to such removal.

7. In § 622.42, paragraph (a)(3) is revised to read as follows:

§ 622.42 Quotas.

(a) ***
(3) Shallow-water groupers, that is, all groupers other than deep-water groupers, jewfish, and Nassau grouper, including scamp before the quota for shallow-water groupers is reached, combined—9.8 million lb (4.4 million kg), round weight.

§ 622.43 [Amended]

8. In § 622.43(b)(1), the words "hartered, traded, or" are removed.

9. In § 622.46, paragraph (d)(1) is revised to read as follows:

§ 622.46 Adjustment of management measures.

(d) ***
(1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, and reopening of a fishery prematurely closed.

[FR Doc. 96-29500 Filed 11-22-96; 8:45 am]
BILLING CODE 3010-25-F

50 CFR Part 622

[D. 111886A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council has submitted Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before January 24, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702.

Requests for copies of Amendment 2, which includes a final supplemental environmental impact statement, a regulatory impact review, and a social impact assessment should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407-4699; Phone: (803) 571-4386; Fax: (803) 769-4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the Federal Register stating that the amendment is available for public review and comment.

Amendment 2 would: (1) Add brown and pink shrimp to the fishery management unit; (2) define overfishing for brown and pink shrimp; (3) define optimum yield for brown and pink shrimp; (4) require the use of certified bycatch reduction devices (BRDs) in all penaeid shrimp trawls in the exclusive economic zone in the South Atlantic; (5) establish a framework procedure for the Regional Administrator, Southeast Region, NMFS, to certify new BRDs, to decertify BRDs, and to specify and modify certification criteria and BRD testing requirements.

NMFS expects to publish proposed regulations that would implement Amendment 2 shortly for public review and comment.

Authority: 16 U.S.C. 1801 et seq.

Dated: November 19, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 96-30042 Filed 11-20-96; 2:33 pm]
BILLING CODE 3010-25-F

50 CFR Part 648

[D. 110798F]

RIN 0648-AF01

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Revised Measures for Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has revised and resubmitted for Secretarial approval three measures that were originally disapproved in the Secretarial review of Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish

Fisheries (FMP). NMFS is requesting comments from the public; copies of the revised measures for Amendment 5, and Amendment 5 itself, may be obtained from the Council (see ADDRESSES).

DATES: Comments on the revised measures of Amendment 5 that have been resubmitted must be received on or before January 24, 1997.

ADDRESSES: All comments should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Resubmitted SMB 5".

Copies of the revised measures that were disapproved earlier in Amendment 5, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that

each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving the FMP or FMP amendment, immediately make them available for public review and comment. The Secretary will consider the public comments in determining whether to approve the FMP or FMP amendment.

The revised measures would establish: (1) A revised overfishing definition for Atlantic mackerel that would restrict allowable biological catch (ABC) to a fishing mortality rate of $F_{0.1}$ and would cap ABC at 405,000 mt for 1 year, (2) a moratorium vessel permit for *Illex* squid with a 5-year sunset provision, and (3) a 5,000-lb (2.26-mt) incidental catch permit for *Illex* squid. The transmit date for this Amendment is November 6, 1996.

Authority: 16 U.S.C. 1801 et seq.

Dated: November 20, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 96-30043 Filed 11-20-96; 2:33 pm]
BILLING CODE 3010-25-F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FCS-806, Claim for Reimbursement (National School Lunch, School Breakfast and Special Milk Programs)

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the proposed Food and Consumer Service (FCS) use of Form FCS-806, Claim for Reimbursement, to collect data to determine the amount of reimbursement sponsors and other providers in the National School Lunch, School Breakfast and Special Milk Programs will be eligible to receive. **DATES:** Comments on this notice must be received by January 24, 1997 to be assured of consideration.

ADDRESSES: Send comments to: Frank Duesing, Accounting Division, Financial Management, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 415, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Frank Duesing, (703) 305-2870.

SUPPLEMENTARY INFORMATION:

Title: Form FCS-806, Claim for Reimbursement, (National School Lunch, School Breakfast and Special Milk Programs).

OMB Number: 0584-0284.

Expiration Date of Approval: July 31, 1996.

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Abstract: The National School Lunch, School Breakfast and Special Milk Programs' Claim for Reimbursement Form is used to collect meal and cost data from sponsors and other providers in order to determine the amount of reimbursement for meals or milk served. The completed forms are sent to the Food and Consumer Service's Regional Offices where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the National School Lunch, School Breakfast, and Special Milk Programs is based on performance, that is, an assigned rate per meal or half pint of milk served, with cost comparisons to free milk and severe need breakfasts. To fulfill the earned reimbursement requirements set forth in National School Lunch, School Breakfast, and Special Milk Program Regulations issued by the Secretary of Agriculture (7 CFR 210.8, 220.11, 215.10), the meal and cost data must be collected on form FCS-806. This form is an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate record keeping.

This request is being made to extend the current information collection for an additional three years. Current methods are the only practical means of collecting this information considering the resources of form users.

The information collected is used by FCS to manage, plan, evaluate, and account for Federal Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Federal Register

Vol. 61, No. 228

Monday, November 25, 1996

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are National School Lunch, School Breakfast and Special Milk Programs sponsors and other providers.

Estimated Number of Respondents: 1200.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 5,400 hours.

Copies of this information collection can be obtained from Cato Watson, Agency Information Collection Coordinator, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: November 12, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96-30050 Filed 11-22-96; 8:45 am]

BILLING CODE 3410-26-U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Cost Study for Single-Family Value-in-Place.

Form Number(s): C-702(BS), C-702(CB).

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 1,520 hours.

Number of Respondents: 7,600.

Avg Hours of Response: 12 minutes.

Needs and Uses: The Census Bureau produces a monthly data series on the value of private single-family residential construction put in place. Estimates for the series are derived from the Bureau's Survey of Construction (SOC) by using a mathematical model and construction progress patterns. The application of the mathematical model requires us to subtract out nonconstruction costs from sales price or contract value that we collect for the SOC and add construction costs not normally

included in the contract value. The factors representing these corrections to the cost need to be updated in order to bring them up to date with today's housing market and recent innovations in construction. The factors currently in use were derived from two studies conducted in the early 1980's. The Census Bureau will conduct a special one-time study to re-estimate these factors based on current single-family construction data. In the study a subset of the SOC respondents for single-family housing completions will be asked to provide the Census Bureau with up to nine construction cost items. The Census Bureau will use the information collected in the study to revise the models and factors that will be applied to the sales price and contract price for private single-family residential construction.

Affected Public: Businesses or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503. **Linda Engelmeier,** Acting Departmental Forms Clearance Officer, Office of Management and Organization. [FR Doc. 96-29864 Filed 11-22-96; 8:45 am] BILLING CODE 3010-07-M

Bureau of the Census

1997 Business Expenditures Survey

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 24, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sheldon Ziman, Bureau of the Census, AGFS, IMALL 300-19, Washington, DC (301)763-7596.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct the 1997 Business Expenditures Survey (BES), previously known as the Assets and Expenditures Survey (AES), as part of the 1997 Economic Censuses. This information collection will supplement basic economic statistics produced by the 1997 Censuses of Wholesale Trade, Retail Trade, and Service Industries, and is the sole source of detailed comprehensive statistics on business operating expenses of domestic merchant wholesale, retail, and service businesses. Data will be collected only from employer businesses included in the business current sample surveys (BSR-97) database. This information will be used by the Bureau of Economic Analysis to benchmark national economic accounts such as the input-output account, and to derive economic measures of value produced, such as value added. Other government agencies, private industry, and academia also will use these data for policy making, market and economic research, and planning. Detailed inquiries on fixed assets and capital expenditures, included in the 1992 survey, have been dropped.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. These forms will initially supplement those mailed to respondents included in the Annual Surveys of Merchant Wholesale, Retail Trade, and Service Industries. The latter surveys provide data on sales, purchases, and inventories needed to supplement the operating expenses data required for the computation of measures of value produced. Since the main Economic Census due date of February 12 would likely pose undue respondent burden for the types of inquiries to be asked, the survey's due date will be March 12.

Reasonable time extensions will be offered to further reduce this burden. Reminder letters and telephone calls will be directed to those not responding by the extension or due date.

III. Data

OMB Number: [not available]
Form Numbers:—9 forms will be used:

1997 BES form	Supplement to annual survey—
B-451(S) ...	Wholesale alpha form B-451.
B-450(S) ...	Wholesale E.I. form B-450.
B-151(S) ...	Retail E.I. form B-151.
B-151A(S) ...	Retail E.I. form B-151A.
B-151D(S) ...	Retail E.I. form B-151D.
B-153(S) ...	Retail alpha form B-153.
B-153D(S) ...	Retail alpha form B-153D.
B-500(S1)	Service alpha (A) and E.I. (E) reporting units covered in the B-500 series).
B-500(S2)	

Note: Alpha reporting units cover all trade-specific locations of companies with multiple Employer Identification (E.I.) numbers in a particular trade. All other reporting units are covered under trade-specific company E.I. numbers.

Type of Review: Regular Review.

Affected Public: Large and small businesses, other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 60,100 (all employers). This reflects the addition of part of the real estate industry to the scope of the survey, consistent with the Service Annual Survey.

Estimated Time Per Response: The average for all respondents is 1.07 hours. For alpha companies (generally large multiunits), the range is .7 to 4.5 hours, averaging 1.7 hours. For E.I. companies (generally smaller), the range is .3 to 3.8 hours, averaging 1.0 hours.

Estimated Total Burden Hours: The total annual burden for fiscal year 1998 is 64,296 hours. The decrease from the 1992 survey reflects the elimination of inquiries covering fixed assets and detailed capital expenditures.

Estimated Total Cost: Included in the total cost of the 1997 Economic Census, estimated to be \$218 million.

Respondents' Obligation: Mandatory.
Legal Authority: Title 13, United States Code, Sections 131, 193, 195, and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 18, 1996.

Linda Engelmeier,
Acting Departmental Forms Clearance
Officer, Office of Management and
Organization.

[FR Doc. 96-29963 Filed 11-22-96; 8:45
a.m.]

BILLING CODE 3010-07-P

The 1997 Study of Public Attitudes Toward Administrative Records Use (SPARU)

ACTION: Proposed agency information
collection activity; comment request.

SUMMARY: The Department of
Commerce, as part of its continuing
effort to reduce paperwork and
respondent burden, invites the general
public and other Federal agencies to
take this opportunity to comment on
proposed and/or continuing information
collections, as required by the
Paperwork Reduction Act of 1995,
Public Law 104-13 (44 U.S.C.
3506(c)(2)(A)).

DATES: Written comments must be
submitted on or before January 24, 1997.

ADDRESSES: Direct all written comments
to Linda Engelmeier, Acting
Departmental Forms Clearance Officer,
Department of Commerce, Room 5327,
14th and Constitution Avenue, NW,
Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:
Requests for additional information or
copies of the information collection
instrument(s) should be directed to
Randall Neugebauer, Bureau of the
Census, Room 3567-3, Washington, DC
20233-7100, (301) 457-3952.

SUPPLEMENTARY INFORMATION:

I. Abstract

In the design for the 2000 census, the
Census Bureau plans to expand the use
of administrative records.
Administrative records may be used to

estimate characteristics of non-
responding households, supplement
missing data for respondents that return
incomplete forms, and to help improve
estimation of the number of persons
missed within households. Collection of
Social Security numbers would assist
efforts to accurately match
administrative records information. The
purpose of the 1997 SPARU is to study
the public's attitudes regarding the
Census Bureau's planned use of
administrative records in the 2000
Census and a proposal to collect the
Social Security number of each
household member in the decennial
census. The 1997 SPARU will be a
repeat of a survey conducted during the
summer of 1996, known as the 1996
SPARU (0607-0822). This research, in
conjunction with results from the 1996
SPARU and the first attitudinal survey
conducted in 1995, will enable the
Census Bureau to assess change in the
public's attitudes.

Results of the 1996 SPARU will be
released in December 1996. The
estimated final response rate is 65
percent with 1,210 completed
interviews. Midway through the
interviewing period, it was reported that
completed interviews averaged less than
15 minutes. The size of the
questionnaire is expected to be about
the same for the 1997 SPARU. To
maintain continuity, the content of the
questionnaire will be mostly the same.
Two developments, however, will cause
some change to the content. As
determined by Census Bureau experts,
the contractor, and outside expert
consultation, the questions yielding
insignificant or meaningless results will
be dropped. The Census Bureau also
will for the first time gauge the public's
understanding of and opinion on
"within household privacy." The
Census Bureau strictly abides by its
confidentiality laws at the household
level. However, when the Census
Bureau must re-contact a household to
get more complete responses, the census
taker may provide information to a
member of the household other than the
initial respondent. The 1997 SPARU
will probe the public's attitude
regarding this aspect of "privacy
principles" and the Census Bureau's
past practices.

II. Method of Collection

A contractor will conduct the survey
with telephone interviewing using an
automated survey instrument and a
random digit dialing sampling design.

III. Data

OMB Number: 0607-0822.

Form Numbers: The automated survey
instrument will not have a form
number.

Type of Review: Regular submission.
Affected Public: Individuals or
households.

Estimated Number of Respondents:
1,200.

Estimated Time Per Response: 15
minutes.

**Estimated Total Annual Burden
Hours:** 300.

Estimated Total Annual Cost:
\$140,099.

Respondent's Obligation: Voluntary.
Legal Authority: Title 13 United States
Code, Section 193.

IV. Request for Comments

Comments are invited on: (a) Whether
the proposed collection of information
is necessary for the proper performance
of the functions of the agency, including
whether the information shall have
practical utility; (b) the accuracy of the
agency's estimate of the burden
(including hours and cost) of the
proposed collection of information;
ways to enhance the quality, utility, and
clarity of the information to be
collected; and (d) ways to minimize the
burden of the collection of information
on respondents, including through the
use of automated collection techniques
or other forms of information
technology.

Comments submitted in response to
this notice will be summarized and/or
included in the request for OMB
approval of this information collection;
they also will become a matter of public
record.

Dated: November 18, 1996.

Linda Engelmeier,
Acting Departmental Forms Clearance
Officer, Office of Management and
Organization.

[FR Doc. 96-29963 Filed 11-22-96; 8:45 am]
BILLING CODE 3010-07-M

Economics and Statistics Administration

2000 Census Advisory Committee, Public Meeting

AGENCY: Economics and Statistics
Administration, Department of
Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal
Advisory Committee Act (Public Law
92-463, as amended by P.L. 94-409,
P.L. 96-523, and P.L. 97-375), we are
giving notice of a meeting of the 2000
Census Advisory Committee. The
meeting will convene on Wednesday,

December 11, 1996, at 8:30 a.m. at the
Embassy Suites Hotel, 1250 22nd Street,
NW, Washington, DC 20037, and
adjourn on Thursday, December 12, at
4:15 p.m.

The Advisory Committee is composed
of a Chair, Vice Chair, and up to thirty-
five member organizations, all
appointed by the Secretary of
Commerce. The Advisory Committee
will consider the goals of Census 2000
and user needs for information provided
by that census, and provide a
perspective from the standpoint of the
outside user community about how
operational planning and
implementation methods proposed for
Census 2000 will realize those goals and
satisfy those needs. The Advisory
Committee shall consider all aspects of
the conduct of the 2000 census of
population and housing, and shall make
recommendations for improving that
census.

DATES: On Wednesday, December 11,
1996, the meeting will begin at 8:30 a.m.
and adjourn for the day at 4:30 p.m. On
Thursday, December 12, 1996, the
meeting will begin at 8:30 a.m. and
adjourn at 4:15 p.m.

ADDRESSES: The meeting will take place
at the Embassy Suites Hotel, 1250 22nd
Street, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Anyone wishing additional information
about this meeting, or who wishes to
submit written statements or questions,
may contact Maxine Anderson-Brown,
Committee Liaison Officer, Department
of Commerce, Bureau of the Census,
Room 3039, Federal Building 3,
Washington, D.C. 20233, telephone 301-
457-2308.

SUPPLEMENTARY INFORMATION: A brief
period will be set aside for public
comment and questions. However,
individuals with extensive questions or
statements for the record must submit
them in writing to the Commerce
Department official named above at
least three working days prior to the
meeting.

The meeting is physically accessible
to people with disabilities. Requests for
sign language interpretation or other
auxiliary aids should be directed to
Kathy Maney; her telephone number is
301-457-2308.

Dated: November 19, 1996.

Everett M. Ehrlich,
Under Secretary for Economic Affairs
Economics and Statistics Administration.
[FR Doc. 96-30017 Filed 11-22-96; 8:45 am]
BILLING CODE 3010-04-M

International Trade Administration [A-533-808]

Certain Forged Stainless Steel Flanges From India; Preliminary Results of New Shipper Antidumping Duty Administrative Reviews

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

ACTION: Notice of preliminary results of
new shipper antidumping duty
administrative reviews.

SUMMARY: In response to requests by two
manufacturer/exporters, Isibars Ltd.
(Isibars) and Patheja Forgings and Auto
Parts Ltd. (Patheja), the Department of
Commerce (the Department) is
conducting new shipper administrative
reviews of the antidumping duty order
on certain forged stainless steel flanges
(flanges) from India. The review covers
sales during the period September 1,
1995 through February 29, 1996. We
have preliminarily determined that
Isibars sold subject merchandise at not
less than normal value (NV) during the
period of review (POR), and that Patheja
has a dumping margin of 4.80%.
Interested parties are invited to
comment on these preliminary results.
Parties who submit argument in this
proceeding are requested to submit with
the argument (1) a statement of the issue
and (2) a brief summary of the
argument.

EFFECTIVE DATE: November 25, 1996.

FOR FURTHER INFORMATION CONTACT:
Thomas Killiam or John Kugelmann,
Office of AD/CVD Enforcement, Group
III, Import Administration, International
Trade Administration, U.S. Department
of Commerce, 14th Street and
Constitution Avenue, N.W.,
Washington, DC 20230; telephone: (202)
482-2704 or 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all
citations to the statute are references to
the provisions effective January 1, 1995,
the effective date of the amendments
made to the Tariff Act of 1930 (the Act)
by the Uruguay Round Agreements Act
(URAA). In addition, unless otherwise
indicated, all citations to the
Department's regulations are to the
current regulations, as amended by the
interim regulations published in the
Federal Register on May 11, 1995 (60
FR 25130).

Background

Isibars, by letters dated February 29,
April 12, and April 22, 1996, and

Patheja, by a letter dated February 28,
1996, each requested a new shipper
review pursuant to section 751(a)(2)(B)
of the Act and section 353.22(h) of the
Department's interim regulations, which
govern determinations of antidumping
duties for new shippers. These
provisions state that, among other
requirements, a producer or exporter
requesting a new shipper review must
include with its request the date on
which the merchandise was first
entered, or withdrawn from warehouse,
for consumption, or, if it cannot certify
as to the date of first entry, the date on
which it first shipped the merchandise
for export to the United States (interim
regulations, section 353.22(h)(2)(i)).

Neither respondent was able to
provide the shipment date at the time of
their requests for review because the
shipments had not yet occurred.
However, both companies did certify
that the shipments were imminent.
Based on the information which the
respondents provided in their requests
we determined that the requirements
cited above were adequately fulfilled.
The respondents later provided the
shipment dates in their questionnaire
responses.

On May 6, 1996, the Department
published a notice of initiation these
new shipper reviews of Isibars and
Patheja (61 FR 20223). The Department
is now conducting these reviews in
accordance with section 751 of the Act
and section 353.22 of its interim
regulations.

Scope of the Reviews

The products covered by this order
are certain forged stainless steel flanges
both finished and not finished,
generally manufactured to specification
ASTM A-182, and made in alloys such
as 304, 304L, 316, and 316L. The scope
includes five general types of flanges.
They are weld neck, used for butt-weld
line connection; threaded, used for
threaded line connections; slip-on and
lap joint, used with stub-ends/butt-weld
line connections; socket weld, used to
fit pipe into a machined recess; and
blind, used to seal off a line. The sizes
of the flanges within the scope range
generally from one to six inches;
however, all sizes of the above-
described merchandise are included in
the scope. Specifically excluded from
the scope of this order are cast stainless
steel flanges. Cast stainless steel flanges
generally are manufactured to
specification ASTM A-351. The flanges
subject to this order are currently
classifiable under subheadings
7307.21.1000 and 7307.21.5000 of the
Harmonized Tariff Schedule of the
United States (HTSUS). The HTSUS

subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The reviews cover two Indian manufacturers/exporters, Isibars and Patheja, and the period September 1, 1995 through February 29, 1996.

Export Price (EP)

We used EP, in accordance with section 772(a) of the Act, based on the price from the respondents because the sales were made prior to importation into the United States, and constructed export price was not otherwise indicated.

We based date of sale on the date of the purchase order, because respondents have provided clear evidence that sale terms were agreed to in writing in the purchase order. Moreover, because respondents produced the subject merchandise to order, renegotiation of material terms was unlikely.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses, which were comprised of customs brokerage and handling expenses, home market inland freight, international freight, and insurance. No other adjustments were claimed or allowed.

Normal Value (NV)

A. Viability

For Isibars, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Isibars—volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Isibars—aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV.

Patheja had no domestic or third country sales of flanges during the POR. Therefore, in accordance with section 773(a)(4) of the Act, we used constructed value for comparison with EP.

B. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829-831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.

Isibars did not request an adjustment for LOT. To ensure that no such adjustment was necessary, we requested and examined information on the selling activities associated with each phase of marketing in each of Isibars's markets; since there were no differences in such selling activities in either market, and since all sales in both markets were at a single LOT, we compared sales at this sole LOT.

C. Constructed Value (CV)

For Patheja, in accordance with section 773(e) of the Act, we calculated CV based on Patheja's cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses (SG&A) incurred in connection with the production and sale of the foreign like product, credit expenses on U.S. sales, and U.S. packing costs. We used the costs of materials, fabrication, SG&A, and profit as reported in the CV portion of Patheja's questionnaire response. We based Patheja's profits on the amounts it realized in connection with the production and sale in India of merchandise in the same general category of products as the subject merchandise, in accordance with Section 773(e)(1)(B) of the Act. Since payment had not been made, in calculating credit expenses on Patheja's U.S. sales, we used the number of days between shipment from the factory and the date of the supplemental questionnaire response, the latest date for which we have information on the record concerning the sale in question. We used the U.S. packing costs reported in the U.S. sales portion of Patheja's questionnaire response.

D. Price-to-Price Comparisons

For Isibars, for price-to-price comparisons, we based NV on the prices at which the foreign like products were first sold for consumption in the home market to an unaffiliated party, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP, in accordance with section 773(a)(1)(B) of the Act. Isibars made all home market and EP sales of subject merchandise at the same level of trade.

Pursuant to section 777A(d)(2) of the Act, for Isibars we compared the EPs of individual U.S. transactions to the average prices of contemporaneous sales of the foreign like product. We calculated NV based on FOB factory as reported. There were no packing costs on home market sales. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. We made circumstance-

of-sale adjustments, where appropriate, for differences in credit expenses. We added U.S. packing expenses to Isibars' home market prices. No other adjustments were claimed or allowed.

Preliminary Results of the Reviews

As a result of our comparison of EP to NV, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin percent
Isibars	9/1/95-2/29/96	0.00
Patheja	9/1/95-2/29/96	4.60

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 34 days after the date of publication, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 20 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 27 days after the date of publication. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of the new shipper administrative reviews, including the results of its analysis of issues raised in any case or rebuttal briefs, within 90 days of issuance of these preliminary results.

Upon completion of these new shipper reviews, the Department will issue appraisal instructions directly to the Customs Service. The results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise sold during the POR and covered by the determination and for future deposits of estimated duties.

Furthermore, upon completion of these reviews, the posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's interim regulations, will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise. The following deposit requirements will be effective upon publication of the final results of these new shipper antidumping duty administrative reviews for all shipments of flanges from India manufactured by Isibars or Patheja, entered, or withdrawn

from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be those established in the final results of these new shipper administrative reviews; (2) for exporters not covered in these reviews, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 162.14 percent, the all others rate established in the LTFV investigation (59 FR 5994, February 9, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper administrative reviews and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.22(h).

Dated: November 1, 1996.

Robert S. LaRocca,
Acting Assistant Secretary for Import Administration.
[FR Doc. 96-30044 Filed 11-22-96; 8:45 am]
BILLING CODE 3510-05-P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app.

2, notice is hereby given that the National Institute of Standards and Technology (NIST) will meet Tuesday, December 10, 1996, from 8:30 a.m. to 5:00 p.m., and on Wednesday, December 11, 1996, from 8:30 a.m. to 10:00 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of the NIST who are eminent in such fields as business, research new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. On December 10, 1996, the agenda will include an update on NIST programs; report on NIST facilities program, report on Applied Technology Program Focused Program: Materials Processing for Heavy Manufacturing, presentation on introduction of advanced structural ceramics, presentation on future of NIST, discussion of the Institute budget; and, on December 11, 1996, laboratory tour of NIST. The discussion on the Institute budget scheduled to begin at 4:15 p.m. and end at 5:00 p.m., on December 10, 1996, will be closed.

DATES: The meeting will convene December 10, 1996, at 8:30 a.m. and will adjourn at 10:00 a.m. on December 11, 1996.

ADDRESSES: The meeting will be held in the Employees Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 15, 1996, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Applied Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of

meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 19, 1996.

Samuel Kramer,
Associate Director.
[FR Doc. 96-30051 Filed 11-22-96; 8:45 am]
BILLING CODE 3510-15-01

National Oceanic and Atmospheric Administration

[D. 111486A]

Marine Mammals; Scientific Research Permit (PSE3)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. D. Ann Pabst, University of North Carolina Wilmington, Biological Sciences, 601 South College Road, Wilmington, NC 28403-3297, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*), North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), Atlantic bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), beaked whales (*Mesoplodon* sp.), and pelagic dolphins (*Stenella* sp.) for purposes of scientific research. DATES: Written comments must be received on or before December 26, 1996.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298 (508/281-9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432 (813/893-3141).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-

West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*); the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23). The applicant seeks authorization to harass during photo-identification studies and aerial and vessel surveys, up to 1,200 humpback whales (*Megaptera novaeangliae*) annually over a 5-year period. In addition, the following non-target species may be harassed during the course of the research: North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), Atlantic bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), beaked whales (*Mesoplodon* sp.), and pelagic dolphins (*Stenella* sp.).

Dated: November 14, 1996.

Ann D. Terback,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96-29983 Filed 11-22-96; 8:45 am] BILLING CODE 3010-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in El Salvador and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to Memoranda of Understanding (MOUs) dated September 28, 1994 and July 6, 1995 between the Governments of the United States and El Salvador and July 18, 1996 for Category 342/642.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 **CORRELATION** will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 60 FR 2740, published on January 11, 1995; 61 FR 49439, published on September 20, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the

implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1996.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,024,895 dozen.
342/642	337,500 dozen.
352/652	7,000,000 dozen.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Pursuant to Memoranda of Understanding dated September 28, 1994 and July 6, 1995 between the Governments of the United States and El Salvador; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 61 FR 49439 (September 20, 1996), effective on January 1, 1997, guaranteed access levels are being established for properly certified textile products assembled in El Salvador from fabric formed and cut in the United States in the following categories which are re-exported to the United States from El Salvador during the period January 1, 1997 through December 31, 1997:

Category	Guaranteed Access Level
340/640	1,000,000 dozen.
342/642	400,000 dozen.
352/652	30,000,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 6, 1995, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-30049 Filed 11-22-96; 8:45 am] BILLING CODE 3010-22-F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

November 19, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Honduras and exported during the period January 1, 1997 through December 31, 1997, are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to a

Memorandum of Understanding (MOU) dated September 15, 1995 between the Governments of the United States and Honduras.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits and guaranteed access levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 60 FR 65299, published on December 19, 1995).

Information regarding the 1997 **CORRELATION** will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 61 FR 38238, published on July 23, 1996, and 61 FR 49439, published on September 20, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1996.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Honduras and exported during the period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following restraint limits:

Category	Twelve-month limit
352/652	10,674,200 dozen of which not more than 7,865,200 dozen shall be in Categories 352-K/652-K ¹ .
435	14,982 dozen.

¹Category 352-K: only HTS numbers 6107.11.0010, 6107.11.0020, 6108.19.9010, 6108.21.0010, 6108.21.0020, 6108.91.0005, 6108.91.0015, 6108.91.0025, 6108.10.0005, 6109.10.0007, 6109.10.0009, 6109.10.0037; Category 652-K: 6107.12.0010, 6107.12.0020, 6108.11.0010, 6108.11.0020, 6108.22.9020, 6108.22.9030, 6108.92.0005, 6108.92.0015, 6108.92.0025, 6109.90.1047 and 6109.90.1075.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Additionally, pursuant to the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989), 61 FR 49439 (September 20, 1996), effective on January 1, 1997, guaranteed access levels are being established for properly certified textile products assembled in Honduras from fabric formed and cut in the United States in textile products in the following categories which are re-exported to the United States from Honduras during the period January 1, 1997 through December 31, 1997 in the following amounts:

Category	Guaranteed Access Level
352/652	50,000,000 dozen.
435	35,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of July 18, 1996 shall be denied entry unless the Government of the Republic of Honduras authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the
Implementation of Textile Agreements
[FR Doc. 96-30048 Filed 11-22-96; 8:45 am]
BILLING CODE 3510-07-F

Adjustment of Import Limits and Amendment of Quota and Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

November 19, 1996.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Issuing a directive to the
Commissioner of Customs adjusting
limits and amending quota and visa
requirements.

EFFECTIVE DATE: December 1, 1996.

FOR FURTHER INFORMATION CONTACT:
Janet Heinzen, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 482-4212. For information on the
quota status of these limits, refer to the
Quota Status Reports posted on the
bulletin boards of each Customs port or
call (202) 927-6704. For information on
embargoes and quota re-openings, call
(202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11851 of March
3, 1972, as amended; section 204 of the
Agricultural Act of 1956, as amended (7
U.S.C. 1854); Uruguay Round Agreements
Act.

In a Memorandum of Understanding
(MOU) dated November 1, 1996, the
Governments of the United States and
Indonesia agreed that goods classified in
HTS numbers 5516.14.0005,
5516.14.0025, 5516.14.0085 (Category
611), 5408.24.9010, 5408.24.9040
(Category 618); 5408.34.9085 and
5516.24.0085 (Category 629) which are
produced or manufactured in Indonesia
and imported on or after December 1,
1996 will no longer be subject to quota
and visa requirements. The new
designations for Categories 611, 618 and
629 will be 611-O, 618-O and 629-O,
respectively.

Also, the two governments agreed to
increase the 1996 limits for Categories
336/636 and 342/642 for special swing,
reducing the limit for Category 618-O to
account for the increase.

Effective on December 1, 1996, goods
in Categories 611, 618 and 629,
produced or manufactured in Indonesia
and exported from Indonesia on or after

December 1, 1996 must be accompanied
by a 611-O, 618-O or 629-O part-
category visa. Goods currently visased as
625/626/627/628/629 which are
exported from Indonesia on or after
December 1, 1996 shall be visased as
merged Categories 625/626/627/628/
629-O, or the correct category or correct
part-category corresponding to the
actual shipment. There will be a grace
period from December 1, 1996 through
December 31, 1996 during which goods
exported from Indonesia in Categories
611, 618 and 629 may be accompanied
by the whole or new part-category visa.
During the grace period merged
Categories 625/626/627/628/629 may be
accompanied by the whole merged
category, the new merged part-category
visa, or the correct whole or part
category visa corresponding to the
actual shipment.

In the letter published below, the
Chairman of CITA directs the
Commissioner of Customs to adjust
limits and amend export quota and visa
requirements.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 60 FR 65299,
published on December 19, 1995). Also
see 52 FR 20134, published on May 29,
1987; and 60 FR 62410, published on
December 6, 1995.

The letter to the Commissioner of
Customs and the actions taken pursuant
to it are not designed to implement all
of the provisions of the Uruguay Round
Agreements Act, the Uruguay Round
Agreement on Textiles and Clothing and
the November 1, 1996 MOU, but are
designed to assist only in the
implementation of certain of their
provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the
Implementation of Textile Agreements
November 19, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Commissioner: This directive
amends, but does not cancel, the directive
issued to you on November 30, 1995, by the
Chairman, Committee for the Implementation
of Textile Agreements. That directive
concerns imports of certain cotton, wool,
man-made fiber, silk blend and other
vegetable fiber textiles and textile products,
produced or manufactured in Indonesia and
exported during the twelve-month period
which began on January 1, 1996 and extends
through December 31, 1996.

Effective on December 1, 1996, goods
classified in HTS numbers 5516.14.0005,
5516.14.0025, 5516.14.0085 (Category 611),
5408.24.9010, 5408.24.9040 (Category 618);
5408.34.9085 and 5516.24.0085 (Category
629) which are produced or manufactured in
Indonesia and imported on or after December
1, 1996 will no longer be subject to quota and
visa requirements, pursuant to a
Memorandum of Understanding dated
November 1, 1996 between the Governments
of the United States and Indonesia and under
the terms of the Uruguay Round Agreements
Act and the Uruguay Round Agreement on
Textiles and Clothing. The new designations
for Categories 611, 618 and 629 will be 611-
O¹, 618-O² and 629-O³, respectively.

Also effective on December 1, 1996, you
are directed to adjust the current limits for
the following categories:

Category	Adjusted twelve-month limit ¹
Levels in Group I	
336/636	615,844 dozen.
342/642	384,088 dozen.
618-O	1,113,422 square me- ters.

¹ The limits have not been adjusted to ac-
count for any imports exported after December
31, 1995.

Effective on December 1, 1996, you are
directed to amend further, the directive dated
May 19, 1987, to require a part-category visa
for Categories 611-O, 618-O and 629-O,
produced or manufactured in Indonesia and
exported from Indonesia on or after
December 1, 1996. Goods currently visased as
625/626/627/628/629 which are exported
from Indonesia on or after December 1, 1996
shall be visased as merged Categories 625/
626/627/628/629-O, or the correct category
or correct part-category corresponding to the
actual shipment. There will be a grace period
from December 1, 1996 through December 31,
1996 during which goods exported from
Indonesia in Categories 611, 618 and 629
may be accompanied by the whole or new
part-category visa. During the grace period
goods in merged Categories 625/626/627/
628/629 may be accompanied by the whole
merged category, the new merged part-
category visa, or the correct whole or part
category visa corresponding to the actual
shipment.

Shipments entered or withdrawn from
warehouse according to this directive which
are not accompanied by an appropriate
export visa shall be denied entry and a new
visa must be obtained.

The Committee for the Implementation of
Textile Agreements has determined that
these actions fall within the foreign affairs

¹ Category 611-O: all HTS numbers except
5516.14.0005, 5516.14.0025 and 5516.14.0085.

² Category 618-O: all HTS numbers except
5408.24.9010 and 5408.24.9040.

³ Category 629-O: all HTS numbers except
5408.34.9085 and 5516.24.0085.

exception to the rulemaking provisions of 5
U.S.C. 553(a)(1).

D. Michael Hutchinson,

Acting Chairman, Committee for the
Implementation of Textile Agreements.
[FR Doc. 96-30047 Filed 11-22-96; 8:45 am]
BILLING CODE 3510-07-F

DEPARTMENT OF EDUCATION

[CFDA No. 84.116N]

Fund for the Improvement of
Postsecondary Education—Special
Focus Competition (Invitational
Priority: Institutional Cooperation and
Student Mobility in Postsecondary
Education between the United States,
Canada and Mexico); Notice Inviting
Application for New Awards for Fiscal
Year (FY) 1997

PURPOSE OF PROGRAM: To provide grants to
improve postsecondary education
opportunities by focusing on problem
areas or improvement approaches in
postsecondary education.

SUPPLEMENTARY INFORMATION: This
program is a Special Focus Competition
pursuant to 34 CFR 630.11(b)(1) to
support projects addressing a particular
problem area or improvement approach
in postsecondary education. The
competition also includes an
invitational priority to encourage
proposals designed to support the
formation of educational consortia of
American, Canadian and Mexican
institutions to encourage cooperation in
the coordination of curricula, the
exchange of students and the opening of
educational opportunities throughout
North America.

The invitational priority is issued in
cooperation with Canada and Mexico.
Canadian and Mexican institutions
participating in any consortium
proposal responding to the invitational
priority may apply, respectively, to
Human Resources Development Canada
and the Mexican Bureau of University
Development for additional funding
under separate Canadian and Mexican
competitions.

Eligible Applicants: Institutions of
higher education or combinations of
such institutions and other public and
private nonprofit educational
institutions and agencies.

Deadline for Transmittal of

Applications: March 14, 1997.

Deadline for Intergovernmental

Review: May 13, 1997.

Applications Available: December 2,
1996.

Available Funds: \$1,150,000.

Estimated Range of Awards:
\$100,000-\$150,000, for three years.

Estimated Average Size of Awards:
\$102,000, for three years.

Estimated Number of Awards: 10.

Note: The Department is not bound by any
estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The
Education Department General
Administrative Regulations (EDGAR) in
34 CFR Parts 74, 75 (except as noted in
34 CFR 630.4(a)(2)), 77, 79, 80, 82, 85,
and 86; and (b) the regulations for this
program in 34 CFR Part 630.

Priorities

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34
CFR 630.11(b)(1), the Secretary is
particularly interested in applications
that meet the following invitational
priority. However, an application that
meets this invitational priority does not
receive competitive or absolute
preference over other applications.

Invitational Priority: Projects that
support consortia of institutions of
higher education that promote
institutional cooperation and student
mobility between the United States,
Mexico and Canada.

Selection Criteria

In evaluating applications for grants
under this program competition, the
Secretary uses the following selection
criteria chosen from those listed in 34
CFR 630.32:

(a) *Significance for Postsecondary
Education.* The Secretary reviews each
proposed project for its significance in
improving postsecondary education by
determining the extent to which it
would—

(1) Achieve the purposes of the
program competition, as referenced in
§ 630.11(b)(1), by addressing a particular
problem area or improvement approach
in postsecondary education;

(2) Address an important problem or
need;

(3) Represent an improvement upon,
or important departure from, existing
practice;

(4) Involve learner-centered
improvements;

(5) Achieve far-reaching impact
through improvements that will be
useful in a variety of ways and in a
variety of settings; and

(6) Increase the cost-effectiveness of
services.

(b) *Feasibility.* The Secretary reviews
each proposed project for its feasibility
by determining the extent to which—

(1) The proposed project represents an
appropriate response to the problem or
need addressed;

(2) The applicant is capable of
carrying out the proposed project, as
evidenced by, for example—

(i) The applicant's understanding of
the problem or need;

(ii) The quality of the project design,
including objectives, approaches, and
evaluation plan;

(iii) The adequacy of resources,
including money, personnel, facilities,
equipment, and supplies;

(iv) The qualifications of key
personnel who would conduct the
project; and

(v) The applicant's relevant prior
experience;

(3) The applicant and any other
participating organizations are
committed to the success of the
proposed project, as evidenced by, for
example—

(i) Contribution of resources by the
applicant and by participating
organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of
the proposed project beyond the period
of funding (unless the project would be
self-terminating); and

(4) The proposed project demonstrates
potential for dissemination to or
adaptation by other organizations, and
shows evidence of interest by potential
users.

(c) *Appropriateness of funding
projects.* The Secretary reviews each
application to determine whether
support of the proposed project by the
Secretary is appropriate in terms of
availability of other funding sources for
the proposed activities.

In accordance with 34 CFR 630.32 the
Secretary announces the methods that
will be used in applying the selection
criteria.

The Secretary gives equal weight to
the selection criteria on significance,
feasibility, and appropriateness. Within
each of these criteria, the Secretary gives
equal weight to each of the criteria
listed above. In applying the criteria, the
Secretary first analyzes an application
in terms of each individual criterion.
The Secretary then bases the final
judgement of an application on an
overall assessment of the degree to
which the applicant addresses all
selection criteria.

For Applications or Information
Contact: Fund for the Improvement of
Postsecondary Education (FIPSE), U.S.
Department of Education, 7th and D
Streets, S.W., Room 3100, ROB-3,
Washington, D.C. 20202-5175.
Telephone: (202) 708-5750 between the
hours of 8 a.m. and 5 p.m., Eastern
Standard Time, Monday through Friday.
Individuals may also request
applications by submitting the name of

the competition, their name, and postal mailing address to the e-mail address (FIPSE@ED.GOV). By January 15, 1997, individuals will also be able to obtain the application text from the Internet address (http://www.ed.gov/prog_info/FIPSE/). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 6 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server (at [GOPHER://gopher.ed.gov](http://gopher.ed.gov)); or on the World Wide Web (at <http://gcs.ed.gov>). However, the official application notice for a discretionary grant competition is the notice published in the *Federal Register*.

Program Authority: 20 U.S.C. 1135-1135-3.

Dated: November 18, 1996.

David A. Longenecker,
Assistant Secretary for Postsecondary
Education.

[FR Doc. 96-30028 Filed 11-22-96; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Energy Research Financial Assistance
Program Notice 97-04; Natural and
Accelerated Bioremediation Research
Program

AGENCY: Office of Energy Research,
DOE.

ACTION: Notice inviting research grant
applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The NABIR Program is made up of the following scientific research elements: Acceleration; Assessment; Biogeochemical Dynamics; Biomolecular Science and Engineering; Biotransformation and Biodegradation; Community Dynamics and Microbial Ecology, and System Engineering, Integration, Prediction, and Optimization. The NABIR program also includes a social-legal element called Bioremediation and Its Social Implications and Concerns (BASIC). Grant applications are being solicited in

each of the first six scientific research elements, as well as in the BASIC element, but not in the System Engineering, Integration, Prediction, and Optimization element.

DATES: Applicants are encouraged (but not required) to submit a preliminary application for programmatic review. Early submission of preliminary applications is encouraged, to allow time for meaningful dialogue. A brief preliminary application should consist of two to three pages of narrative describing the research objectives and methods of accomplishment together with a brief summary of the principal investigator's publication and research background; only one copy is required. The deadline for receipt of formal applications is 4:30 p.m., E.S.T., January 30, 1997, to be accepted for merit review and to permit timely consideration for award in fiscal year 1997. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preliminary application, referencing Program Notice 97-04, it should be sent e-mail to john.houghton@oer.doe.gov. Formal applications referencing Program Notice 97-04 on the cover page must be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER-64, 19901 Germantown Road, Germantown, MD 20874-1290, ATTN: Program Notice 97-04. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant. FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, ER-74, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, telephone (301) 903-8288, e-mail john.houghton@oer.doe.gov, fax (301) 903-8519.

SUPPLEMENTARY INFORMATION: The mission of the NABIR Program is to provide the scientific understanding needed to use natural processes and to develop new methods to accelerate those processes for the bioremediation of contaminated soils, sediments, and groundwater at DOE facilities. The program will be implemented through seven interrelated scientific research elements (Acceleration, Assessment, Biogeochemical Dynamics, Biomolecular Science and Engineering, Biotransformation and Biodegradation,

Community Dynamics and Microbial Ecology, and System Engineering, Integration, Prediction, and Optimization); and a social and legal element called Bioremediation and Its Social Implications and Concerns (BASIC). A document entitled Natural and Accelerated Bioremediation Research Program Plan (DOE/ER-0659T) contains an initial planning description of the NABIR Program and each of the science elements. It is available via the Internet using the following web site address: <http://www.er.doe.gov/production/oher/nabir/cover.html>. The NABIR Program Plan is also available from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831 (DOE and DOE grantees only) and the U.S. Department of Commerce, Technology Administration, National Technical Information Service, Springfield, VA 22161, (703) 487-4650 (public source). Additional information about NABIR, such as references to infrastructure that could be available to the research community, can be accessed from the NABIR Homepage: <http://www.lbl.gov/NABIR/>. Each scientific research element is directed by a program manager from OHER, who is responsible for providing support and overall direction for the element, including determining the relevance of the proposed research to the goals and objectives of the program element to the NABIR and other DOE programs. The NABIR program also has Science Team Leaders, selected through a previous peer review process, who will provide scientific leadership and coordination to the community of NABIR investigators.

Program Focus

The NABIR Program supports long-term, hypothesis-driven research directed at specific topics that will provide the understanding necessary to develop effective new technologies for DOE site cleanup. This research will help determine the future viability of bioremediation technologies at the DOE sites. The NABIR Program will not support research to evaluate the risk to humans or to the environment. Although the program is directed at specific goals, it supports research that is more fundamental in nature than demonstration projects.

The initial theme for the NABIR Program will be an emphasis on field-scale research and metal and radionuclide contamination, specifically on the metals and radionuclides associated with weapons production. However, the research program will support laboratory, theoretical, modeling, and other non-field research

projects, if they fill important gaps that would be necessary to complete understanding for field-scale applications. The study of real problems might iterate between, for example, the laboratory and the field. Investigators without access to laboratories licensed to work with radionuclides may propose research with non-radioactive surrogates of radionuclides, or collaboration with a licensed laboratory. The NABIR program will initially emphasize the bioremediation of metals and radionuclides in the subsurface below the root zone, including both thick vadose and saturated zones. Typically, the bioremediation of metals and radionuclides involves, but is not limited to, mobilization and immobilization scenarios. Consideration of organic contaminants, such as solvents and complexing agents that would be important substrates, facilitators, inhibitors, or carbon or electron donors or acceptors, can be included in the proposed research to the extent that they influence the primary goal of understanding the remediation of metals and radionuclides. Applicants are encouraged to review Chemical Contaminants on DOE Lands, DOE/ER-0547T, available at the OHER Homepage: http://www.er.doe.gov/production/oher/EPR/pub_spr.html, for a compilation of wastes and waste mixtures at the DOE sites.

NABIR is a research program designed to serve as a foundation for microbial in situ bioremediation techniques. Although "spillover" benefits of the research to other cleanup needs such as the use of bioreactors to process waste streams are anticipated, NABIR supports investigations into bioremediation of subsurface waste sites. This emphasis includes research that will assist the application of in situ bioremediation in conjunction with other cleanup methods, for example, using bioremediation to mobilize radionuclides so that pump-and-treat techniques could be more effective. Problems characterized by large areas with low-concentration contamination are emphasized over problems of localized, high concentrations. Research on phytoremediation will not be supported during this initial funding period.

In research plans that involve the potential release of chemicals, enzymes, and/or microorganisms to the field (both at contaminated and non-contaminated control sites), applicants should discuss how they will involve the public or stakeholders in their research, beginning with experimental design through completion of the project. All applicants should discuss other relevant societal

issues, where appropriate, which may include intellectual property protection, communication with and outreach to affected communities (including members of affected minority communities where appropriate) to explain the proposed research.

NABIR Infrastructure

The NABIR program anticipates selecting at least one Field Research Center (FRC) located on a DOE site. The FRC will serve as a central facility for researchers to use at their option.

However, FRCs will not be available (or even identified) for at least a year, because of a current National Environmental Policy Act (NEPA) review of the NABIR Program. Therefore, applicants are encouraged to use any site that is presently available to them, including but not limited to DOE sites. Investigators should describe how their research will interface with or transfer to field scale research at their site. Applicants should access the NABIR Homepage: <http://www.lbl.gov/NABIR/> for a listing of available sites and facilities.

A centrally-maintained database will be developed to provide limited data, such as site characterization and kinetics data, needed by a broad segment of investigators. Applications shall include a short discussion of the Quality Assurance and Quality Control (QA/QC) measures that will be applied in data gathering and analysis activities. Successful grantees will be expected to coordinate their QA/QC measures with NABIR program personnel.

Scientific Research Elements

The following sections describe each of the six NABIR scientific research elements and the emphasis that is given preference in this solicitation. Applicants may propose research that transcends more than one research element; it is also anticipated that many applications could be placed in more than one element. However, each application should state the one science element most closely aligned with the proposed research, to facilitate scientific review.

Bioremediation and Biodegradation: The goal of all bioremediation efforts is to reduce the potential toxicity of chemical contaminants in the field by using living organisms or their products to mineralize, degrade, transform, mobilize, or immobilize contaminants. There is already a significant base of knowledge about many pathways for organic chemical degradation, and several important contaminant degradation mechanisms are presently

under detailed investigation. Despite the successful contributions of existing knowledge about biodegradation and biotransformation mechanisms, there is still need for additional research. At present, the understanding of biotransformation and biodegradation pathways and mechanisms in the field is incomplete. Although the degradation of many organic compounds and the biotransformation of some inorganic compounds in laboratory cultures have been well described, it is unclear how this information relates to bioremediation processes under field conditions. The biotransformation of metals and radionuclides in thick vadose zones is poorly understood. Successful laboratory studies have not allowed for predictions about the fate of complex chemical mixtures that include metals and radionuclides in the field. It would be useful to know the metabolic pathways taken by mixtures of chemicals in the presence of complex microbial communities in vadose zones and their interfaces with saturated zones and the waste plume. It would be equally useful to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics. Research is needed to address questions such as:

- How can laboratory studies be used to accurately represent field situations and allow for predictions of chemical fate?
- How important are microbial species interactions in the biotransformation of metals and radionuclides?
- How do organic co-contaminants affect the biotransformation of metals and radionuclides?
- What factors control the kinetics of desirable metal and radionuclide biotransformations in vadose and saturated zones?
- Can biological processes be harnessed to permanently sequester metals and/or radionuclides in the subsurface?
- What are the metal- and radionuclide-transforming capabilities of indigenous microorganisms in deep vadose or saturated zones representative of DOE sites?

Community Dynamics and Microbial Ecology: Fundamental research in Community Dynamics and Microbial Ecology at both the molecular and the organismal level is needed to understand better the natural intrinsic processes of bioremediation in mixed-contaminant sites. A more complete understanding of energetics and biogeochemical transformation at the community level may ultimately

provide the ability to control or stimulate communities capable of transformation and to channel carbon flow (particularly of polluting organic compounds) through these communities or populations. It is essential to understand the roles and interactions of diverse communities in order to understand how and to what extent the structure of the biological community influences the course of bioremediation and to what extent the environmental factors influence community dynamics in sites containing metals and radionuclides. This need is especially critical to successful bioremediation of diffuse metals and radionuclides in thick vadose and deep saturated zones. Research should be directed toward the identification and characterization of microbial communities at contaminated sites, and toward understanding the dynamics of extant microbial communities under the influence of metals and radionuclides. Research is needed to address questions such as:

- Is there sufficient biological activity and diversity in thick vadose zones to support natural and/or accelerated bioremediation of metals and radionuclides?

- What are the effects of metals and radionuclides on microbial community activity and diversity, including both metabolic and genetic activity and diversity?

- Do microbial (population) interactions occur within communities present in vadose zones contaminated with metals and radionuclides?

- What kind of measurement (assessment) technology must be developed to interrogate microbial communities for their activity and diversity before, during, and after bioremediation?

Biomolecular Science and Engineering: The overall goal of research in the Biomolecular Science and Engineering element is to use molecular and structural biology to enhance understanding of bioremediation and to genetically modify macro-molecules and organisms to improve their bioremediation activities. Using information and data gained from other program elements, the molecules, enzymes, and enzyme pathways that are most effective for bioremediation of metals and radionuclides will be identified. Initial DOE objectives and priorities for research in Biomolecular Science and Engineering are to: (i) identify, clone, and sequence novel genes and promoters important to the bioremediation of metals and radionuclides; and (ii) construct or enhance bioremediation enzymatic pathways by identifying active genes

from different procaryotic, eukaryotic and archaeal organisms and inserting those genes into one or more organisms that can survive and compete effectively in a contaminated subsurface environment. Research in these areas is encouraged that includes:

- How can we identify and characterize important genes and proteins that detoxify mixed contaminants or that affect the ability of organisms to live and survive under contaminated conditions?

- How can we identify and characterize genes from different organisms that can work together to improve bioremediation?

- How can we identify critical promoter elements that induce or regulate bioremediation genes or gene clusters?

- How can we develop expression systems for genes with an emphasis on the use of organisms that will survive in contaminated environments?

- How can we develop organisms with improved enzymatic pathways for bioremediation by combining genes from different organisms into a single organism with an emphasis on the use of soil organisms or organisms that will survive in other types of contaminated environments?

Biogeochemical Dynamics: Successful bioremediation of metals and radionuclides at DOE sites is closely linked to understanding the complex and dynamic interplay of hydrological, geochemical, and biological processes within geological media that are themselves spatially and temporally heterogeneous. Understanding the natural biogeochemical processes that control the mobility and form of radionuclides is one of the most challenging problems affecting the future viability of bioremediation at DOE sites, particularly within the thick vadose zones and saturated zones below the root zone where much of the contamination resides.

DOE cleanup problems are at the field scale, and the immediate priority in biogeochemical dynamics is to scale up the existing scientific knowledge base on underlying mechanisms and processes governing metal and radionuclide behavior to the field. Focus will be on (i) understanding how natural biogeochemical processes control the mobility and stability of contaminants in waste mixtures, including the biogeochemical processes that modify the form and behavior of contaminants in mixtures; and (ii) the influence of spatial heterogeneity in chemical, microbiological, and physical processes on the transport and transformation of contaminant mixtures.

Research within biogeochemical dynamics seeks to quantify the intrinsic biogeochemical processes that influence the form and behavior of contaminants and which can lead to development of new concepts for *in situ* bioremediation. New and creative scientific approaches are sought that address the following fundamental research questions:

- What are the principal biogeochemical reactions that govern mixed contaminant concentration, chemical speciation, and distribution between the aqueous and solid phases in the vadose and saturated zones?

- What are the thermodynamic and kinetic controls on these reactions?

- What are the major factors controlling the rate and extent of oxidation and reduction of multivalent radionuclides and naturally-occurring metals in various mineral phases? How can these factors be manipulated to enhance or limit the mobility of contaminants?

- What are the geochemical, microbiological, and transport processes and their interactions that control biological availability, transformation, and movement of contaminant mixtures?

- What are the interdependent distributions of microbiological, chemical, and physical properties and processes that have scale-dependent effects on biogeochemical phenomena and contaminant behavior? How can this information be scaled to the field?

- How can fundamental understanding of biogeochemical dynamics be used to develop innovative *in situ* remediation concepts for application to DOE sites?

Assessment: Current methods for measuring and evaluating the effectiveness of bioremediation are inadequate and, in most cases, undeveloped. Demonstrating the effectiveness of bioremediation will require documentation for direct impacts, such as loss of contaminants from the site, or indirect impacts, such as product accumulation and detoxification. The two primary objectives of research in the Assessment program element are to develop innovative and effective methods for assessing (i) bioremediation rate and activity, including microbial community structure and dynamics, biotransformation processes and rates, and electron flow; and (ii) bioremediation end points, including not only the concentrations of the contaminants and byproducts but also the stability, bioavailability, and toxicity of residual end-products. NABIR will not, however, fund projects that

examine human health risks of end points.

This element will focus on developing techniques for assessing the bioremediation activities of individual strains and functional groups within a community, as well as validate existing and emerging laboratory and field techniques. Priority will be given to research applications that could result in techniques and/or instrumentation that: (i) operate in real time; (ii) operate in field-scale heterogeneous environments; (iii) are cost-effective; and (iv) determine endpoints which more closely approximate limited or non-bioavailability. Research is sought to answer questions such as:

- Can quantitative techniques be adapted or developed for measurement of microbial community structure, movement, activity, and effectiveness during bioremediation?

- How can geophysical, geochemical, and hydrologic properties critical to bioremediation effectiveness be determined?

- What new methods might be developed to interpret complex data sets, including temporal and spatial variability in support of bioremediation management?

- Can bioremediation endpoints that accurately measure bioavailability be quantitatively established?

Acceleration: This program element will address effective delivery of microorganisms to contaminated zones, where bacteria and/or archaea can transform, mobilize, or immobilize toxicants, particularly metals and radionuclides in thick vadose and deep saturated zones. Highest priority will be on research that defines issues of microbial transport, such as chemical and physical heterogeneity and geochemistry. The fundamental processes that affect microbial survival are included in the Community Dynamics and Microbial Ecology Program Element.

Building on new knowledge being developed in other program elements on microbial community dynamics, biogeochemical processes governing the form and behavior of inorganic solutes and the effects of heterogeneity on these processes, research is needed to address questions such as:

- What factors control the delivery and transport of microorganisms and genetic elements in heterogeneous subsurface systems?

- What are the coupled effects of chemical, biological, and hydrologic processes on transport, such as attachment/detachment of microbial cells (including viruses and genetic elements) to mineral grains in concert

with advection and dispersion of cells and chemicals during flow through porous media?

- How can key controlling factors and coupled processes be evaluated and scaled to the field for acceleration of natural processes?

Basic

The introduction of non-native or genetically engineered microorganisms or the manipulation of the environment to change its microbial composition or chemical characteristics has the potential to raise concerns among those who may live or work nearby. Great care is required to involve the affected communities and stakeholders in any plans to use novel agents and/or processes to remediate a contaminated site; for example, a deliberate release of a non-indigenous microorganism, the purposeful manipulation of a microbial community, or the mobilization of a hazardous chemical. Although it may be many years before work under the auspices of this program gets to that point, it is wise to begin to consider some of the issues involved now.

The Bioremediation and its Societal Implications and Concerns (BASIC) component of the NABIR program is directed at these larger societal implications of bioremediation. DOE seeks to encourage applications that address effective ways to articulate the risks and benefits attendant to *in situ* bioremediation to stakeholders, and effective ways to involve affected communities in bioremediation research and decision making. The DOE also solicits applications for the preparation and dissemination of educational materials in any appropriate medium that will enhance understanding of the scientific as well as the societal aspects of NABIR among the public or specified groups. If an educational effort for a specific group is proposed, the value to NABIR of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of conferences focusing on the legal and societal implications of NABIR. Applications should demonstrate knowledge of any relevant literature and should include detailed plans for the gathering and analysis of factual information and the associated societal implications. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience.

Administrative Information

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this

notice, the preparation and submission of grant applications must follow the guidelines given in the *Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605*.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the *Application Guide for the Office of Energy Research Financial Assistance Program*. The Application Guide is available from the U. S. Department of Energy, Office of Energy Research, ER-74, 19901 Germantown Road, Germantown, MD 20874-1290. Telephone requests may be made by calling (301) 903-3338. Electronic access to ER's Financial Assistance Application Guide is possible via the World Wide Web at: <http://www.er.doe.gov/production/grants/grants.html>. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later guidelines as may be published in the *Federal Register*. Grantees must also comply with other federal and state laws and regulations as appropriate, for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation. The research description must be 15 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments include curriculum vitae, QA/QC plan, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

Also, as part of the evaluation, program policy factors become a selection priority.

Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

It is anticipated that up to \$10 million will be available for multiple awards to be made in FY 1997 and early FY 1998 in the categories described above, contingent on availability of appropriated funds. Applications may request project support up to three years, with one-year support contingent on availability of funds, progress of the research, and programmatic needs. Annual budgets for most of the six scientific research element projects are expected to range from \$200,000 to \$500,000 total costs. Annual budgets for most of the BASIC projects are expected not to exceed \$100,000. Researchers are encouraged to team with investigators in other disciplines where appropriate. DOE may encourage collaboration among prospective investigators, to promote joint applications or joint research projects, by using information obtained through the preliminary applications or through other forms of communication.

Although the required original and seven copies of the application must be submitted, researchers are asked to submit an electronic version of their abstract of the proposed research in ASCII format and their e-mail address to Karen Carlson by e-mail at karen.carlson@oer.doe.gov. Additional information on the NABIR Program is available at the following web site: <http://www.lbl.gov/NABIR/>. For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, ER-74; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874-1290; (301) 903-3336 phone; (301) 903-8519 fax; karen.carlson@oer.doe.gov; for hard copies of background material mentioned in this solicitation. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example:

<http://www.nsf.gov/80/bfa/cpo/gpg/fcft.htm#forms-9>.

Related Funding Opportunities

Investigators may wish to obtain information about the following related funding opportunities:

Department of Energy, Office of Environmental Management: The Environmental Management Science Program (EMSP). Contact: Carol Henry, Science and Policy Director, Office of Integrated Risk Management, EM-52, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, e-mail: carol.henry@em.doe.gov. Phone 202-586-7150. The EMSP home page is available at web site: www.em.doe.gov/science.

DOE/EPA/NSF/ONR Joint Program on Bioremediation, Dr. Robert E. Menzer, U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance, 401 M Street, SW, Washington, DC 20460, menzer.robert@epamail.epa.gov, phone (202) 260-5770.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10-CFR Part 805.

Issued in Washington, DC, on November 13, 1996.

John Rodney Clark, Associate Director for Resource Management, Office of Energy Research. [FR Doc. 96-30016 Filed 11-22-96; 8:45 am] BILLING CODE 5498-01-P

Federal Energy Regulatory Commission

[Docket No. RP97-11-001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1996.

Take notice that on November 14, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1996:

Third Revised Sheet No. 10
Substitute Second Revised Sheet No. 49

ANR states that the above-referenced tariff sheets are being filed in compliance with the Commission's October 30, 1996 "Order Accepting and Suspending Tariff Sheets Subject to Conditions" in the captioned proceeding. The revised tariff sheets address directed changes to ANR's Rate Schedule FSS.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell, Secretary. [FR Doc. 96-29973 Filed 11-22-96; 8:45 am] BILLING CODE 5717-01-M

[Docket No. CP97-90-000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 19, 1996.

Take notice that on November 12, 1996, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP97-90-000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon four delivery points and the service related thereto located in Cochise County, Arizona under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to abandon by removal four metering and/or tap facilities located in Cochise County, Arizona. The four facilities are the Campbell Shaft Delivery Point (Meter No. 20-152), Douglas Smelter Delivery Point (Meter No. 30-071), Douglas Smelter House No. 1 Meter Station (Meter No. 20-154-01) and the Douglas Smelter House No. 2 Tap (Meter No. 20-155-01). El Paso states that these facilities enabled it to sell and deliver, on a direct sale basis, natural gas to Phelps Dodge Mining Company, a Division of Phelps Dodge Corporation (Phelps Dodge), for use in its mining, smelting and metallurgical operations in southern Arizona.

El Paso understands that the mining and smelting operations that received natural gas at the subject facilities are no longer functioning and therefore no longer in need of natural gas service. El

Paso states that, in recognition of these circumstances, Phelps Dodge has requested that El Paso abandon and remove the facilities and service at the four delivery points.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell, Secretary. [FR Doc. 96-29981 Filed 11-22-96; 8:45 am] BILLING CODE 5717-01-M

[Docket No. RP96-296-005]

KN Interstate Gas Transmission Co., Notice of Compliance Filing

November 19, 1996.

Take notice that on November 12, 1996 KN Interstate Gas Transmission Co. (KNI) tendered for filing certain revised tariff sheets in compliance with Commission's November 4, 1996 Order in the above referenced proceeding. In particular, KNI submitted for filing as part of its FERC Gas Tariff, the following tariff sheets with a requested effective date of August 1, 1996:

Third Revised Volume No. 1-A
Second Substitute Original Sheet No. 4-D
Third Revised Volume No. 1-B
Second Substitute Original Sheet No. 57
Third Substitute Original Sheet No. 86
Substitute Original Sheet No. 87
Substitute Original Sheet No. 88

KNI also submitted for filing as part of its FERC Gas Tariff, the following tariff sheets with a requested effective date of October 1, 1996:

Third Revised Volume No. 1-A
Substitute First Revised Sheet No. 4-D
Substitute Second Revised Sheet No. 4-D

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell, Secretary. [FR Doc. 96-29975 Filed 11-22-96; 8:45 am] BILLING CODE 5717-01-M

[Docket No. RP96-320-004]

Koch Gateway Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

November 19, 1996.

Take notice that on November 14, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, to be effective August 31, 1996:

Substitute Second Revised Sheet No. 2901

Koch states that this tariff sheet clarifies Koch's definition of negotiated rate to comply with the Commission's October 30, 1996 Order on Requests for Rehearing and Clarification.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell, Secretary. [FR Doc. 96-29975 Filed 11-22-96; 8:45 am] BILLING CODE 5717-01-M

[Docket No. CP97-98-000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 19, 1996.

Take notice that on November 13, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, P.O. Box 58900, Salt Lake City, Utah 84158-0900,

filed in Docket No. CP97-98-000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to operate two meter stations as certificated delivery points for deliveries to Mid-America Pipeline Company (MAPCO), successor in interest to Gulf Gas Utilities Company, under the blanket certificate issued in Docket No. CP82-433, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that it proposes to operate the Lisbon and Dolores meter stations (formerly known as the Gulf Gas No. 1 and Gulf Gas No. 2 meter stations), located in San Juan County, Utah and Montezuma County, Colorado, respectively, as certificated delivery points. Northwest further states that MAPCO recently acquired Gulf Gas Utilities' interest in its gas supply and transportation agreements, including the A-89 agreement, and certain facilities located downstream of the subject meter stations. Northwest asserts that MAPCO requested Northwest to take the necessary action to make the meter stations available as delivery points for open access transportation under MAPCO's Rate Schedule TT-1 Part 284 transportation agreement dated April 20, 1994 (E-48 agreement), as reported in Docket No. ST95-1124. Northwest further asserts that MAPCO has requested Northwest to transfer the volumes and priority dates established under the A-89 agreement to its E-48 agreement, and subsequently terminate the A-89 agreement, upon approval of the prior notice authorization sought herein. Northwest indicates that it will shortly seek the necessary waivers of its first-come, first-served and priority of service tariff provisions in order to maintain the priority dates established under the A-89 agreement under the E-48 agreement.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30

days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lola D. Cashell,
Secretary.

[FR Doc. 96-29980 Filed 11-22-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. CP97-85-000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 19, 1996.

Take notice that on November 12, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP97-85-000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade its Spokane West Meter Station in Spokane County, Washington by partially abandoning certain existing facilities and constructing and operating upgraded replacement facilities under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Spokane West Meter Station by removing the two existing 6-inch turbine meters, the existing 750,000 Btu per hour heater and approximately 250 feet of existing 4-inch inlet piping and appurtenances and installing two new 8-inch turbine meters, a 1,900,000 Btu per hour heater, a new 6-inch tap valve on the lateral line and approximately 200 feet of 6-inch inlet piping and appurtenances.

Northwest states that the meter station upgrade is necessary to accommodate a request by The Washington Water Power Company for increased delivery point capacity at this point for service under existing firm transportation agreements.

Northwest states that as a result of the proposed upgrade, the maximum design capacity of the meter station will increase from approximately 18,733 Dth per day at 250 psig to approximately 34,945 Dth per day at 250 psig.

Northwest estimates the total cost of the proposed meter station upgrade to be approximately \$357,400.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission,

file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lola D. Cashell,
Secretary.

[FR Doc. 96-29982 Filed 11-22-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. RP96-337-001]

Pacific Gas Transmission Company; Notice of GSR Reconciliation Report

November 19, 1996.

Take notice that on November 12, 1996, Pacific Gas Transmission Company (PGT) tendered for filing a Reconciliation of Gas Supply Recovery Costs (GSR) Report pursuant to its August 13, 1996 filing to terminate the Initial GSR Collection Period in its FERC Gas Tariff, First Revised Volume No. 1-A. That filing was approved by a Letter Order dated September 11, 1996, effective on August 15, 1996.

PGT asserts that the purpose of this filing is to submit for filing and acceptance a reconciliation of its actual GSR surcharge revenues and GSR costs to be collected through surcharge. PGT states that \$319,423 remains unrecovered as of August 15, 1996; however, PGT is not proposing to establish a new surcharge to recover this deficiency.

PGT states that a copy of this filing has been served upon all jurisdictional customers and upon interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before November 26, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lola D. Cashell,
Secretary.

[FR Doc. 96-29974 Filed 11-22-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. RP92-137-042]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

November 19, 1996.

Take notice that on October 19, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report pursuant to the Stipulation and Agreement (Settlement) approved by Commission's letter order dated November 4, 1993 in Docket No. RP92-137-015, et al. The refund covers the period September 1, 1992 through August 31, 1995.

On December 23, 1994, the U.S. Court of Appeals for the D.C. Circuit reversed and remanded the Commission's order in this proceeding (42 F.3d 659 (D.C. Cir. 1994)). On April 10, 1996, the Commission issued its order (April 10 Order) on remand.

Transco states that on September 17, 1996, it refunded amounts to contesting parties, and their replacement shippers based on the difference between the demand charges computed using the capital structure and rate of return approved in the April 10 Order and the demand charges set forth in the Settlement. Transco states that its report shows refunds totalling \$3,249,674.16, including \$559,687.03 in interest.

Transco further states that copies of this filing are being served upon each affected customer and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 26, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lola D. Cashell,
Secretary.

[FR Doc. 96-29977 Filed 11-22-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. CP97-99-000]

Wisconsin Public Service Corporation; Notice of Application

November 19, 1996.

Take notice that on November 14, 1996, Wisconsin Public Service Corporation (Public Service), 700 North Adams Street, P.O. Box 18001, Green Bay, Wisconsin 54307-9001, filed in Docket No. CP97-99-000 an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination, all as more fully set forth in the application on file with the Commission and open to public inspection.

Public Service states that it is a local distribution company operating service areas for the sale and distribution of natural gas in the States of Wisconsin and Michigan. Public Service receives natural gas from ANR Pipeline Company (ANR) at its Marinette, Wisconsin and Menominee, Michigan city-gates and sells gas received from ANR at retail to customers located in Wisconsin and Michigan. Public Service states that, in providing service to its customers, it has the capability to transport gas approximately four miles, via a twelve-inch, river-crossing distribution main, across the Menominee River between Marinette, Wisconsin and Menominee, Michigan. Public Service states that its local distribution of natural gas within Wisconsin is regulated by the Public Service Commission of Wisconsin and its local distribution of natural gas within Michigan is regulated by the Michigan Public Service Commission.

Public Service requests a service area determination for an area consisting of its Marinette, Wisconsin and Menominee, Michigan service areas and Public Service's rights-of-way connecting the designated areas. Additionally, Public Service requests: (i) a determination that Public Service qualifies as a local distribution company for purposes of Section 311 of the National Gas Policy Act (NGPA); (ii) a waiver of all reporting and accounting requirements and rules and regulations that are normally applicable to natural gas companies under the NGA and NGPA; (iii) such further relief as the Commission may deem appropriate.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Public Service to appear or be represented at the hearing.

Lola D. Cashell,
Secretary.

[FR Doc. 96-29979 Filed 11-22-96; 8:45 am]
BILLING CODE 9717-01-M

[Docket No. EC97-2-000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

November 18, 1996.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. EC97-2-000]

Take notice that on November 1, 1996, Commonwealth Edison Company (ComEd) filed an application pursuant to Section 203 of the Federal Power Act and Section 33 of the Commission's Regulations for authority to sell certain transmission facilities to Kincaid Generation, L.L.C.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company of Indiana, Inc.

[Docket No. EC97-3-000]

Take notice that on November 1, 1996, Commonwealth Edison Company of Indiana, Inc. filed an application pursuant to Section 203 of the Federal Power Act and Section 33 of the Commission's Regulations for authority to sell certain transmission facilities located in Hammond, Indiana to State Line Energy, L.L.C.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Doswell Limited Partnership, Doswell II Limited Partnership, Diamond Energy, Inc., Diamond-Hanover, Inc., New DHI, Inc., and North Anna Power Company

[Docket No. EC97-4-000]

Take notice that on November 5, 1996, Doswell Limited Partnership; Doswell II Limited Partnership; Diamond Energy, Inc.; Diamond-Hanover, Inc.; New DHI, Inc. and North Anna Power Company (Applicants) submitted for filing an application under Section 203 of the Federal Power Act (16 U.S.C. § 824b) and Part 33 of the Commission's Regulations (18 CFR Part 33) seeking authorization from the Commission for the reorganization of certain of Doswell Limited Partnership's owners, confirmation of rates previously accepted for filing, waiver of certain filing requirements and requesting expedited consideration.

Comment date: December 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Western Systems Power Pool

[Docket No. ER91-195-026]

Take notice that on November 6, 1996, the Western Systems Power Pool (WSPP), filed certain information to update its October 30, 1996, quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992, Order on Rehearing Denying Request Not To Submit Information, And Granting In Part and Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

5. North American Energy Conservation Inc., Citizens Lehman Power Sales, Stand Energy Corporation, IEP Power Marketing, LLC, Power Clearinghouse, Inc., Nordic Electric, L.L.C., NFR Power, Inc.

[Docket No. ER94-152-011; ER94-1685-010; ER95-382-007; ER95-802-008; ER95-914-006; ER96-127-002; ER96-1122-002; (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 30, 1996, North American Energy Conservation, Inc. filed certain information as required by the Commission's February 10, 1994, order in Docket No. ER94-152-000.

On November 6, 1996, Citizens Lehman Power Sales filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER94-1685-000.

On October 30, 1996, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95-382-000.

On November 12, 1996, IEP Power Marketing, LLC filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95-802-000.

On November 5, 1996, Power Clearinghouse, Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95-914-000.

On October 31, 1996, Nordic Electric, L.L.C. filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96-127-000.

On November 13, 1996, NFR Power, Inc. filed certain information as required by the Commission's April 2, 1996, order in Docket No. ER96-1122-000.

6. Eastern Power Distribution, Inc., National Power Management Company, Superior Electric Power Corp., VTEC Energy Inc., Greenwich Energy Partners, L.P., Ocean Energy Services Inc., EnergyChoice, L.L.C.

[Docket No. ER94-904-012; ER95-192-008; ER96-1747-004; ER96-1855-004; ER96-116-004; ER96-588-002; ER96-827-003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 7, 1996, Eastern Power Distribution, Inc. filed certain

information as required by the Commission's April 5, 1994, order in Docket No. ER94-904-000.

On November 4, 1996, National Power Management Company filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95-192-000.

On November 4, 1996, Superior Electric Power Corporation filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95-1747-000.

On October 16, 1996, VTEC Energy Inc. filed certain information as required by the Commission's November 8, 1995, order in Docket No. ER95-1855-000.

On October 16, 1996, Greenwich Energy Partners, L.P. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96-116-000.

On November 4, 1996, Ocean Energy Services Inc. filed certain information as required by the Commission's January 19, 1995, order in Docket No. ER96-588-000.

On November 4, 1996, EnergyChoice, L.L.C. filed certain information as required by the Commission's March 21, 1996, order in Docket No. ER96-827-000.

7. Washington Water Power Company

[Docket No. ER96-3152-000]

Take notice that on November 5, 1996, Washington Water Power Company tendered for filing an amendment to its September 30, 1996, filing in the above-referenced docket.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Arkansas, Inc.

[Docket No. ER97-257-000]

Take notice that on October 29, 1996, Entergy Arkansas, Inc. (EAI) tendered for filing a letter stating EAI's intent to propose certain changes to the rate formulas contained in the Transmission Service Agreement between EAI and Louisiana Energy & Power Authority.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. CINERGY Services, Inc.

[Docket No. ER97-310-000]

Take notice that on November 1, 1996, CINERGY Services, Inc. (Cinergy) tendered for filing a services agreement under Cinergy's Open Access Transmission service Tariff entered into between Cinergy and Florida Power and Light Company.

Cinergy and Florida Power and Light Company are requesting an effective date of October 15, 1996.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Citizens Utilities Company

[Docket No. ER97-311-000]

Take notice that on November 1, 1996, Citizens Utilities Company tendered for filing a notice of intent to provide transmission service for Rochester Electric Light & Power Company under Citizens' FERC Electric Tariff No. 28. Citizens will provide transmission of up to 500 Kw of capacity and associated energy from Hydro-Quebec during the period of November 1, 1996, to March 31, 1997.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER97-312-000]

Take notice that on November 1, 1996, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing the existing Exhibit VII and revised Exhibits VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Exhibit VII sets forth the specification of the rate of return on common equity to determine the overall cost of capital. The return on common equity for calendar year 1997 is the same as that used for 1996.

Exhibit VIII sets forth the specification of average monthly coincident peak demands for calendar year 1997 for each of the Companies. A statement of the impacts of these coincident peak demands on each company has been filed. These coincident peak demands were determined upon three years' data consisting of 18 months of actual and 18 months of projected peak demands. The change from the use of the average of the 12 monthly peak demand allocation method to the use of the 36 months was approved in Docket No. ER97-279-000.

Exhibit IX sets forth a specification of depreciation rates certified by the Wisconsin Public Service Commission (PSCW) and the Minnesota Public Utilities Commission (MPUC). A statement of the impact of the depreciation rates on each company has been filed.

The NSP Companies request an effective date of January 1, 1997, for this filing. Copies of the filing letter and

Exhibits VII, VIII and IX have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have been mailed to the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER97-313-000]

Take notice that on November 1, 1996, Public Service Electric and Gas

Company (PSE&G) tendered for filing an agreement to provide non-firm transmission service to Electric Clearinghouse, Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96-80-000.

This agreement supersedes PSEG's existing non-firm transmission agreement with ECI currently on file with the Commission (Rate Schedule FERC No. 128).

PSE&G further requests waiver of the Commission's regulations such that the

agreement can be made effective as of November 1, 1996.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER97-314-000]

Take notice that on November 1, 1996, Southern California Edison Company (Edison) tendered for filing a change in rate for scheduling and dispatching services as embodied in Edison's agreements with the following entities:

Entity	FERC schedule no.
1. City of Anaheim	130, 246.6, 246.8, 246.13, 246.29, 246.32.1, 246.33.1, 246.36, 246.43.
2. City of Azusa	160, 247.4, 247.6, 247.8, 247.24, 247.29, 247.29.6.
3. City of Banning	169, 248.5, 248.7, 248.9, 248.24, 248.29.
4. City of Colton	162, 249.4, 249.6, 249.8, 249.24, 249.29.
5. City of Riverside	129, 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, 250.30, 250.35, 250.41, 250.44, 250.46, 250.50.
6. City of Vernon	149, 154.24, 172, 207, 272, 276.
7. Arizona Electric Power Cooperative	132, 161.
8. Arizona Public Service Company	185, 348.
9. California Department of Water Resources	112, 113, 181, 342.
10. City of Burbank	166.
11. City of Glendale	143.
12. City of Los Angeles Department of Water and Power	102, 118, 141, 163, 168.
13. City of Pasadena	158.
14. Coastal Electric Services Company	347.
15. Imperial Irrigation	259, 268.
16. Metropolitan Water District of Southern California	292.
17. M-S-R Public Power Agency	153, 339.
18. Northern California Agency	240.
19. Pacific Gas and Electric Company	117, 147, 256, 318.
20. PacifiCorp	275.
21. Rainbow Energy Marketing Corporation	346.
22. San Diego Gas & Electric Company	151.
23. Western Area Power Administration	120.

Edison requests that the revised rate for these services be made effective January 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER97-315-000]

Take notice that on November 1, 1996, in order to comply with the Commission's unbundling requirements in Order 888, PECO Energy Company (PECO) filed revised sheets to its FERC Electric Tariff Original Volume No. 4 (the Tariff). PECO requested an effective date of July 9, 1996 for the revised sheets.

PECO states that copies of its filing have been served on the Pennsylvania Public Utility Commission and on all

customers who have executed service agreements under the Tariff.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER97-316-000]

Take notice that on November 1, 1996, PECO Energy Company (PECO) filed revised sheets to its FERC Electric Tariff Original Volume No. 1 (the Tariff). The revised sheets contain modifications to certain terms and conditions of the Tariff, which would result, among other things, in market based Class P transactions. PECO requested an effective date of January 9, 1997, for the revised sheets.

PECO states that copies of its filing have been served on the Pennsylvania Public Utility Commission and on all customers who have executed service agreements under the Tariff.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER97-317-000]

Take notice that on November 1, 1996, in order to comply with the Commission's unbundling requirements in Order 888, PECO Energy Company (PECO) filed revised sheets to its FERC Electric Tariff Original Volume No. 1 (the Tariff). PECO requested an effective date of July 9, 1996 for the revised sheets.

PECO states that copies of its filing have been served on the Pennsylvania Public Utility Commission and on all customers who have executed service agreements under the Tariff.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company
(Docket No. ER97-318-000)

Take notice that on November 1, 1996, Florida Power & Light Company (FPL) tendered for filing a proposed notice of cancellation of an umbrella service agreement with Lakeland Electric & Water for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Continental Energy Services, Inc.
(Docket No. ER97-319-000)

Take notice that on November 1, 1996, Continental Energy Services, Inc. (Continental) petitioned the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) acceptance of Continental's Rate Schedule FERC No. 1; (3) waiver of certain Commission Regulations; and (4) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in Continental's petition on file with the Commission.

Continental states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where Continental acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company
(Docket No. ER97-321-000)

Take notice that on November 1, 1996, Carolina Power & Light Company (CP&L) tendered for filing Amendments to the PCA By And Between CP&L and NCEMC. The Amendments relate to the August 27, 1993, Power Coordination Agreement between CP&L and the North Carolina Electric Membership Corporation. CP&L has requested an effective date of January 1, 1997.

CP&L states that copies of the filing have been served on NCEMC as well as the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.
(Docket No. ER97-322-000)

Take notice that on November 1, 1996, Entergy Services, Inc. (ESI), acting as agent for Entergy Arkansas Inc. (EAI), Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc. (ELI), Entergy Mississippi, Inc. (EMI), and Entergy New Orleans, Inc. (ENO), (collectively "Entergy") submitted for filing a wholesale electric service agreement between EGS and East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), and Tex-La Electric Cooperative of Texas, Inc. (Tex-La) and also a First amendment to an Interchange Agreement between ESI, EAI, EL, EMI, ENO and SRG&T and ETEC whereby the parties proposed to add EGS and Tex-La to such Interchange Agreement. ESI requests that the Interconnection Agreement and the wholesale electric service agreement be permitted to become effective January 1, 1997.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company
(Docket No. ER97-323-000)

Take notice that on November 1, 1996, Southern California Edison Company (Edison) tendered for filing a change in rate for scheduling and dispatching services as embodied in Edison's agreements with Southern California Water Company, FERC Rate Schedule No. 349.3.

Edison requests that the revised rate for these services be made effective January 1, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. The Detroit Edison Company
(Docket No. ER97-324-000)

Take notice that on November 1, 1996, The Detroit Edison Company (DE) submitted for filing a market-based Power Sales Tariff (WPS-2) to permit DE to make wholesale sales to eligible customers of electric power at market-determined prices, including sales not involving DE's generation or transmission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. The Detroit Edison Company
(Docket No. ER97-325-000)

Take notice that on November 1, 1996, The Detroit Edison Company (DE) submitted for filing a Wholesale Power Sales Tariff (WPS-1) to permit DE to make wholesale electric generation sales to eligible customers. The tariff includes a Power Sales Schedule.

DE requests an immediate effective date and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. West Texas Utilities Company
(Docket No. ER97-326-000)

Take notice that on November 1, 1996, West Texas Utilities Company (WTU) submitted for filing a Power Supply Agreement (PSA), dated June 21, 1996, between WTU and the City of Weatherford, Texas (Weatherford) and Amendment No. 1, dated October 31, 1996, to the PSA. Under the PSA, as amended, WTU and energy in excess of the power and energy provided by Weatherford's own generating units.

WTU requests an effective date of December 1, 1996 for the PSA and, accordingly, seeking waiver of the Commission's notice requirements. Copies of this filing have been served on Weatherford and the Public Utility Commission of Texas.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.
(Docket No. ER97-404-000)

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Citizens Lehman Power Sales (CLP). Con Edison states that a copy of this filing has been served by mail upon CLP.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.
(Docket No. ER97-405-000)

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant

to its Open Access Transmission Tariff to Equitable Power Services Company (EPS).

Con Edison states that a copy of this filing has been served by mail upon EPS.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.
(Docket No. ER97-406-000)

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access transmission Tariff to Federal Energy Sales, Inc. (FES).

Con Edison states that a copy of this filing has been served by mail upon FES.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Consolidated Edison Company of New York, Inc.
(Docket No. ER97-407-000)

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Pennsylvania Power & Light Company (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Consolidated Edison Company of New York, Inc.
(Docket No. ER97-408-000)

Take notice that on November 7, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to North American Energy Conservation (NAEC).

Con Edison states that a copy of this filing has been served by mail upon NAEC.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Portland General Electric Company
(Docket No. ER97-409-000)

Take notice that on November 7, 1996, Portland General Electric Company (PGE), tendered for filing

under PGE's Final Rule pro forma tariff, (Docket No. OA96-137-000) an executed Service Agreement for Firm Point-to-Point Transmission Service with PacifiCorp.

Pursuant to 18 CFR 35.11 and the Commission's Order issued July 30, 1993 (Docket No. PL93-2-002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective November 1, 1996.

Copies of this filing were caused to be served upon the entities listed in the body of the filing letter.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Great Bay Power Corporation
(Docket No. ER97-410-000)

Take notice that on November 7, 1996, Great Bay Power Corporation (Great Bay), tendered for filing two service agreements between Boston Edison Company and Great Bay and United Illuminating Company and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96-726-000. The service agreements are proposed to be effective November 1, 1996.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Commonwealth Electric Company Cambridge Electric Light Company
(Docket No. ER97-411-000)

Take notice that on November 7, 1996, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the "Companies", tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the companies and Western Power Services, Inc. (WPS).

These Service Agreements specify that WPS has signed on to and has agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and WPS to enter into separately scheduled transactions under which the Companies will sell to

WPS capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. FirstEnergy System/Ohio Edison Company
(Docket No. ER97-412-000)

Take notice that on November 8, 1996, Ohio Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Power Company, and The Toledo Edison Company (the Companies), tendered for filing and approval an Open Access Tariff for the proposed FirstEnergy System.

FirstEnergy Corp. will be the holding company for the companies, which pursuant to a merger agreement will be operated on a single-system basis. The Companies request that this proceeding not be consolidated with the merger proceeding. The proposed Open Access Tariff will provide transmission service over the combined FirstEnergy transmission system at a single postage stamp rate when the merger is made effective.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Ohio Valley Electric Corporation
(Docket No. ER97-414-000)

Take notice that on November 8, 1996, Ohio Valley Electric Corporation (OVEC), tendered for filing a Service Agreement dated October 9, 1996, for Non-Firm Point-to-Point Transmission Service (the Service Agreement) between the Dayton Power and Light Company (DP&L) and OVEC. OVEC proposes an effective date of October 9, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to DP&L.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96-190-000).

Copies of this filing were served upon The Public Utilities Commission of Ohio and DP&L.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Carolina Power & Light Company

[Docket No. ER97-415-000]

Take notice that on November 8, 1996, Carolina Power & Light Company (Carolina), tendered for filing executed Service Agreements between Carolina and the following Eligible Entities: SCANA Energy Marketing, Inc.; CPS Utilities; and The Power Company of America, L.P. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

36. PacifiCorp

[Docket No. ER97-416-000]

Take notice that on November 8, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with Electric Clearinghouse, Inc. and Southern Energy Marketing, Inc. under, PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464-6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

37. Louisville Gas and Electric Co.

[Docket No. ER97-417-000]

Take notice that on November 8, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

38. Wisconsin Public Service Corporation

[Docket No. ER97-418-000]

Take notice that on November 8, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 10 to its service agreement with Consolidated Water Power Company (CWPCO). Supplement No. 10 provides CWPCO's contract

demand nominations for January 1997-December 2001, under WPSC's W-3 tariff and CWPCO's applicable service agreement.

The company states that copies of this filing have been served upon CWPCO and to the State Commissions where WPSC serves at retail.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

39. Wisconsin Public Service Corporation

[Docket No. ER97-419-000]

Take notice that on November 8, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Dairyland Power Cooperative. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11. WPSC also filed a refund compliance report.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

40. ProLiance Energy, LLC

[Docket No. ER97-420-000]

Take notice that on November 8, 1996, ProLiance Energy, LLC (ProLiance), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and 18 CFR 35.12, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule No. 1, to be effective the earlier of January 8, 1997, or the date of a Commission order granting approval of this Rate Schedule.

ProLiance intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ProLiance purchases power, including capacity and related services from producers, and resells such power to other purchasers, ProLiance will be functioning as a marketer. In ProLiance's marketing transactions, ProLiance proposes to charge rates mutually agreed upon by the parties. In transactions where ProLiance does not take title to the electric power and/or energy, ProLiance will be limited to the role of a broker and will charge a fee for its services. ProLiance is not in the business of producing nor has any plans to acquire title to any electric power facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed-upon prices.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

41. Atlantic City Electric Company

[Docket No. ER97-421-000]

Take notice that on November 8, 1996, Atlantic City Electric Company (ACE), tendered for filing an executed service agreement under which ACE will provide capacity and energy to AIG Trading Corporation (AIG), CNG Power Services Corporation (CNG) and AYP Energy, Inc. (AYP); and an unexecuted service agreement with PacifiCorp Power Marketing (PacifiCorp) in accordance with the ACE wholesale power sales tariff.

ACE states that a copy of the filing has been served on AIG, CNG, AYP and PacifiCorp.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

42. The Dayton Power and Light Company

[Docket No. ER97-422-000]

Take notice that on November 8, 1996, The Dayton Power and Light Company (Dayton), tendered for filing an executed Master Electric Interchange Agreement between Dayton and Enron Power Marketing, Inc. (EPMI). Pursuant to the rate schedules attached as Exhibit B to the Agreement, the parties will provide to each other power and/or energy for resale.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

43. Central Illinois Light Company

[Docket No. ER97-423-000]

Take notice that on November 12, 1996, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for two new customers.

CILCO requested an effective date of November 1, 1996.

Copies of the filing were served on all affected customers, parties and the Illinois Commerce Commission.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-30009 Filed 11-22-96; 9:45 am]

BILLING CODE 6717-01-7

[Docket No. EG97-17-000, et al.]

Island Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 19, 1996.

Take notice that the following filings have been made with the Commission:

1. Island Power Corporation

[Docket No. EG97-17-000]

On November 12, 1996, Island Power Corporation ("IPC") filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 385 of the Commission's Regulations.

IPC is the owner of a 7 MW eligible facility located in San Jose on the island of Occidental Mindoro, Republic of the Philippines.

Comment date: December 10, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The Power Company of America, L.P.

[Docket Nos. EC97-6-000 and ER97-441-000]

On November 1, 1996, The Power Company of America, L.P. tendered for filing an Application for Amended Blanket Authorization, Certain Waivers, Disclaimer of Jurisdiction and Request for Expedited Approval.

Comment date: December 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Ogden Power International Holdings, Inc.

[Docket No. EG97-19-000]

On November 12, 1996, Ogden Power International Holdings, Inc. ("OPIH") filed with the Federal Energy Regulatory

Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to Part 385 of the Commission's Regulations.

OPIH, through its affiliate Island Power Corporation ("IPC"), is the owner of a 7 MW eligible facility located in San Jose on the island of Occidental Mindoro, Republic of the Philippines. OPIH, through its affiliate Edison Bataan Cogeneration Corporation ("Bataan"), owns and operates a 58 MW eligible facility in Bataan on the island of Luzon, Republic of the Philippines.

Comment date: December 9, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Florida Municipal Power Agency

[Docket No. EL97-6-000]

Take notice that on October 25, 1996, Florida Municipal Power Agency tendered for filing a Petition for Declaratory Order in response to a September 12, 1996, Order of the United States District Court for the Middle District of Florida.

Comment date: December 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company

[Docket No. EL97-9-000]

Take notice that on November 6, 1996, Jersey Central Power & Light Company filed a Petition for Declaratory Order approving Revised Depreciation Rates in the above-referenced docket.

Comment date: December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Electric Cooperative, Inc. v. Pennsylvania Electric Company, and Metropolitan Edison Company, doing business as GPU Energy

[Docket No. EL97-10-000]

Take notice that on November 8, 1996, Allegheny Electric Cooperative, Inc. tendered for filing a complaint against Pennsylvania Electric Company and Metropolitan Edison Company for failure to provide reliable and firm electric service.

Comment date: December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Northwest Generating Cooperative

[Docket No. EL97-11-000]

Take notice that on November 14, 1996, Pacific Northwest Generating

Cooperative (PNGC), filed a petition for authority to sell power at market-based rates, for certain waivers and for deficiency relief.

Specifically, PNGC petitions the Commission to (1) accept for filing PNGC's initial Rate Schedule to sell power at market-based rates; (2) grant PNGC blanket authority to make market-based sales of energy and capacity under this rate schedule for the purposes specified herein; (3) grant waiver of Order No. 889 for certain PNGC cooperative members that have limited transmission and do not operate a control area; (4) issue a declaratory order finding that certain cooperative members of PNGC do not own, control or operate interstate transmission; and (5) grant such waivers and authorizations as have been granted by the Commission to other filing marketers, including, but not limited to, cost-of-service filing requirements and Subparts B and C of 18 CFR Part 35 and 18 CFR Parts 41, 45, 101, and 141, and blanket approval under Section 204 of the Federal Power Act and Part 34 of the Commission's Regulations of future issuances of securities and assumptions of liability.

Comment date: December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER96-1485-002]

Take notice that on October 18, 1996, Illinois Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96-2553-001]

Take notice that on October 17, 1996, Louisville Gas and Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. United Power Technologies, Inc.

[Docket No. ER97-122-000]

Take notice that on November 14, 1996, United Power Technologies, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER97-425-000]

Take notice that on November 12, 1996, MidAmerican Energy Company,

106 East Second Street, Davenport, Iowa 52801, tendered for filing a proposed revision to its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5 consisting of First Revised Sheet No. 10, superseding Original Sheet No. 10.

MidAmerican states that the revision requires MidAmerican to separately state prices for capacity, energy, transmission services and ancillary services when MidAmerican obtains transmission service under its Open Access Transmission Tariff for transactions under the Rate Schedule for Power Sales.

MidAmerican proposes an effective of November 14, 1996, for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER97-426-000]

Take notice that on November 12, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Sonat Power Marketing, L.P. (Sonat). Boston Edison requests that the Service Agreement become effective as of November 1, 1996.

Edison states that it has served a copy of this filing on Sonat and the Massachusetts Department of Public Utilities.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power & Light Company

[Docket No. ER97-430-000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to Duke/Louis Dreyfus pursuant to Delmarva's open access transmission tariff.

Delmarva states that a copy of the filing was provided to Duke/Louis Dreyfus.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER97-431-000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to Morgan Stanley Capital Group, Inc. pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of October 25, 1996, the date on which it was executed.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power & Light Company

[Docket No. ER97-432-000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to the City of Dover pursuant to Delmarva's open access transmission tariff.

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Delmarva Power & Light Company

[Docket No. ER97-433-000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to The Power Company of America, L.P. pursuant to Delmarva's open access transmission tariff.

Delmarva asks that the Commission set an effective date for the service agreement of November 11, 1996, the date on which it was executed.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Delmarva Power & Light Company

[Docket No. ER97-434-000]

Take notice that on November 12, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to AIG Trading Corp. time to pursuant to Delmarva's open access transmission tariff. Delmarva asks that the commission set an effective date for the service agreement of November 6, 1996, the date on which it was executed.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. South Carolina Electric & Gas Company

[Docket No. ER97-436-000]

Take notice that on November 12, 1996, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement, dated November 1, 1996, establishing SCANA Energy Marketing, Inc. (SCANA) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon SCANA and the South Carolina Public Service Commission.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Illinois Power Company

[Docket No. ER97-437-000]

Take notice that on November 12, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Electric Clearinghouse, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER97-438-000]

Take notice that on November 12, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Sonat Power Marketing, L.P. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 15, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Illinois Power Company

[Docket No. ER97-439-000]

Take notice that on November 12, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements

under which Sonat Power Marketing, L.P. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Delmarva Power & Light Company

[Docket No. ER97-440-000]

Take notice that on November 12, 1996, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with Carolina Power & Light Company; The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc.; Electric Clearinghouse, Inc.; Rainbow Energy Marketing Corporation; The Power Company of America, L.P.; and TransCanada Power Corp. under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96-2571-000.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Puget Sound Power & Light Company

[Docket No. ER97-442-000]

Take notice that on November 12, 1996, Puget Sound Power & Light Company, tendered for filing an agreement amending its wholesale for resale power contract with the Port of Seattle (Purchaser). A copy of the filing was served on Purchaser.

Puget states that the agreement changes the term of the wholesale for resale power contract.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER97-443-000]

Take notice that on November 12, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the annual facilities charge calculation under PacifiCorp Rate Schedule FERC No. 298.

PacifiCorp requests that an effective date of December 31, 1996 be assigned to the annual facilities charge calculation.

Copies of this filing were supplied to Southern California Edison Company, Pacific Gas & Electric Company, the Washington Utilities and Transportation Commission, the Public Utility

Commission of Oregon and the Public Utilities Commission of the State of California.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464-6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER97-444-000]

Take notice that on November 12, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and City of Hamilton, Ohio.

Cinergy and City of Hamilton, Ohio are requesting an effective date of November 1, 1996.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. The Washington Water Power Company

[Docket No. ER97-445-000]

Take notice that on November 15, 1996, Rate Schedule FERC 179, effective November 12, 1992 and filed with the Federal Energy Regulatory Commission (FERC) by The Washington Water Power Company, is to be cancelled. Notice of the proposed cancellation is to be served upon the following:

Mr. Lance Elias, Montana Power Company, 40 East Broadway, Butte, MT 59701

Mr. Kelvin Ketchum, B.C. Hydro & Power Authority, c/o 970 Burrard Street, Vancouver, BC V6Z 1Y3

Mr. Dick Arkills, Pend Oreille PUD, Box Canyon Dam, Box 547, Ione, WA 99139-0547

Mr. Jonah Tsui, Seattle City Light, 1015 Third Avenue, Seattle, WA 98104

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. The Washington Water Power Company

[Docket No. ER97-446-000]

Take notice that on November 12, 1996, The Washington Water Power (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, the Flathead/Clark Fork/Pend Oreille coordination Agreement. The term of the Agreement is to commence on November 15, 1996 and continue through July 31, 1997.

WWP requests that the Commission accept the amended filing effective

November 15, 1996 and waive the 60-day notice requirement. No parties will be adversely affected by the granting of this waiver.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Virginia Electric and Power Company

[Docket No. ER97-447-000]

Take notice that on November 12, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Coral Power, L.L.C. and Virginia Power, dated March 29, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Coral Power, L.L.C. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Kansas City Power & Light Company

[Docket No. ER97-448-000]

Take notice that on November 12, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 11, 1996, between KCPL and Electronic Clearinghouse, Inc. (ECI). KCPL proposes an effective date of October 11, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and ECI.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order in Docket No. OA96-4-000.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. The Montana Power Company

[Docket No. ER97-449-000]

Take notice that on November 12, 1996, The Montana Power Company (MPC), tendered for filing pursuant to the Federal Power Act, 16 U.S.C. 824d (1994), a rate schedule under which MPC proposes to charge market-based rates for wholesale sales of electric power.

MPC intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MPC sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Pacific Gas and Electric Company
[Docket No. FA93-12-001]

Take notice that on October 21, 1996, Pacific Gas and Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. PECO Power Company, Susquehanna Power Company

[Docket Nos. FA95-37-001 and FA95-55-001]

Take notice that on October 11, 1996, PECO Power Company and Susquehanna Power Company tendered for filing refund reports in the above-referenced dockets.

Comment date: December 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96-30011 Filed 11-22-96; 8:45 am]
BILLING CODE 8717-01-P

[Project No. 11374-001, Iowa]

**Butler County Conservation Board;
Notice of Availability of Final
Environmental Assessment**

November 18, 1996.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Greene Milldam Hydroelectric Project, located on the Shell Rock River, Butler County, Iowa, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 96-29972 Filed 11-22-96; 8:45 am]
BILLING CODE 8717-01-M

[Project Nos. 1417 and 1835]

**Central Nebraska Public Power and
Irrigation District, Nebraska Public
Power District; Notice of Public
Briefing**

November 19, 1996.

The U.S. Department of the Interior has requested an opportunity to brief Commission staff on the contents of the draft biological opinion of the effects of the Platte River projects on threatened and endangered species in the project area. The Commission will hold a briefing for that purpose on December 4, 1996, starting at 9:00 a.m. in Conference Room No. 3M-1, located on the 3rd Floor of the Commission headquarters at 888 First Street, N.E., Washington, DC.

The briefing will be recorded by a stenographer, and all briefing statements (oral and written) will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcripts of the briefing may contact Ann Riley & Associates by calling (202) 293-3950, or writing to 1612 K Street, NW., Suite 300, Washington, DC 20006.

Anyone wishing to comment in writing on the briefing must do so no later than January 3, 1997. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Reference should be clearly made to: the Kingsley Dam (Project No. 1417) and North Platte/Keystone Diversion Dam (Project No. 1835).

For further information, please contact Frankie Green at (202) 501-7704.

Lois D. Cashell,

Secretary.

[FR Doc. 96-29978 Filed 11-22-96; 8:45 am]
BILLING CODE 8717-01-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL-5854-1]

**Agency Information Collection
Activities: Proposed Collection;
Comment Request; Reinstatement of
an Existing ICR; Confidentiality Rules.
ICR #1662.01**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Confidentiality Rules. ICR #1662.01 OMB #2020-0003, expires 1/31/97. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 24, 1997.

ADDRESSES: Office of General Counsel, Finance and Operations Division, 401 M Street, SW., Washington, DC 20460, Mailstop 2377.

FOR FURTHER INFORMATION CONTACT: Jonathan S. Baker, Assistant General Counsel, (202) 260-6542/(202)-260-0020 (fax); baker.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who submit to EPA documents claimed as confidential business information.

Title: CONFIDENTIALITY RULES. EPA ICR #1662.01 OMB Control #2020-0003; expires 1/31/97.

Abstract: EPA administers a great variety of statutes pertaining to the protection of the environment, (e.g., the Toxic Substances Control Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability

Act, Clean Water Act, Federal Water Pollution Control Act, etc.), each with differing data collection requirements and differing requirements for disclosure of information to the public. The Agency collects chemical, process, waste stream, financial, and other data from tens of thousands of facilities in many, if not most, sectors of American business. Companies frequently consider this information vital to their competitive position, and claim the information as confidential business information (CBI).

In the course of its daily business, the Agency often has a need to communicate this information in response to Freedom of Information Act (FOIA) requests to members of the general public, 5 U.S.C. 552, in litigation to various plaintiffs, etc. To manage this volume of confidential information while protecting both the confidentiality of competitively valuable information and the rights of FOIA requestors, EPA instituted in 40 CFR Part 2, Subpart B, a set of procedures for handling and disclosing CBI. These procedures derive their authority from FOIA, the Trade Secrets Act (18 U.S.C. 1905), and the confidentiality provisions of the environmental statutes that EPA administers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is soliciting comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Based upon EPA's past history of FOIA and other requests for information claimed as confidential and other events generating requests for

confidentiality substantiations, EPA estimates that there will be a total of 1006 respondents per year. The annual estimated burden for this collection is 9.4 hours per respondent. No capital costs are estimated to be incurred by respondents.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 20, 1996.

Ray E. Spears,
Associate General Counsel, Finance and
Operations Division.

[FR Doc. 96-30039 Filed 11-22-96; 8:45 am]
BILLING CODE 8260-30-P

[FRL-5854-9]

**Public Meetings of the Urban Wet
Weather Flows Advisory Committee,
the Storm Water Phase II Advisory
Subcommittee, and the Sanitary Sewer
Overflow Advisory Subcommittee**

AGENCY: Environmental Protection
Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is convening separate public meetings for the Urban Wet Weather Flows (UWWF) Advisory Committee; the Storm Water Phase II Advisory Subcommittee; and the Sanitary Sewer Overflow (SSO) Advisory Subcommittee. These meetings are open to the public without need for advance registration. The UWWF Advisory Committee will continue discussions of issues related to monitoring, watershed framework, storm water effluent limitations, no exposure, physical impacts, and water quality standards in a wet weather context. The Storm Water Phase II Advisory Subcommittee will continue discussions on issues concerning the framework for Phase II implementation. The SSO Advisory Subcommittee will continue discussions

on key issues and the overall SSO strategy.

Note: The Storm Water Phase II Advisory Subcommittee meeting has been changed from December 12-13 to December 11-13.

The meeting will now begin on the afternoon of December 11 instead of the morning of December 12.

DATES:

- (1) **Sanitary Sewer Overflow Advisory Subcommittee:**
 - December 16-17, 1996
- (2) **Storm Water Phase II Advisory Subcommittee:**
 - December 11-13, 1996
 - February 20-21, 1997
- (3) **Urban Wet Weather Flows (UWWF) Advisory Committee:**
 - January 9-10, 1997
 - April 28-29, 1997

The SSO Advisory Subcommittee meeting starts at 10:00 a.m. EST and ends at 5:00 p.m. On the second day, the meeting will begin at 8:30 a.m. and end at 4:00 p.m. The UWWF Advisory Committee meetings will begin at 10 a.m. EST and end at 5:30 p.m. On the second day, the meetings will run from 8:00 a.m. until 3:30 p.m. On December 11, the Storm Water Phase II meeting will begin at 1:30 p.m. and end at 5:30 p.m. On December 12, the Storm Water Phase II meeting will begin at 9:00 a.m. EST and end at 5:30 p.m. On the third day, the meeting will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: There is a change in meeting locations. The following meetings will be held at the Washington National Airport Hilton Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia (Crystal City). (The Hilton's telephone number is (703) 418-8667):

- The SSO meeting of December 16-17, 1996.
- The Storm Water Phase II meeting of February 20-21, 1997.
- The UWWF meeting of April 28-29, 1997.

The following meetings will be held at the Holiday Inn Historic-District, 625 First Street, Alexandria, Virginia. The Holiday Inn's telephone number is (703) 548-6300:

- The Storm Water Phase II meeting of December 11-13, 1996.
- The UWWF Advisory Committee meeting of January 9-10, 1997.

FOR FURTHER INFORMATION CONTACT: For the UWWF Advisory Committee meeting, contact Will Hall, Office of Wastewater Management, at (202) 260-1458, or Internet: hall.william@epamail.epa.gov

For the Phase II Subcommittee meeting, contact Sharie Centilla, Office of Wastewater Management, at (202) 260-6052 or Internet: centilla.sharie@epamail.epa.gov

For the SSO meeting, contact Charles Vanderlyn, Office of Wastewater Management, at (202) 280-7277 or Internet: vanderlyn.charles@epamail.epa.gov

Dated: November 14, 1996.

Michael B. Cook,
Director, Office of Wastewater Management,
Designated Federal Official.

[FR Doc. 96-30037 Filed 11-22-96; 8:45 am]

BILLING CODE 6960-60-P

COUNCIL ON ENVIRONMENTAL QUALITY

CERCLA Order Authority for Federal Natural Resource Trustees—Solicitation of Comment

AGENCY: Council on Environmental Quality.

ACTION: Notice.

SUMMARY: The Council on Environmental Quality (CEQ) has established a federal interagency task force to coordinate federal implementation of Executive Order 13016 which delegates administrative order authority under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et. seq.) to the federal natural resource trustees. 61 FR 45671 (August 30, 1996). The task force will focus on the development of a memorandum of understanding (MOU) among federal agencies to ensure coordination, efficiency and effectiveness. The MOU will clarify the roles and responsibilities of the relevant federal agencies and provide appropriate guidance for issuance of administrative orders. The signatory agencies to this MOU will be the Environmental Protection Agency, the United States Coast Guard, the Department of the Interior, the National Oceanic and Atmospheric Administration on behalf of the Department of Commerce, and the Departments of Agriculture, Defense, and Energy. To assure that relevant areas of concern are addressed in this memorandum of understanding CEQ invites interested parties to submit comments regarding implementation of Executive Order 13016.

DATES: Comments must be submitted by December 28, 1996.

ADDRESSES: Comments should be sent to Bradley M. Campbell, Associate Director, Council on Environmental Quality, Old Executive Office Building, Washington, DC 20501.

FOR FURTHER INFORMATION CONTACT: Bradley M. Campbell, Council on

Environmental Quality, Old Executive Office Building, Washington, D. C. 20501, 202-456-6224.

Dated: November 19, 1996.

Elizabeth A. Blaug,
Associate General Counsel.

[FR Doc. 96-29992 Filed 11-22-96; 8:45 am]

BILLING CODE 3125-01-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Export-Import Bank Advisory Committee Open Special Meeting

SUMMARY: The Advisory Committee was established by P.L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, December 12, 1996, at 9:30 a.m. to 12:00 noon. The meeting will be held at EX-IM Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of several thought provoking questions covering Charter Renewal, Legislative Strategy, Key Industries/Lundine Report and improving the Advisory Committee process.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565-3503, not later than December 9, 1996. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 12, 1996, Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, Voice (202) 565-3955 or TDD: (202) 565-3377.

FOR FURTHER INFORMATION CONTACT: Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565-3503.

Kenneth Hansen,
General Counsel.

[FR Doc. 96-30144 Filed 11-21-96; 12:47 pm]

BILLING CODE 6960-61-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

November 19, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by January 24, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to: dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0012.

Title: Application for Additional Time to Construct a Radio Station.

Form No.: FCC 701.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other For-Profit.

Number of Respondents: 200.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 400 hours.

Needs and Uses: FCC 701 is used when applying for additional time to

construct a radio or satellite station. Sections 308, 309, 319 of the Communications Act are the legal authorities for the requirement.

Ruleparts 21, 23 and 25 and 101 promulgate the collection. In addition to the requirements in the form, applicants may be subject to other requirements.

FCC 701 is used by agency staff to determine whether to grant the applicant's request for an additional period of time to construct a station. A space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. The Yes/No question for the drug certification has been deleted and certification to this item has been made part of the Certification text. The FCC is required to collect the applicant's Taxpayer Identification Number to comply with the Debt Collection Improvement Act of 1996.

OMB Approval Number: 3060-0048.

Title: Application for Consent to Transfer of Control.

Form No.: FCC 704.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other For-Profit.

Number of Respondents: 800.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 6,400 hours.

Needs and Uses: Section 301(d) of the Communications Act requires that common carriers and noncommon carrier permittees or licensees contemplating a transfer of control apply for authority to make such transfer. Ruleparts 21, 23, 25 and 101 of FCC Rules and Regulations promulgate Section 310(d) of the Act. In addition to information specified on the form, applicants may be required to file other information.

Information is used by Commission personnel to determine whether an entity seeking control of an existing permittee or licensee is legally and financially qualified to become a common carrier or noncommon carrier telecommunications licensee. If the information is not submitted, the determination could not be made.

A space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. The Yes/No question for the drug certification has been deleted and certification to this item has been made part of the Certification text. The FCC is required to collect the

applicant's Taxpayer Identification Number to comply with the Debt Collection Improvement Act of 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-29999 Filed 11-22-96; 8:45 am]

BILLING CODE 6712-01-P

FCC To Hold Open Commission Meeting Tuesday, November 26, 1996

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 26, 1996, which is scheduled to commence at 9:30 a.m. in Room 852, at 1919 M Street, N.W., Washington, DC.

Item No., Bureau, Subject

1—International—Title: Regulation of International Accounting Rates (CC Docket No. 90-337, Phase II).

Summary: The Commission will consider a framework for allowing flexibility in the International Settlements Policy.

2—Common Carrier—Title: Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers. Summary: The Commission will consider revising its rules for filing formal complaints against common carriers.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418-0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc., at (202) 857-3800. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418-0460 or TTY (202) 418-1388; fax numbers (202) 418-2800 or (202) 418-7286. The meeting can be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966-2211 or fax (202) 966-1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1-800-962-0044.

Dated November 19, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-30001 Filed 11-22-96; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Global Link Transport, Inc., 324 Garden Road, Springfield, PA 19084. Officers: Anthony Pacitti, President, Angela Wilson, Secretary/Treasurer. Distribution Transportation Services Company, 827 West Terra Lane, O'Fallon, MO 63366. Officers: Tom Komadina, Sr., President, Donna Komadina, Vice President. East West North South Forwarding, Inc., 2315 N.W. 107 Ave., 1M57, Box 25, Miami, FL 33172. Officer: Ashok Kitchloo, President.

Dated: November 19, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96-29998 Filed 11-22-96; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1996.

A Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272.

1. James R. Bruton, De Leon, Texas; to acquire an additional .95 percent, for a total of 10.59 percent, of the voting shares of F & M Bancshares, Inc., De Leon, Texas, and thereby indirectly acquire Farmers & Merchants Bank, De Leon, Texas.

Board of Governors of the Federal Reserve System, November 19, 1996.

William W. Wilas,

Secretary of the Board.

[FR Doc. 96-29069 Filed 11-22-96; 8:45 am]

BILLING CODE 3210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pineries Bankshares, Inc.*, Stevens Point, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Mattoon State Bank, Mattoon, Wisconsin.

B. Federal Reserve Bank of Dallas (Ganie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *First Pecos Bancshares, Inc.*, Midland, Texas; to acquire 21.34 percent of the voting shares of First National Bank of Fort Stockton, Ft. Stockton, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Great Basin Financial Corporation*, Elko, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of Great Basin Bank of Nevada, Elko, Nevada.

Board of Governors of the Federal Reserve System, November 19, 1996.

William W. Wilas,

Secretary of the Board.

[FR Doc. 96-29069 Filed 11-22-96; 8:45 am]

BILLING CODE 3210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Quarterly Public Health Assessments and Addendum Completed; Correction

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Correction.

SUMMARY: A notice was published in the Federal Register on September 27, 1996 (61 FR 50827), entitled, "Quarterly Public Health Assessments and Addendum Completed." This notice is corrected as follows:

On page 50827, third column, under the "Public Health Assessments and Addendum Completed or Issued" section, in the "NPL Sites" heading, for

the "Annie Creek Mine Tailings (Reliance Tailings—Leade—(PB96-188784)," please change the State heading from "South Carolina" to "South Dakota."

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96-30018 Filed 11-22-96; 8:45 am]

BILLING CODE 4160-01-F

Food and Drug Administration

[Docket No. 96N-0222]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the reinstatement of a collection of information regarding labeling requirements for color additives (other than hair dyes) and petitions (formerly color additive petitions), has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA-80), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-19, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 10, 1996 (61 FR 47756), the agency announced that the proposed information collection requirements on labeling requirements for color additives (other than hair dyes) (21 CFR 70.25 and 71.1), had been submitted to OMB for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), OMB has approved the reinstatement of the information collection and assigned OMB control number 0910-0188. The approval expires on October 31, 1999. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: November 18, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96-30053 Filed 11-22-96; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Conservation Agreement for the Coral Pink Sand Dunes Tiger Beetle for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Document Availability, Public Comment Period, and Public Hearing.

SUMMARY: The Fish and Wildlife Service announces the availability of a Draft Conservation Agreement for the Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*). This species is a candidate for listing as endangered or threatened under the provisions of the Endangered Species Act of 1973, as amended. The Draft Conservation Agreement was developed jointly by the Utah Department of Natural Resources' Division of Parks and Recreation; the U.S. Bureau of Land Management; Kane County Commission, Utah; and the Service as a collaborative and cooperative effort. The agreement focuses on identifying, reducing and eliminating significant threats to the tiger beetle that warrant its candidate status, and on enhancing and maintaining the species population to ensure its long term conservation. The Service solicits review and comment from the public on this draft agreement.

DATES: Public hearings will be held from 6 p.m. to 9 p.m. on Wednesday, December 4, 1996, in Kanab, Utah; from 6 p.m. to 9 p.m. on Thursday, December 5, 1996, in St. George, Utah; and from 6 p.m. to 9 p.m. on Tuesday, December 10, 1996 in Salt Lake City, Utah. Comments on the Draft Conservation Agreement must be received on or before January 24, 1997 to be considered by the Service during preparation of the final Conservation Agreement and prior to the Service's determination of whether or not it will be a signatory party to the agreement.

ADDRESSES: The public hearings will be held at the Holiday Inn, 800 East Highway 89, Kanab, Utah; at the Hilton Inn, 1450 South Hilton Drive, St. George, Utah; and at the Natural Resources Auditorium, Room 1060 "C", Division of Natural Resources Building, 1594 West North Temple Street, Salt Lake City, Utah. Persons wishing to review the Draft Conservation Agreement may obtain a copy by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written

comments and materials regarding the Draft Conservation Agreement also should be directed to the same address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Williams, Assistant Field Supervisor (see ADDRESSES section) (telephone 801/524-5001).

SUPPLEMENTARY INFORMATION:

Background

The Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*) is a terrestrial, predaceous insect in the family Cicindelidae. The beetle is known to occur only at the Coral Pink Sand Dunes. The Coral Pink Sand Dunes comprise a dune field about eight miles long and a little less than one mile wide. These dunes are located in Kane County about seven miles west of Kanab, Utah. The southern portion of the Dunes is within the State of Utah's Coral Pink Sand Dunes State Park, managed by Utah Division of Parks and Recreation. The northern portion of the Dunes is located on public land managed by the U.S. Bureau of Land Management, Kanab Resource Area. The Bureau's portion of the dunes is within the Moquith Mountain Wilderness Study Area.

The Coral Pink Sand Dunes tiger beetle is currently a candidate species for listing under the provisions of the Act, in the Service's most recent Notice of Review (61 FR 7598). On April 19, 1994, the Southern Utah Wilderness Alliance petitioned the Service to list the Coral Pink Sand Dunes tiger beetle and designate critical habitat. On September 8, 1994, the Director of the Service approved the 90-day petition finding as providing substantive information that the species' listing may be warranted (59 FR 47293).

The Service has assessed existing and potential threats facing the species based on the five criteria as required by Section 4(a)(1) of the ESA. Within each of these criteria, several factors which have contributed to the degradation of Coral Pink Sand Dunes tiger beetle habitat and its populations were identified (59 FR 47293).

The Agreement focuses on following goals: (1) Permanently protect the Coral Pink Sand Dunes tiger beetle habitat in two designated conservation areas within the historical range of the species. (2) Establish a continuing management program which educates and enforces Coral Pink Sand Dunes tiger beetle conservation measures

within the Dunes. (3) Monitor the Coral Pink Sand Dunes tiger beetle population to demonstrate that conservation measures taken in behalf of the species are maintaining it at viable population levels. (4) Gain additional biological and ecological information concerning the beetle and its dune habitat. (5) Form a conservation advisory committee to coordinate all conservation actions and to act as a information gathering, dissemination center. (6) Provide for both motorized and nonmotorized recreation within the Dunes consistent with the conservation of the Coral Pink Sand Dunes tiger beetle.

Public Comments Solicited

The Service will use information received during the public comment period and at the above mentioned public hearings in its determination as to whether it should be a signatory party to the agreements. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the draft documents are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author

The primary author of this notice is John L. England (see ADDRESSES section) (telephone 801/524-5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: November 19, 1996.

Mary L. Gummer,

Acting Regional Director, Denver, Colorado.

[FR Doc. 96-30020 Filed 11-22-96; 8:45 am]

BILLING CODE 4310-05-01

Preparation of an Environmental Impact Statement on a Permit Application to Incidentally Take Threatened and Endangered Species in Association with a Multiple Species Habitat Conservation Plan for the Potrero Creek and Beaumont Gateway Sites in the City of Beaumont, County of Riverside, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has under consideration for approval a draft Multiple Species Habitat Conservation Plan and an application for incidental take submitted by the Lockheed Martin

Corporation (Lockheed). In response to the plan, the Service intends to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act. The Stephens' kangaroo rat (*Dipodomys stephensi*) is the only species within the plan area for this Multiple Species Habitat Conservation Plan that is currently federally listed as threatened or endangered. However, Lockheed is also seeking coverage with respect to a number of species of plants and animals of concern that may be listed in the future. The Multiple Species Habitat Conservation Plan proposes a basis for the issuance of incidental take permits and other authorizations under the Federal Endangered Species Act and California Endangered Species Act for all the covered species. This notice describes the action proposed by Lockheed and possible alternatives, identifies mechanisms for the interested public to obtain background materials, solicits written comments on the scope and preparation of the Environmental Impact Statement, and identifies the Service official to whom questions and comments concerning the proposed action and the Environmental Impact Statement may be directed. The Service is requesting comments addressing what issues and alternatives should be considered in the development of the Environmental Impact Statement.

DATES: Written comments related to the scope and content of the Environmental Impact Statement should be received on or before December 26, 1996 at the address below.

ADDRESSES: Information, comments, or questions related to preparation of the Environmental Impact Statement and the National Environmental Policy Act process should be submitted to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to telephone (619) 431-9678.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Sorensen, Assistant Field Supervisor, at the above Carlsbad address, telephone (619) 431-9440. Documents will also be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the above Carlsbad address. Individuals interested in background materials, including Lockheed's draft Multiple Species Habitat Conservation Plan and the Final Environmental Impact Report for the Beaumont Gateway Specific Plan and Potrero Creek Specific Plan prepared by Lockheed and its

consultants for the City of Beaumont, should contact Hugh Hewitt, representing Lockheed, at (714) 798-0500.

SUPPLEMENTARY INFORMATION: The Service listed the Stephens' kangaroo rat as an endangered species, effective October 31, 1988 (53 FR 38485). Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Endangered Species Act's prohibition against "take." This means no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 U.S.C. 1534). The Service, however, may issue permits to conduct activities involving endangered species under certain circumstances, including carrying out scientific purposes, enhancing the propagation or survival of the species, or incidentally taking the species in connection with otherwise lawful activities (16 U.S.C. 1539).

Lockheed is applying to the Service for a 30-year incidental take permit to incidentally take the endangered Stephens' kangaroo rat on up to 2,016 acres of occupied and potential habitat at Potrero Creek, and 14 acres of occupied and potential habitat at Beaumont Gateway, and propose their Multiple Species Habitat Conservation Plan as the basis for the issuance of the requested permit. In addition, Lockheed is seeking authorization for the incidental take of seven other currently listed species not known to occupy the Potrero Creek and Beaumont Gateway sites, and seeks incidental take assurances for 44 other species that may be listed in the future.

The Potrero Creek site supports one of the largest known contiguous populations of the Stephens' kangaroo rat, and includes a significant portion (2,000 to 2,200 acres of occupied and potential habitat, or approximately 7 percent) of the known Stephens' kangaroo rat population in Riverside County. The requested permit would allow future development of portions of the 9,117 acre Potrero Creek site, including up to 2,016 acres of occupied and potential Stephens' kangaroo rat habitat, and all of the 160 acre Beaumont Gateway site, which includes 14 acres of occupied or potential habitat, pursuant to Specific Plans approved by the city of Beaumont. The proposed developments would proceed without further mitigation for sensitive biological resources as long as the conservation program contained within the Multiple Species Habitat Conservation Plan is being properly implemented.

The Multiple Species Habitat Conservation Plan proposes the establishment and management of two open space preserves totaling 9,127 acres for sustainable multiple species uses, contribution of a \$1,950 per acre fee, for a total of \$5,325,450, to the Riverside County Habitat Conservation Agency for acquisition, expansion and/or long-term management of the Stephens' kangaroo rat Core Reserve System, and implementation of measures designed to minimize and/or avoid adverse effects of development of the Potrero Creek and Beaumont Gateway sites. The proposed 30-year permit will be evaluated in the Environmental Impact Statement.

The Environmental Impact Statement will consider the proposed action and a reasonable range of alternatives. Possible alternatives include:

Alternative 1: Potrero Creek and Beaumont Gateway Specific Plans (proposed project by Lockheed). This alternative involves development of the Potrero Creek and Beaumont Gateway Specific Plans, as currently approved by the City of Beaumont, in concert with implementation of the Multiple Species Habitat Conservation Plan.

Alternative 2: Stephens' Kangaroo Preservation Alternative No. 1. This alternative is intended to avoid take of the endangered Stephens' kangaroo rat by confining any proposed development on either the Potrero Creek or the Beaumont Gateway sites to areas that do not adversely affect known Stephens' kangaroo rat occupied habitat.

Alternative 3: Stephens' Kangaroo Preservation Alternative No. 2. This alternative involves a reduction in development areas on the Potrero Creek site to retain approximately 70 percent of the existing occupied habitat on the Potrero Creek site with no Stephens' kangaroo rat habitat preservation on the Beaumont Gateway site.

Alternative 4: Bureau of Land Management Area of Critical Ecological Concern Alternative. This alternative would result in the application of the Bureau of Land Management's proposed Area of Critical Ecological Concern designation upon the Potrero Creek site as described in the South Coast Resource Management Plan prepared by the Bureau of Land Management in 1994. Through a land exchange or other means acceptable to Lockheed and the Bureau of Land Management, the Potrero Creek site would be conserved and managed by the Bureau of Land Management while the Beaumont Gateway site would be developed pursuant to the approved land uses within the Beaumont Gateway Specific Plan.

Alternative 5: Stephens' Kangaroo Rat Habitat Conservation Plan Fee Area Alternative. This alternative involves development of the Potrero Creek and Beaumont Gateway sites according to approved land uses in the respective Specific Plans. In contrast to preparing and implementing a separate Multiple Species Habitat Conservation Plan as proposed, the Potrero Creek and Beaumont Gateway projects would use existing provisions in the "Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County" for the authorization of incidental take. Under this alternative Lockheed would be responsible for acquiring a 1:1 ratio of occupied Stephens' kangaroo rat habitat within the plan area boundary of the "Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County."

Alternative 6: Reduced Stephens' Kangaroo Rat Mitigation Fee Alternative. This alternative involves development of the Potrero Creek and Beaumont Gateway sites according to approved land uses in the respective Specific Plans, in concert with implementation of the Multiple Species Habitat Conservation Plan. Under this alternative the Multiple Species Habitat Conservation Plan would propose the contribution of a \$500 per acre fee, for a total of \$1,775,150, to the Riverside County Habitat Conservation Agency instead of the currently proposed \$1950 per acre contribution.

Alternative 7: No Project. Under this alternative, no incidental take permit would be issued.

Environmental review of the Multiple Species Habitat Conservation Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.), National Environmental Policy Act regulations (40 CFR parts 1500-1508), other appropriate regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Impact Statement.

Dated: November 15, 1996.

John H. Doebel,
Regional Director, Region 1, Portland, Oregon.
[FR Doc. 96-30021 Filed 11-22-96; 8:45 am]
BILLING CODE 4310-68-P

Bureau of Land Management

[WO-210-1610-24 1A]

Approval of Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period on request for comments.

SUMMARY: On September 25, 1996, the Bureau of Land Management (BLM) published a document in the Federal Register requesting comments on an information collection connected with filing protests on resource management plans and management framework plans (61 FR 50326). The regulations governing this information collection are found at 43 CFR Subpart 1610. BLM has received a request for extension of the comment period from its current November 25, 1996, ending date. By this notice, BLM is extending the comment period for an additional 30 days.

DATES: Submit comments on or before December 26, 1996.

ADDRESSES: If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., N.W., Washington, D.C.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C St., N.W., Washington, D.C. 20240; or

(c) Transmit comments electronically via the Internet to WOCComment@wo.blm.gov. Please include "ATTN: 1004-PLAN" in your message. If you do not receive a confirmation from the system that we have received your message, contact us directly.

You will be able to review comments at the L Street address during normal business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Carole Smith, Regulatory Affairs Group, (202) 452-0367.

Dated: November 19, 1996.

Annetta Cheek,
Leader, Regulatory Affairs Group.
[FR Doc. 96-30041 Filed 11-22-96; 8:45 am]
BILLING CODE 4310-34-P

[CO-030-06-1610-00-1784]

Southwest Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (SW RAC) will meet on Thursday, December 12, 1996, at Ridgway State Park headquarters 21 miles south of Montrose, Colorado, on US Highway 550 (Dutch Charlie exit).

DATES: The meeting will be held on Thursday, December 12, 1996. It will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone 970-240-5335; TDD 970-240-5366.

SUPPLEMENTARY INFORMATION: The December 12, 1996, meeting is scheduled to begin at 9:00 a.m. in the conference room at Ridgway State Park Headquarters, 21 miles south of Montrose, Colorado, on US Highway 550 (Dutch Charlie exit). The agenda will focus on public land user fees. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and are available for public inspection and reproduction during regular business hours within thirty (30) days following each meeting.

Dated: November 19, 1996.

Jamie E. Connell,
Associate District Manager.
[FR Doc. 96-30012 Filed 11-22-96; 8:45 am]
BILLING CODE 4310-38-P

[NM-030-1210-00]

Emergency Closure of a Vehicle Trail, Ladrón Area of Critical Environmental Concern (ACEC) and Sierra Ladrónes Wilderness Study Area (WSA), Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of vehicle trail.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces District is implementing an emergency closure of an existing vehicle trail to use by any motorized vehicle or equipment. The closure is implemented in order to prevent resource degradation and protect the values of the Ladron ACEC and Sierra Ladrones WSA. The authority for this emergency closure is 43 CFR 8364.1: Closure and Restriction Orders.

The vehicle trail is located within the following public land:

T. 3 N., R. 2 W., NMPM

Sec. 35, N $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$, Lots 5, 6, and 10.

The subject vehicle trail begins on the east boundary of Section 35, N $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$, and ends at the eastern boundary of the private land located in Sections 34 and 35, all in T. 3 N., R. 2 W.

This closure is not intended to affect valid existing rights on the subject land or rights-of-way of any private landowners. Persons that are exempt from this closure are Mr. Lionel Ortega, adjacent private landowner, Mr. Charles Heaton, grazing permittee and his representatives, and any Federal, State or local officer, or member of any organized rescue or firefighting force in the performance of an official duty, or any person authorized or permitted in writing by the BLM. BLM personnel conducting official duties, cooperating agency personnel, and contractors authorized by the BLM are included in the exemption from this order.

DATES: This closure was effective on November 8, 1996 and shall remain in effect until rescinded or modified by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Ron Danton, Socorro Resource Area Manager, or Jan Hertz, Chief, Multi-Resources, 198 Neel Avenue, NW, Socorro New Mexico, 87801 or at (505) 835-0412.

SUPPLEMENTARY INFORMATION: Violations of this closure are punishable by fines not to exceed \$1,000 and/or imprisonment not to exceed 1 year. The action taken is to prevent impacts to wildlife habitat, cultural resources, scenic values, native vegetation and fragile soils resulting from indiscriminate off-road use. This closure will be evaluated in an environmental assessment to be completed by the Socorro Resource Area in the near future.

Copies of the closure order and maps showing the location of the route are available from the Socorro Resource Area Office, 198 Neel Avenue, NW, Socorro, New Mexico 87801.

Dated: November 18, 1996.

Linda S. C. Russell,
District Manager.

[FR Doc. 96-30022 Filed 11-22-96; 8:45 am]
BILLING CODE 4310-05-P

[CO-425-96-1420-00]

Colorado: Filing of Plats of Survey

November 12, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 12, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The field notes representing the remonumentation of certain corners in T. 6 N., R. 94 W., T. 11 N., R. 96 W., and T. 12 N., R. 102 W., Sixth Principal Meridian, Group 750, Colorado, were accepted October 22, 1996.

The remonumentation was requested by the District Manager, Craig, Colorado.

The plats (in 6 sheets) representing the dependent resurvey of a portion of the subdivision of the south and west boundaries, a portion of the subdivisional lines, and a portion of the subdivision survey of certain sections, and metes-and-bounds survey of the East boundary, Pinon Canyon Maneuver Site, T. 28 S., R. 55 W., T. 29 S., R. 55 W., T. 28 S., R. 56 W., T. 29 S., R. 56 W., T. 29 S., R. 57 W., and T. 30 S., R. 57 W., Sixth Principal Meridian, Group 1001, Colorado, was accepted October 16, 1996.

These surveys were requested by the Regional Director of Lands, Rocky Mountain Region, USDA, Forest Service, to identify the boundaries of the Comanche National Grasslands. These surveys were also requested by the Department of Defense to define the Purgatoire Canyon rim.

The plat representing the dependent resurvey of the west one mile of the south boundary, the south four miles of the west boundary, a portion of the subdivisional lines, the subdivision of certain sections, and the metes-and-bounds survey of tract 37 in T. 38 N. R. 3 W., New Mexico Principal Meridian, Group 1082, Colorado, was accepted October 28, 1996.

This survey was requested by the Director, Engineering, Rocky Mountain Region, USFS, to identify the National Forest boundaries.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and

the subdivision of sections 18 and 19, T. 35 N., R. 9 W., New Mexico Principal Meridian, Group 1086, Colorado was accepted October 24, 1996.

This survey was requested by the District Manager, Montrose, Colorado, for the administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the east boundaries and subdivisional lines, and the subdivision of sections 23 and 24, T. 15 S., R. 91 W., Sixth Principal Meridian, Group 1112, Colorado, was accepted October 23, 1996.

This survey was requested by the Forest Supervisor, Grand Mesa, Gunnison and Uncompahgre National Forests, Delta, Colorado, to identify the National Forest boundaries.

Danney L. McDonald,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 96-29966 Filed 11-22-96; 8:45 am]
BILLING CODE 4310-05-P

[NV-030-1430-01; CACA 24052]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 74 acres of public land in Alpine County and add it to the existing Indian Creek Recreation area. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by February 18, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Carson City District Manager, BLM, 1535 Hot Springs Road, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: Tom Abbott, BLM Carson City District Office, 702-885-6000.

SUPPLEMENTARY INFORMATION: On November 4, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Mount Diablo Meridian

T. 10 N., R. 20 E.

Sec. 9, S $\frac{1}{2}$ of the NW $\frac{1}{4}$, excepting therefrom the lands conveyed to the

county of Alpine by deed recorded August 17, 1970, in Book 13, Page 145 Official Records of Alpine County, aggregating approximately 74 acres in Alpine County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Carson City District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Carson City District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land use permits by BLM under existing laws and regulations.

Dated: November 6, 1996.

David McInay,

Chief, Lands Section.

[FR Doc. 96-29405 Filed 11-15-96; 8:45 am]
BILLING CODE 4310-05-P

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of Information Collection Solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Cooperative Agreements (OMB Control Number 1010-0087).

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to:

Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225-0165; courier address is: Building 85, Room A-212, Denver Federal Center, Denver, Colorado 80225; e-Mail address is: David_Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Procedures Staff, phone (303) 231-3046, FAX (303) 231-3194, e-Mail

Dennis_Jones@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning this collection of information in order to solicit comment to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The MMS is requesting the continuation of this collection of information, Cooperative Agreements. The Secretary of the Interior (Secretary) is authorized by the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) at 30 U.S.C. 1732, to enter into cooperative agreements utilizing the capabilities of States and Indian Tribes to carry out royalty audits and related investigation and enforcement activities. Cooperative agreements benefit both the Minerals Management Service (MMS) and the State or Tribe involved by helping to ensure proper product valuation, correct and timely production reporting, and correct and timely royalty payment through the application of an aggressive and comprehensive audit program. To be considered for a cooperative agreement States and Indian Tribes must comply with the regulations at 30 CFR 228 by submitting a request to the Director, MMS, and preparing an application detailing the work to be done. While working under a cooperative agreement, the State or Tribe must submit quarterly vouchers to claim reimbursement for the cost of eligible activities. Information

required for the application is supplied voluntarily.

The MMS has simplified the process of applying for and lessened the burden of participating in cooperative agreements. The information requested is the minimum necessary to determine an applicant's ability to perform royalty audits. The MMS provides telephone assistance, written guidelines, and onsite assistance for the preparation of cooperative agreement applications, annual work plans, and quarterly reimbursement vouchers.

The initial information collection burden to cooperative agreement applicant involves becoming acquainted with the requirements and preparing the original request to the Director and preparing the application. If the agreement is approved, the burden in subsequent years includes preparing an annual work plan and budget and a quarterly request for reimbursement voucher. MMS estimates that the burden estimate to the applicant for preparing the request and application is approximately \$2500 (100 hours x \$25/hour). In addition, the agency estimates the burden for the annual work plan and budget (40 hours) and the quarterly request for reimbursement voucher (10 hours per quarter) is \$2,500 (80 hours x \$25/hour).

Dated: November 13, 1996.

James W. Shaw,

Associate Director for Royalty Management.
[FR Doc. 96-29984 Filed 11-22-96; 8:45 am]
BILLING CODE 4310-05-P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, the Payor Information Form for Oil and Gas (OMB Control Number 1010-0033). The Royalty Policy Committee recommendations and the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 may require MMS to make changes to this information collection. MMS is evaluating both of these issues.

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to: Minerals Management Service, Royalty

Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225-0165; courier address is: Building 85, Room A-212, Denver Federal Center, Denver, Colorado 80225; e-Mail address is: David_Gury@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Procedures Staff, phone (303) 231-3046, FAX (303) 231-3194, e-Mail Dennis_Jones@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning this collection of information in order to solicit comment to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The MMS is requesting the continuation of this collection of information, the Payor Information Form for Oil and Gas. However, the Royalty Policy Committee recommendations and the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, signed August 13, 1996, may require MMS to make changes to this information collection. MMS is evaluating both of these issues.

The Secretary of the Interior is authorized to prescribe rules and regulations to accomplish the purpose of applicable Federal laws. MMS performs the royalty management functions for the Secretary, who is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. The MMS has developed computer applications that document payment and sales volumes and values as reported by payors and also track minerals from the point of production to the point of disposition, royalty determination, or point of sale. Payor data enables MMS to provide reliable, comprehensive sources of information for Federal, State, and Indian auditors and inspectors checking payors and lease operators, as required by Federal

Oil and Gas Royalty Management Act of 1982 (FOGRMA). Failure to collect some of the PIF information would make it impossible for MMS to comply with FOGRMA Section 101(a) and assure that proper royalties are collected for mineral production from a given lease.

The consolidated database developed by MMS provides the agency the ability to verify that proper royalties are being received for minerals produced. This database is an essential part of an overall effort to improve the management of the nation's mineral resources and to ensure proper collection and accounting for revenues due from companies removing and processing oil and gas products from Federal or Indian leases. PIF information comprises an integral part of the consolidated database establishing the payor(s) for producing leases and payor accounts on these leases, and updating relevant payor information. This information collection identifies the payor(s) who pays rent, royalty or minimum royalty to MMS and identifies the products on which these payments are made.

Approximately 1,700 active oil and gas payors will submit an estimated 25,000 initial and updated PIF's annually. MMS estimates that it will take approximately 12,500 burden hours to complete these PIF's, or an average of 1/4 hour per PIF. MMS further estimates that it will take approximately 850 burden hours for all payors to perform the necessary record keeping directly related to the PIF, or an average of 1/4 hour per payor. Therefore, the total burden hours for this information collection is estimated to be 13,350 burden hours. At an estimated cost of \$25 per burden hour, the total estimated cost to respondents is \$333,750.

Dated: November 13, 1996.

James W. Shaw,
Associate Director for Royalty Management.
[FR Doc. 96-29987 Filed 11-22-96; 8:45 am]
BILLING CODE 4310-MR-P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities, Proposed Collection; Comment Request

ACTION: Notice of information collection under review; making officer redeployment effective progress reports.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until the sixtieth day from the

date published in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Layman, 202-616-2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Layman, 202-616-2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

- (1) Type of Information Collection: New collection.
- (2) Title of the Form/Collection: Making Officer Redeployment Effective (MORE) Progress Report.
- (3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 017/01. Office of Community Oriented Policing Services, U.S. Department of Justice.
- (4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State and Local governments, private non-profit organizations, individuals, education

institutions, hospitals, and private commercial organizations (if legislation allows). Other: None.

The information collected is used to determine grantees progress on its Making Officer Redeployment Effective (MORE) Grant. Completion of such report is a condition of the MORE grant award. Upon receipt and review, the agency will notify the grantees if it is not in compliance with the terms and conditions of its grant award under this program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,600 responses; 2 hours per response. The information will be collected twice per year from each respondent. Thus, there will be approximately 3,200 total yearly responses at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 6,400 annual burden hours. If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 20, 1996.

Robert B. Briggs,
Department Clearance Officer, United States
Department of Justice.
[FR Doc. 96-30007 Filed 11-22-96; 8:45 am]
BILLING CODE 4410-21-M

Antitrust Division

[Civil Action No. 96-5313 (RWS), S.D.N.Y.]

United States v. Alex. Brown & Sons, Inc., et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), the United States publishes below the written comments received on the proposed Final Judgment in *United States v. Alex. Brown & Sons, Inc.*, Civil Action No. 96-5313 (RWS), United States District Court for the Southern District of New York, together with the response of the United States to the comments.

Copies of the written comments and the response are available for inspection and copying in Room 9500 of the U.S. Department of Justice, Antitrust Division, 600 E Street, N.W., Washington, D.C. 20530 (telephone: (202) 307-7200) and for inspection at the Office of the Clerk of the United

States District Court for the Southern District of New York, Room 120, United States Courthouse, 500 Pearl Street, New York, New York 10007.

Rebecca P. Dick,
Deputy Director of Operations.

Response of United States to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. 16 (b)-(h), the United States make and files this response to the public comments received regarding the relief described in the proposed Stipulation and Order ("proposed order") that, if entered by the Court, would resolve this civil antitrust proceeding. The United States has carefully considered the comments received, and remains convinced that entry of the proposed order is in the public interest.

This response and the attached public comments have been submitted to the Federal Register for publication (see 15 U.S.C. 16(d)). Moreover, the United States has today certified to the Court that it has fulfilled the requirements of the Tunney Act. Upon a determination that the United States and the defendants have fulfilled the requirements of the Tunney Act and that entry of the proposed order would be in the public interest, the Court may enter the proposed order.

This action was initiated by the United States with the filing of a complaint on July 17, 1996. The complaint charges that the defendants—all of whom are "market makers" in over-the-counter ("OTC") stocks quoted for public trading on Nasdaq,¹ had violated Section 1 of the Sherman Act, 15 U.S.C. 1, by engaging in a form of price fixing. The complaint alleges that the defendants and others adhered to and enforced a "quoting convention" that was designed to and did deter price competition among the defendants and other market makers in their trading of Nasdaq stocks with the general public. As a result of adherence to and enforcement of the "quoting convention" by the defendants, investors incurred higher transaction costs to buy and sell Nasdaq stocks than they otherwise would have.

With the filing of its complaint, the United States also filed the proposed Stipulation and Order, signed by all the defendants, which, if entered by the Court, would terminate the litigation. In

¹ The term "Nasdaq" was originally an acronym for the "National Association of Securities Dealers Automated Quotation System." The automated quotation system is now operated by The Nasdaq Stock Market, Inc.

addition, on July 17, 1996, the United States filed its Competitive Impact Statement ("CIS"), 15 U.S.C. 16(b). Thereafter, the defendants filed statements identifying certain communications made on their behalf, as required by the Tunney Act, 15 U.S.C. 16(g). A summary of the terms of the proposed order and the CIS, and directions for the submission of written comments relating to the proposed order to the Department, were published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, and in *The New York Times*, a newspaper of general circulation in the Southern District of New York, beginning on July 29, 1996, and continuing on consecutive days through August 3, 1996, and on August 5, 1996.

The proposed order and the CIS were published in the Federal Register on August 2, 1996. 61 FR 40433-40451 (Aug. 2, 1996). The 60-day period public comment period began on August 3, 1996 and expired on October 2, 1996. In response to the solicitation of public comments, the United States received comments from three persons. These comments are attached as Exhibits 1-3.

In addition, the private plaintiffs in *In re: Nasdaq Market-Makers Antitrust Litigation*, 94 Civ. 3996 (RWS), M.D.L. No. 1023 (S.D.N.Y.), commented upon the proposed relief in the form of certain filings they made with the Court in connection with their pending motion to intervene in this case, namely (1) a memorandum in support of their motion to intervene and (2) a reply to the government's opposition to the motion. These papers are on file with the Court, and the relevant portions of these documents are attached as Exhibits 4-5.

I. Background

The complaint and proposed order are the culmination of a major, two-year-long investigation by the Department of Justice into the trading activities of Nasdaq securities dealers. The Department's investigation began in the summer of 1994, shortly after the public disclosure of an economic study by Professors William Christie of Vanderbilt University and Paul Schultz of Ohio State University (the "Christie/Schultz study"). The Christie/Schultz study suggested that securities dealers on Nasdaq might have tacitly colluded to avoid odd-eighth price quotations on a substantial number of Nasdaq stocks, including some of the best known and most actively traded issues, such as Microsoft Corp., Amgen, Apple Computers, Inc., Intel Corp., and Cisco Systems, Inc. After the Christie/Schultz study had received wide-spread publicity, several class action lawsuits

alleging antitrust violations were filed against the defendants and other Nasdaq market makers.²

During the course of its investigation, the Department reviewed thousands of pages of documents produced by the defendants and other market participants in response to more than 350 Civil Investigative Demands ("CIDs"). The Department reviewed hundreds of responses to interrogatories that were submitted by the defendants (and others) and took more than 225 depositions of individuals with knowledge of the trading practices of Nasdaq market makers, including current and former officers and employees of the defendants and other Nasdaq market makers, as well as officials and committee members of the National Association of Securities Dealers, Inc. ("NASD"), the organization responsible for oversight of the Nasdaq market.

The Department conducted numerous telephone and in-person interviews of current and former Nasdaq stock traders, Nasdaq investors, and others with relevant knowledge of the industry, and listened to approximately 4500 hours of audio tapes of telephone calls between stock traders employed by the defendants and other Nasdaq market makers. These audio tapes had been recorded by certain of the defendants (and other market makers) in the ordinary course of their business and were produced to the Department in response to its CIDs.

The Department also reviewed and analyzed substantial quantities of data relating to trading and quoting activity in Nasdaq stocks produced in computer-readable format by the NASD. These data included data showing all market maker quote changes on Nasdaq during a twenty-month period between December 1993 and July 1995, and for selected months thereafter, including March 1996. The Department also reviewed eighteen months of data reflecting actual trades in Nasdaq stocks. Finally, the Department reviewed numerous transcripts of depositions taken by the Securities and Exchange Commission ("SEC") in a concurrent inquiry into the operations and activities of the NASD and the Nasdaq market.

Based upon the evidence discovered during its investigation, the Department concluded that the defendants and others had been engaged for a number of years in anticompetitive conduct in violation of the Sherman Act, as alleged in the complaint. The Department

challenged this conduct as violative of Section 1 of the Sherman Act. Entry of the proposed order would resolve the Department's competitive concerns regarding this conduct.

The complaint and proposed order address a mechanism by which the defendants coordinated their price quotes in certain Nasdaq stocks to increase the inside spread.³ The central allegation of the complaint is that the defendants and others agreed to abide by a long-standing, essentially market-wide commitment to a two-part "quoting convention." This "quoting convention" dictates the price increments a market maker can use to adjust or "update" its bid and ask price quotes on the Nasdaq system. Under the first part of the quoting convention, if a market maker's dealer spread in a stock is $\frac{1}{4}$ point (75 cents) or wider, the market maker is required to quote its bid and ask prices in even-eighth increments (e.g., $\frac{1}{4}$ (25 cents), $\frac{1}{2}$ (50 cents), $\frac{3}{4}$ (75 cents) or $\frac{1}{2}$ (\$1)). (The minimum quote increment for Nasdaq stocks trading at a price of \$10 or more is $\frac{1}{4}$ point, i.e., a much narrower increment than the $\frac{1}{4}$ point increment dictated by the quoting convention when an individual dealer spread in a stock is $\frac{1}{4}$ point or wider.) The quoting convention thus ensures that the inside spread in those stocks is maintained at $\frac{1}{4}$ point (25 cents), or wider.

Under the second part of the quoting convention, market makers can quote bid and ask prices on Nasdaq in odd-eighth increments, e.g., $\frac{1}{8}$ (12.5 cents), $\frac{3}{8}$ (37.5 cents), $\frac{5}{8}$ (62.5 cents) or $\frac{7}{8}$ (87.5 cents), only if they have a dealer spread of less than $\frac{1}{4}$ point. This requirement deters market makers from quoting bid and ask prices in odd-eighth increments because a narrower dealer spread is likely to create a greater economic risk to the market maker in trading that stock. A market maker with a narrow dealer spread is more likely than a market maker with a wide dealer spread, other things equal, to be required to trade on the "wrong side" of

the market.⁴ When the difference between a market maker's bid and ask quotes is $\frac{1}{4}$ rather than $\frac{3}{8}$, a market maker may be called upon to buy (or sell) more stock than the trader wants, or buy stock when the market maker wants to sell (or vice versa).

In executing a market order on behalf of a retail customer, market makers historically bought from the customer at the inside bid, and sold to the customer at the inside ask. This execution by the market maker satisfied the retail broker's obligation of "best execution" for retail customers. Historically, large institutional customers have sometimes been able to negotiate prices that are better (higher bid prices and lower ask prices) than the inside spread, but the width of the inside spread influences many negotiations between market makers and their institutional customers.

Market makers thus have a significant interest in each others' price quotes because those quotes can either set each others' actual transaction prices or significantly affect those prices. This relationship creates an incentive for market makers to discourage bid and ask price competition that may have the effect of narrowing the inside spread.

Adherence to the quoting convention deterred the use of odd-eighth quotes in many stocks. This, in turn, tended to maintain the inside spread in those stocks at no less than one quarter, or twenty-five cents. This artificial floor on the inside spread in those stocks raised transaction costs on Nasdaq. The proposed order, if entered by the Court, would prohibit the defendants from continuing to adhere to and enforce the quoting convention. In addition, it would establish mechanisms that would enable the Department to determine whether the defendants have, in fact, ceased their unlawful conduct and have complied with the terms of the proposed order designed to ensure against its repetition.

² Market makers must continuously quote the prices at which they are willing both to buy and sell individual stocks. The price an individual market maker quotes to buy a stock is known as its "bid" price. The price it quotes to sell a stock is known as its "offer" or "ask" price. (A market maker's bid price is always higher than its ask price.) The difference between a market maker's "bid" and "ask" is known as its "dealer spread." The Nasdaq computer screen collects and displays the bid and offer prices of all the market makers in each stock. The highest bid and the lowest offer from among the quotes of all the market makers in a stock are called the "inside bid" and the "inside ask," or—taken together—the "inside quotes." The difference between the inside bid and the inside ask in a stock is called the "inside spread."

⁴ To trade on the "wrong side" of the market means to buy a stock when one would prefer to sell the stock, or vice versa. Being required to trade on the "wrong side" of the market is more likely to occur if a dealer has a narrow dealer spread, than if a dealer has a wide dealer spread. For example, if a market maker has a dealer spread of fifty cents—say, 20 to 20 $\frac{1}{2}$ —when the best bid in the market is 20, the market maker is presumably trying to buy the stock (because its bid is equal to the best bid in the market). If, however, the market moves up quickly, the market maker's 20 $\frac{1}{2}$ ask price could suddenly become the best ask price in the market, meaning that the market maker would be required to sell stock at that price. With a wider dealer spread—say, 20 to 20 $\frac{1}{2}$ —the possibility of this occurring is less.

II. The Legal Standard Governing the Court's Public Interest Determination

A. General Standard

When the United States proposes to settle a civil antitrust case with a consent judgment, the Tunney Act requires the district court to determine whether "the entry of such judgment is in the public interest." 15 U.S.C. 16(e).⁵ The court is not, however, required "to determine whether the resulting array of rights and liabilities 'is one that will best serve society,' but only to assess whether that the resulting settlement is 'within the reaches of the public interest.'" *United States v. Microsoft Corp.*, 56 F.3d 1448, 1460 (D.C. Cir. 1995) (emphasis in original); accord, *United States v. Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), cert. denied, 114 S. Ct. 487 (1993); see also *United States v. Bechtel*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975). For this reason, a court should not refuse to enter an order terminating a civil antitrust case initiated by the United States "unless 'it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'" *Microsoft*, 56 F.3d at 1460 (quoting *Western Electric*, 993 F.2d at 1577). Congress did not intend the Tunney Act to lead to protracted hearings on the merits, and thereby undermine the incentives for defendants and the government to resolve civil antitrust cases through agreed-upon orders. S. Rep. No. 298, 93d Cong. 1st Sess. 3 (1973).

Tunney Act review is confined to the terms of the proposed relief and their adequacy as remedies for the violations alleged in the complaint. *Microsoft*, 56 F.3d at 1459.⁶ Thus, in this case, the Court need decide only whether the proposed order is reasonably directed

⁵ While not styled "consent judgment," the proposed order serves the same purpose. Violations of the proposed order are punishable as civil or criminal contempt. See, e.g., *United States v. Schine*, 280 F.2d 582 (2d Cir. 1958), cert. denied, 358 U.S. 934 (1958); 18 U.S.C. 401; see also CIS at 3-4, 42, 49, 52.

⁶ A district court exceeds its authority if it requires production of information concerning "the conclusions reached by the Government" with respect to the particular practices investigated but not charged in the complaint, and the areas addressed in settlement discussions, including "what, if any areas were bargained away and the reasons for their non-inclusion in the decree." *Microsoft*, 56 F.3d at 1455, 1459. To the extent that comments raise issues not charged in the complaint, those comments are irrelevant to the Court's review. *Id.* at 1460.

toward addressing the competitive concern raised by the quoting convention.

No third party has a right to demand that the proposed order be rejected or modified simply because a different order might better serve its private interests. Unless the proposed order "will result in positive injury to third parties," a district court "should not reject an otherwise adequate remedy simply because a third party claims it could be better treated." *Microsoft*, 56 F.3d at 1461 n.9.⁷

The United States—not any third party—represents the public interest in government antitrust cases. See, e.g., *Bechtel Corp.*, 648 F.2d at 660, 666; *United States v. Associated Milk Producers*, 534 F.2d 113, 117 (8th Cir.), cert. denied, 429 U.S. 940 (1976). Moreover, there is no allegation that the government has acted in bad faith in negotiating the relief. The proposed order is intended to ensure that market makers do not continue to collude through the mechanism of the quoting convention to increase transaction costs for investors in Nasdaq stocks. It will effectively accomplish this goal. Moreover, it is directed at private conduct illegal under the antitrust laws. It is not intended or designed—nor could it be—to make the Department the regulator of The Nasdaq Stock Market, Inc. The decree is also not intended to change the structure of the Nasdaq Stock Market by, for example, requiring that market-maker quotes be posted anonymously on Nasdaq, as suggested by one commentator. Exhibit 1 (letter of Professor Junius Peake, dated July 26, 1996) at 2; see *infra* text at 14-15.

III. Entry of the Proposed Order is in the Public Interest

Entry of the proposed order is clearly within the reaches of the public interest under the standards articulated in *Microsoft* and other decided cases. If entered by the Court, the proposed order would prevent each of the defendant market makers, unless otherwise specifically permitted, in connection with their market-making activities in OTC stocks, from agreeing with any other market maker:

- (1) to fix, raise, lower, or maintain quotes or prices for any Nasdaq security;
- (2) to fix, increase, decrease, or maintain any dealer spreads, inside spreads, or the size of any quote

⁷ Cf. *United States v. Associated Milk Producers, Inc.*, 534 F.2d 113, 116 n.3 (8th Cir.) ("The cases unanimously hold that a private litigant's desire for (the) *prima facie* effect (of a litigated government judgment) is not an interest entitling a private litigant to intervene in a government antitrust case."), cert. denied, 429 U.S. 940 (1976).

increment (or any relationship between or among dealer spread, inside spread, or the size of any quote increment), for any Nasdaq security;

(3) to adhere to a quoting convention whereby Nasdaq securities with a three-quarter ($\frac{3}{4}$) point of greater dealer spread are quoted on Nasdaq in even-eighths and are updated in quarter-point (even-eighth) quote increments; and

(4) to adhere to any understanding or agreement (other than an agreement on one or a series of related trades) requiring a market maker to trade at its quotes on Nasdaq in quantities of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market.⁸

In addition, the proposed order, if entered by the Court, would bar each of the defendants from engaging in any harassment or intimidation of any other market maker because such market maker:

- (1) decreased its dealer spread or the inside spread in any Nasdaq security;
- (2) refused to trade at its quoted prices in quantities of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker; or
- (3) displayed or quantity of shares on Nasdaq greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker.

Finally, Section IV(6) of the proposed order, if entered by the Court, would bar each of the defendants from refusing, or threatening to refuse, to trade (or agreeing with or encouraging any other market maker to refuse to trade) with any market maker at the defendant's published Nasdaq quotes in amounts up to the published quotation size because such market maker decreased its dealer spread, decreased the inside spread in any Nasdaq security, or refused to trade at its quoted prices in a quantity of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker.

Entry of the proposed order is in the public interest. The United States urges that the Court to enter the proposed order upon a determination that the United States and the defendants have satisfied the requirements of the Tunney Act.

⁸ The reference to agreements "other than an agreement on one or a series of related trades" is intended to make clear that a market maker is not prohibited from agreeing to buy or sell a specific quantity of stock, and that agreeing to buy or sell a quantity of shares greater than the amount initially specified in a series of related trades also does not violate the proposed order.

IV. Response to Public Comments

As noted, this case has generated three formal comments. In addition, the private plaintiffs in *In re: Nasdaq Market-Makers Antitrust Litigation*, 94 Civ. 3986 (RWS), M.D.L. No. 1023 (S.D.N.Y.), commented upon the proposed relief in the form of certain filings they made with the Court in connection with their pending motion to intervene in this case, namely (1) a memorandum in support of their motion to intervene and (2) a reply to the government's opposition on file with the Court. Our response to each of these comments is set forth below.

Comments of Professor Junius Peake

Professor Peake is Monfort Distinguished Professor of Finance at the University of Northern Colorado. He served as a member of the Board of Governors of the NASD. He is frequently quoted nationally and internationally in both print and electronic media. See Exhibit 1 at 1.

In his letter, Professor Peake expresses concern that the proposed order "will not necessarily deter retribution by firms which wish to keep spreads wider than might otherwise be the case under real competition." *Id.* at 2. Given his view that the proposed order will not deter retribution for spread-cutting, Professor Peake suggests that the appropriate remedy would be to require The Nasdaq Stock Market, Inc. to display market maker quotes anonymously. This would eliminate the possibility of retaliation by one market maker against another for violating the quoting convention or otherwise acting to narrow the spread in a stock for a simple and obvious reason: a firm inclined to retaliate in some way would not be able to identify the culprit firm. *Id.* at 3. In his letter, Professor Peake identifies some of the ways a market maker could—despite the proposed order—retaliate against a spread-cutter without violating the proposed order—all of them a form of refusal to deal. *Id.* at 3.⁹

⁹ In addition to changing the way market-maker quotes are displayed on Nasdaq, Professor Peake would strengthen competition in market making by eliminating the practice of "preferencing." Exhibit 1 at 2. "Preferencing" occurs when a broker directs an order to a particular market maker. Pursuant to preferencing agreements, the market maker may pay the broker several cents per share for the order. The market maker then executes the order at the best price displayed on Nasdaq, although this may not be the price displayed by the market maker receiving the preferred order. Agreements that provide for payment for a steady flow of orders are called "payment-for-order-flow" agreements.

Under a "preferencing" arrangement, the price quoted by the market maker receiving the preferred order is irrelevant. Although it will execute order at the best price displayed on Nasdaq,

The relief suggested by Professor Peake is not obtainable in this action. The Department's lawsuit charges a conspiracy among market makers. This charge involves alleged private conduct by the defendant firms. The Nasdaq Stock Market, Inc., which owns Nasdaq—and, in turn, is owned by the NASD—is not a defendant in this action, nor is the NASD. Under the law, the NASD has the authority to organize the market and establish the rules governing its operation, subject to oversight by the SEC. See 15 U.S.C. §§ 78o, 3 and 78a. Thus, even if, hypothetically, the Department had sought the relief suggested by Professor Peake from the defendant market makers (and the defendants had agreed to it), they could not implement the structural changes in Nasdaq necessary to accomplish this result.

There has been debate in the academic literature for some time on the question of whether market makers should be required to post quotes anonymously on Nasdaq. Professor Peake has long advocated anonymity and other changes in Nasdaq. See Comments of Junius W. Peake and Morris Mendelson on SEC's Market 2000 Draft Release, SEC File # S7-18-92 (Nov. 3, 1992). As neither the NASD nor the SEC has acted to require anonymity on Nasdaq (a feature that, as Professor Peake notes, is available on Instinet), they have not made a judgment that having this feature on Nasdaq is necessary to the national market system. They are obviously free to revisit this question at any time.¹⁰

the market maker receives the order without reference to its own quoted price in the stock. For this reason, some market observers believe preferencing arrangements significantly reduce incentives for market makers with preferred order flow to compete vigorously for orders on the basis of price. (Normally, of course, in most markets, if a firm lowers its price, it can expect to increase sales. If, however, price improvement does not guarantee increased sales (order flow), a Nasdaq stock dealer will have fewer incentives to improve price and will therefore do so less frequently.)

The practice of preferencing, and especially payment-for-order-flow agreements, have been subject to considerable study and controversy. See, e.g., *Market 2000: An Examination of Current Equity Market Developments*, SEC Division of Market Regulation (January 1994). The SEC has not acted to prohibit payment-for-order-flow or other types of preferencing arrangements, and the complaint in this case did not allege that preferencing is an unreasonable restraint of trade. Under the Tunney Act, 15 U.S.C. 16, "the court is only authorized to review the decree itself." *Microsoft*, 56 F.3d at 1459. The district court in *Microsoft* was held to have exceeded its authority, *id.* at 1459, by requiring production of information concerning "the conclusions reached by the Government" with respect to practices investigated that the government chose not to charge as violative of the Sherman Act. *Id.* at 1453.

¹⁰ In its 1975 amendments to the securities laws, Congress established

The proposed order will do much to decrease the likelihood that the defendants will endeavor to identify and punish spread cutters. It proscribes the illegal conduct identified in the Department's complaint. In making the "public interest" determination required by the Tunney Act, 15 U.S.C. 16(e), "the court's function is not to determine whether the resulting array of rights and liabilities is the one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1460-61 (D.C. Cir. 1995) (emphasis in original) (internal quotations omitted). Under this standard, there is no doubt that the proposed relief is within the reaches of the public interest.

In addition, it contains terms that go a considerable distance in increasing the likelihood that recidivist behavior, if it occurs, will be identified. If entered by the Court, the proposed order will subject the defendants to punishment for civil or criminal contempt if they engage—even unilaterally—in any "harassment or intimidation of any other market maker" because such market maker:

(1) "decreas[ed] its dealer spread or the inside spread in any Nasdaq security" (proposed order, IV(A)(5));

(2) "refus[ed] to trade at its quoted price in quantities of shares greater than either (1) the minimum size required by Nasdaq or NASD rules or (2) the size displayed or otherwise communicated by that market maker" (*id.*, IV(A)(6)); or

(3) "display[ed] a quantity of shares on Nasdaq in excess of the minimum size required by Nasdaq or NASD rules" (*id.*, IV(A)(7)).

a statutory scheme clearly granting the SEC broad authority to oversee the implementation, operation, and regulation of the national market system and at the same time to (sic) charging it with the clear responsibility to assure that the system develops and operates in accordance with Congressionally determined goals and objectives.

Sen. Rep. No. 75, 94th Cong., 1st Sess. at 2-9 (1975). These goals and objectives include ensuring that the securities markets (a) provide "economically efficient mechanisms for the execution of transactions" and (b) make available "information with respect to quotations for securities." *Id.* at 8. Fair competition is another goal of the securities laws, but, in ensuring fair competition, the SEC has been admonished by the Congress not "to compel elimination of differences between types of markets or types of firms that might be competition-enhancing." *Id.*

In a recent rulemaking (see 61 Fed. Reg. 48,290 (Sept. 12, 1996)), the SEC directed that market makers that accept limit orders must either execute those limit orders upon receipt or, if the customer limit order is priced better than the market maker's quote, display the limit order to the market in the market maker's quote. The Department submitted formal comments to the SEC strongly supporting the adoption of this rule.

The proposed order also addresses the issue of refusals to deal specifically. Under the proposed order, each defendant is prohibited, directly or through any trade association, in connection with the activities of its OTC desk in making markets in Nasdaq securities, from:

(Refus[ing], or threaten[ing] to refuse to trade, (or agree[ing] with or encourag[ing] any other market maker to refuse to trade) with any market maker at defendant's published Nasdaq quotes in amounts up to the published quotation size because such market maker decreased its dealer spread, decreased the inside spread in any Nasdaq security, or refused to trade at its quoted prices in a quantity of shares greater than either (1) the minimum size required by Nasdaq or NASD rules or (2) the size displayed or otherwise communicated by that market maker.

Id., IV(A)(8).

Importantly, the proposed order would not merely prohibit the defendants from engaging in the conduct described, but would require each defendant to monitor and record up to 3.5% of its traders' conversations (without the traders having knowledge of the time when this recordation was occurring) and to notify the Department of any conversation which a defendant's Antitrust Compliance Officer "believes may violate" the order. *Id.*, IV(C)(5) (emphasis added).

The Department views these terms as a significant deterrent to repetition of the unlawful behavior. Further, the proposed order permits the Department to assure itself—through review of the tapes required to be created and real-time monitoring of trader conversations—that the prohibitions of the proposed order are being obeyed. *Id.*, IV(C)(6)-(8).

The Department recognizes that retaliation could take a large number of different forms. But the proposed order can and does proscribe such retaliation, even though it does not, and could not, anticipate each possible form that such retaliation could take. Instead, the Department has identified broad but unambiguous categories of behavior—harassment, intimidation, refusals to deal, or threats of refusals to deal—and branded any behavior of that type, if directed at another market maker in response to that other market maker's specific pro-competitive acts, to be a violation of the proposed order.

Contrary to Professor Peake's suggestion (Exhibit 1 at 1), the relief that would be provided by the proposed order is not unnecessary and does not constitute an unwarranted burden upon the investing public or the country's corporate stock issuers. As shown, the

proposed order would provide significant deterrence to revival of the defendant's unlawful conspiracy. Under the circumstances, the proposed settlement is clearly "within the reaches of the public interest" (*Microsoft*, 56 F.3d at 1460 (emphasis in original)), and ought to be entered by the Court.¹¹

Comments of William Leighton

Mr. Leighton has bought and sold Nasdaq stocks, and describes himself as "a person aggrieved and adversely affected by the proposed order." Exhibit 2 [letter of Sept. 9, 1996] at 1. He has written three letters to the Department, making a variety of objections to the proposed settlement. His primary objection is that the relief does not provide for the payment of damages to aggrieved persons, such as himself:

The relief sought, which leaves the defendants in possession of the fruits of their unjust enrichment, does not enable those injured and damaged by the actions of the "defendants" to recover their losses. There is no provision for disgorgement by the "defendants" of the enormous profits which they have realized and which have occasioned huge losses to the public.

Id. As the Department pointed out in its CIS—and, as is the case with all of the Department's settlements in civil antitrust cases—the relief obtained will neither advance or impair private plaintiffs' ability to bring damages cases.¹² The assertion by Mr. Leighton that he will be "adversely affected by the proposed order" is, therefore, incorrect. Mr. Leighton is free to pursue a claim for damages against the Nasdaq market makers individually or as part of a class. See *Zenith Radio Corp. v.*

¹¹ Professor Peake notes that, despite long experience in the securities industry, including service on the NASD's Board of Governors, until the week before the Department's complaint and proposed settlement with the market maker defendants were filed, he had "never before heard of . . . [the quoting] convention." Exhibit 1 at 2. While Professor Peake may personally have been unaware of the quoting convention, the complaint, unchallenged by the defendants, alleges the convention and the CIS describes some of the abundant evidence of its existence and effects.

¹² Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Order will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Order has no prima facie effect in any subsequent lawsuits that may be brought against the defendants in this case. CIS at 46. The defendants, in agreeing to entry of the proposed order, have not admitted the truth of any of the allegations in the government's complaint. Entry of the proposed order will not constitute evidence against or an admission by any defendant with respect to any allegation in the complaint.

Hazeltine Research, Inc., 395 U.S. 100, 130-31 (1969); *United States v. Borden Co.*, 347 U.S. 514, 518 (1954). As the Supreme Court has emphasized, the "treble damages provision wielded by the private litigant is a chief tool in the antitrust enforcement scheme, posing a crucial deterrent to potential violators." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 635 (1985).

As the Court knows, there is a consolidated, class-action lawsuit pending in this district in which private plaintiffs claiming to have suffered antitrust injury as a result of a price-fixing conspiracy among Nasdaq market makers are seeking monetary damages. This avenue, among others, is available to Mr. Leighton.

Mr. Leighton also objects to the entry of the proposed order because of alleged legal deficiencies in the action. For example, he suggests that the Department's complaint "does not state a claim upon which relief could be granted because there is no Case or Controversy present in the constitutional sense." Exhibit 2 [letter of Aug. 7, 1996] at 1. Mr. Leighton's assertion of a lack of any Case or Controversy is based upon the defendants' consent to the entry of the proposed order before having been sued—in other words, to the negotiated settlement. *Id.*; see also *id.* [letter of Sept. 9, 1996] at 3.

A Case or Controversy exists here because the United States and the market maker defendants have adverse interests (see *Muskat v. United States*, 219 U.S. 346, 361 (1911)) and because the United States seeks to enjoin the defendants from engaging in certain specific conduct in the future and to impose upon them certain requirements designed to ensure that they do not continue to engage in the conduct identified in the complaint as unlawful. The fact that the United States and the defendants have reached a settlement, that, if approved by the Court, would resolve the issue, does not mean that there is no justifiable controversy between them. See, e.g., *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 371 n.10 (1982); *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 465 n.3 (1978); *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978).

Civil antitrust cases brought by the government are, more frequently than not, resolved via consent decrees. Indeed, in enacting the Tunney Act, the Congress recognized that such cases would often be resolved by consent orders. See 15 U.S.C. 16 (*passim*); 51 Cong. Rec. 15,824-25 (noting Congress' interest in encouraging capitulation in

government antitrust suits, and providing that no prima facie effect would flow from such decrees entered before any testimony was taken) (1914); *United States v. Blue Chip Stamp Co.*, 272 F.Supp. 432, 440 (C.D. Cal. 1967) (the legality of the consent decree procedure is "beyond question") (quoting *Sam Fox Pub. Co. v. United States*, 366 U.S. 683, 689 (1961)).

Mr. Leighton also suggests that the United States is not a "real party in interest" here—and therefore not a proper plaintiff—because it is "members of the public (not the government qua government) who buy or sell securities on the NASDAQ and who have suffered, and may continue to suffer, damages as a result of the alleged conduct." *Id.* The United States is a proper party to bring an injunctive action under Section 1 of the Sherman Act on behalf of the public. 15 U.S.C. § 4; *United States v. Trans-Missouri Freight Assn.*, 166 U.S. 290, 309–10 (1897).¹² See also *supra* text at 22–23. Mr. Leighton's comments do not state a sound basis upon which to reject the proposed order.

Comments of Joel Steinberg

Mr. Steinberg is a plaintiff in a lawsuit against Goldman, Sachs & Company. He has communicated with the Department on five occasions in connection with this matter. Exhibit 3. Mr. Steinberg's central objection to the proposed order is that it does not require that any parties injured as a result of the conduct alleged in the complaint be compensated. *Id.* [letter of August 15, 1996] at 1. Mr. Steinberg further complains that the Department did not proceed criminally against the market makers under the antitrust laws. *Id.* [letter of August 15, 1996] at 1; *id.* [letter of August 18, 1996] at 1.

The Department exercised its prosecutorial discretion not to pursue a criminal case against the defendant market makers based upon the quoting

¹² Mr. Leighton makes other technical, legal objections to the case, the primary one being that "It does not appear that the complaint has been served on the 'defendants.'" *Id.* [letter of Sept. 9, 1996] at 2. Citing Fed. R. Civ. P. 4, Mr. Leighton claims that deficiency would enable a defendant later to "dismiss the attorney who has signed the stipulation and claim the Court's lack of jurisdiction over its person." *Id.* The defendants in this case have expressly waived service of summons, acknowledged receipt of the complaint, consented to in personam jurisdiction and entered their general appearance in the action. Stipulation and Order (filed Aug. 5, 1996). It is clear on this record that defendants have been adequately notified of the government's case and have acceded to the jurisdiction of the Court. See *Precision Etchings & Findings v. LCP Gen. LTD.*, 152 F.R.D. 433, 436 (D.R.I. 1993); *A.L.T. Corp. v. Small Business Admin.*, 801 F.2d 1461, 1458–59 (5th Cir. 1986); *Wright & Miller, Federal Practice and Procedure: Civil 2d* § 1062 (1987).

convention because the evidence did not meet the criteria the Department has historically required in order to proceed criminally. See *Antitrust Division Manual* at III-12 (2d ed. 1987). Furthermore, to the extent that Mr. Steinberg's comments raised issues not alleged in the complaint, they are outside the scope of Tunney Act review. *Microsoft*, 56 F.3d at 1448, 1459, 1463; see also *ABA Antitrust Section, Annual Review of 1995 Antitrust Law Developments* at 171–72 (1996).

Comments of the Private Plaintiffs

The plaintiffs in *In re: Nasdaq Market-Makers Antitrust Litigation*, 94 Civ. 3006 (RWS), M.D.L. No. 1023 (S.D.N.Y.), a private, class-action civil case to recover damages under the antitrust laws for injuries allegedly sustained by persons who bought or sold Nasdaq stocks that were subject to an alleged price-fixing conspiracy among Nasdaq market makers, commented upon the proposed order in briefs filed in connection with their motion to intervene in the instant action. See Exhibit 4 (Excerpts from *Memorandum of Plaintiffs in the In re: Nasdaq Market-Makers Antitrust Litigation to Intervene or to Appeal as Amicus Curiae* (filed Aug. 28, 1996); Exhibit 5 (Excerpts from *Reply Memorandum in Support of Motion of Plaintiffs in the In re: Nasdaq Market-Makers Antitrust Litigation to Intervene or to Appeal as Amicus Curiae* (filed Oct. 14, 1996)).

Plaintiffs object to the provision of the proposed order that would limit use of the audio tapes to be created under it. Paragraphs IV(C) (2)–(6) of the proposed order, if entered by the Court, would require that defendants randomly monitor and tape record not less than 3.5% of their Nasdaq trader telephone conversations (up to a maximum of 70 hours per week). It would also require that they identify and produce any tapes containing conversations that may violate the proposed order and furnish the tape of any such conversation to the Antitrust Division within ten business days of its recordation. Further, paragraph IV(C)(6) specifically provides:

Tapes made pursuant to this stipulation and order shall not be subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended.

Plaintiffs ask "the Court [to] reject this provision, or clarify that, by entering the Consent Decree, the Court does not bind any non-party to the Consent Decree * * * Exhibit 4 at 30.

In reaching the tentative settlement of this case, the defendants agree, at the government's insistence, to conduct random taping of their traders' conversations. In negotiating this unusually strict requirement, the government agreed to the term in the proposed order that would limit the use to which the tapes could be put.¹⁴ Since the tapes would not even be created but for the proposed order, the Court should accept the provision in the proposed order preventing their use in private litigation. See *In re LTV Securities Litigation*, 89 F.R.D. 595, 617–22 (N.D. Tex. 1981) (denying disclosure of

¹⁴ The disclosure and admissibility limitations of the proposed order apply only to tape recordings created pursuant to the proposed order. To the extent that defendants record trader conversations for their own purposes, such recordings would not be subject to the provision of paragraph IV(C)(6), which limits the disclosure and admissibility only of recordings "made pursuant to" the proposed order. See also proposed order, paragraph IV(C)(8) (Upon request of the Antitrust Division, a defendant must "immediately identify all tape recordings made pursuant to * * * [the proposed] order that are in its possession or control * * *"). (emphasis added). Further, as the proposed order requires that a defendant both "record (and listen to) not less than three and one-half percent (3.5%) of the total number of trader hours of such defendant" (paragraph IV(C)(4) (emphasis added))—and to report potential violations to the Antitrust Division (paragraph IV(C)(5))—a defendant would have great difficulty claiming that recordings not created pursuant to the proposed order were actually made as a result of it.

While a firm might record and listen to all trader conversations for the purpose of ensuring that the tapes of such conversations would be protected from use in civil damages cases, such a decision would be costly for the firm in two respects. In addition to the obvious economic costs, the firm would incur the obligation of reporting potential violations of the proposed order discovered during the listening process to the Department. Were violations detected, the Department could bring a contempt action. These two factors provide substantial disincentives for firms to record a greater number of hours of trader conversations that are required to be recorded under the proposed order. If a firm were to record all of its trader conversations and then to claim that they had been recorded pursuant to the proposed order, the Department could request their production at any time within 30 days. Further, the failure to report potential violations of the proposed order from among all these conversations could result in a charge of contempt. This possibility would act as a disincentive to a firm claiming that recordings made, but not listened to, were actually made pursuant to the proposed order. The Department intends to ensure that, as part of the system each defendant will establish to assure compliance with the proposed order, it is capable of identifying immediately upon request all tape recordings in its possession made pursuant to the proposed order. The Department may also require the defendants routinely to provide it with a schedule of the recordings to be made in advance of their actual creation. See proposed order, paragraph IV(C)(8); see also paragraph IV(C)(5). In this way, it will be clear what recordings have been made pursuant to the proposed order, and, to the contrary, what additional recordings, if any, fall outside the scope of the limitations on discovery and use of recordings made pursuant to the mandate of the proposed order.

documents prepared by Special Officer appointed, in accordance with provisions of a consent decree, to investigate and report on defendant's accounting and auditing practices).

Contrary to the facts in *Ex Parte Upperco*, 239 U.S. 435, 440, (1915), and *Olympic Refining Co. v. Carter*, 332 F.2d 280, 285 (9th Cir. 1964), both cases cited by plaintiffs in their motion to intervene, the proposed order does not withhold from the public or from any present parties to litigation information that that would otherwise be available to them. Unless the proposed order is entered, the audio tapes will not be created. Should the tapes be subpoenaed in future litigation, the enforceability of this provision can be litigated at that time by parties with standing to press the issue.

Meanwhile, the Department plans, if the Court enters the proposed order, to monitor the tapes carefully and, if evidence of new or continuing violations comes to light, take appropriate enforcement action. In addition, should violations of the securities laws be indicated, the Department will refer such evidence to the SEC, the NASD, or both.

Conclusion

Entry of the proposed order is in the public interest. The United States has today certified compliance with the Tunney Act. The Court should enter the proposed order as submitted.

Dated: November 15, 1996, Washington, D.C.

Respectfully submitted,

Hays Gorey, Jr., (HG 1946), John D. Worland, Jr. (JW 1962), Jessica N. Cohen (JC 2089), Attorneys, U.S. Department of Justice, Antitrust Division, 800 E Street, N.W., Room 9500, Washington, D.C. 20530, (202) 307-6200 phone, (202) 616-8544 fax.

Certificate of Service

I, Hays Gorey, Jr., hereby certify that on November 15, 1996, I caused to be served a true and correct copy of the foregoing Response to Public Comments by first-class mail, postage prepaid, upon:

James T. Halverson, Esq., Shearman & Sterling, 153 East 53rd Street, New York, New York 10022-4676, Attorneys for Defendant Herzog, Heine, Geduld, Inc.
Lewis A. Noonberg, Esq., Piper & Marbury, 1200 19th Street, NW, Washington, D.C. 20036-2430, Attorneys for Defendant Alex. Brown & Sons Incorporated.
Robert M. Heller, Esq., Kramer, Levin, Naftalis & Frankel, 919 Third Avenue, New York, New York 10022, Attorneys for Defendant Bear Stearns & Co., Inc.
Richard A. Cirillo, Esq., Rogers & Wells, 200 Park Avenue, 53rd Floor, New York, New

York 10166, Attorneys for Defendant CS First Boston Corp.
Frank M. Holozabiec, Esq., Kirkland & Ellis, Citicorp Center, 153 East 53rd Street, 39th Floor, New York, New York 10022-4675, Attorneys for Defendant Dean Witter Reynolds, Inc.

Robert F. Wise, Jr., Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attorneys for Defendant Donaldson, Lufkin & Jenrette Securities Corporation.
James J. Calder, Esq., Rosenman & Colin, 575 Madison Avenue, New York, New York 10022, Attorneys for Defendant Furman Selz LLC.

John L. Warden, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, Attorneys for Defendant Goldman Sachs & Co.

Charles E. Koob, Esq., Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017-3954, Attorneys for Defendant Hambrecht & Quist LLC.

Robert F. Wise, Jr., Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attorneys for Defendant J.P. Morgan Securities Inc.
Jeffrey Q. Smith, Esq., Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, New York 10038, Attorneys for Defendant Lehman Brothers, Inc.

Catherine A. Ludden, Esq., Morgan, Lewis & Bockius, 101 Park Avenue, New York, New York 10178, Attorneys for Defendant Mayer & Schweitzer, Inc.

Jay Fastow, Esq., Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153, Attorneys for Defendant Merrill Lynch, Pierce, Fenner & Smith

Robert F. Wise, Jr., Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, Attorneys for Defendant Morgan Stanley & Co. Incorporated.

Paul B. Uhlenhop, Esq., Lawrence, Kamin, Saunders & Uhlenhop, 208 South LaSalle Street, Suite 1750, Chicago, Illinois 60604, Attorneys for Defendant Nash, Weiss & Co.
Norman J. Barry, Jr., Esq., Donahue Brown Mathewson & Smyth, 20 North Clark Street, Suite 900, Chicago, Illinois 60602, Attorneys for Defendant OLDE Discount Corporation.

Robert McCaw, Esq., Wilmer, Cutler & Pickering, 2445 M Street, NW, Washington, D.C. 20037-1420 Attorneys for Defendant PaineWebber Incorporated.

Neil S. Cartusciello, Esq., Shanley & Fisher, P.C., One World Trade Center, 89th Floor, New York, New York 10048, Attorneys for Defendant Piper Jaffray Inc.

William P. Frank, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022, Attorneys for Defendant Prudential Securities Incorporated.

Jeffrey I. Weinberger, Esq., Munger, Tolles & Olson, 355 South Grand Avenue, 35th Floor, Los Angeles, California 90071, Attorneys for Defendant Salomon Brothers Inc.

Brian J. McMahon, Esq., Crummy, Del Deo, Dolan, Griffinger & Vecchione, P.C., One Riverfront Plaza, Newark, New Jersey 07102, Attorneys for Defendant Sherwood Securities Corp.

Charles A. Gilman, Esq., Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005, Attorneys for Defendant Smith Barney Inc.

R. Bruce Holcomb, Esq., Dickstein Shapiro Morin & Oshinsky, L.L.P., 2102 L Street, NW, Washington, DC 20037, Attorneys for Defendant Spear, Leeds & Kellogg, LP (Troster Singer).

Philip L. Graham, Jr., Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, Attorneys for Defendant UBS Securities LLC.

Hays Gorey, Jr.

Attorney, U.S. Department of Justice, Antitrust Division, 800 E Street, N.W., Room 9500, Washington, D.C. 20530.

University of Northern Colorado

Junius W. Peaks, Monfort Distinguished Professor of Finance, Kaplan Hall 1075F, College of Business Administration, Greeley, Colorado 80639-0019, (970) 351-2737, (970) 351-1062 FAX, jwpeaks@bentley.univnorthco.edu

July 28, 1996

Judge Robert Sweet,

United States District Court, The Southern District of New York, Federal Court House, Foley Square, New York, NY 10007

Re: United States of America v. Alex Brown & Sons, Inc., et al.

Your Honor: Not being an attorney, and unfamiliar with court protocol, I take the liberty of addressing this letter to you to point out some facts that you might wish to consider in deciding whether to approve the proposed Stipulation and Order between the Department of Justice ("DOJ") and the 24 broker-dealer defendants ("the 24") named in the above-captioned civil litigation. Needless to say, I will be glad to send copies to anyone else required, as well as to attorneys for the United States and the defendants.

In my professional opinion the proposed sanctions and agreements between the DOJ and the 24 will not serve their stated purposes, and will, therefore, merely be an unnecessary and expensive added regulatory and financial burden on the investing public and America's stock issuers.

First, may I state my personal qualifications to comment on this matter. As you will note from my letterhead, I am Monfort Distinguished Professor of Finance at the University of Northern Colorado, and have been a member of that university's faculty since 1993. Prior to that time I was in the securities industry as a practitioner and consultant from 1951 onward. I served on a number of securities industry organizations, including the National Association of Securities Dealers, Inc. ("NASD"), at which I served as district committeeman, member of several national committees, member of the Board of Governors and Vice-Chairman of the Board. I have testified before congressional committees of both the House and Senate as an expert in securities operational and structural matters, and have written and delivered papers on financial market microstructure since 1976, a number of which have been published in recognized

academic journals, and others which have appeared as chapters in books on finance. I am frequently quoted nationally and internationally in both print and electronic media.

I have also been a paid consultant to the Securities and Exchange Commission ("SEC" or "Commission"), the Commodity Futures Trading Commission ("CFTC") and the Antitrust Division of the Department of Justice, although not on this matter. I have testified as an expert in Federal and state courts in securities cases, and am presently engaged as a consultant to the plaintiffs in the private civil litigation on a similar matter before your Court. However, I wish to make it clear that this letter is written solely at my own initiative as a student of market structure, and that I have had no conversations with any of the plaintiffs' attorneys or anyone else in formulating these opinions, but I have discussed the contents of this letter and my conclusions with my colleague and frequent co-author, Dr. Morris Mendelson, Professor Emeritus of Finance at the Wharton School of the University of Pennsylvania. Dr. Mendelson has asked me to state that he endorses the analysis in this letter and concurs with its conclusions.

The Nasdaq system of the NASD was designed and built at the instigation of the SEC to replace its predecessor, the Pink Sheets® published by the National Quotation Bureau. Market makers' quotations were sent to the Pink Sheets® in the afternoon, and distributed the following morning by messenger to over-the-counter traders nationally. Nasdaq commenced operations in 1971, just 25 years ago. At the time I was a member of the Board of Governors of the NASD, and participated in policy making for the Association, including the development of Nasdaq and the automation efforts of the Association.

Let me explain why the DOJ's proposed solution to the issue of alleged price-fixing, which the DOJ also refers to as a "quoting convention," will not necessarily deter retribution by firms which wish to keep spreads wider than might otherwise be the case under real competition.

DOJ defines "Quoting Convention" as: "any practice of quoting Nasdaq securities whereby stocks with a three-quarter (¾) point or greater dealer spread are quoted on Nasdaq in even eighths and are updated in quarter-point (even eighth) quote increments." (DOJ draft Stipulation and Order, page 4.)

Before newspaper articles referred to this term the week prior to the DOJ's press release on July 17th, I had never before heard of such a "convention" in Wall Street. However, even assuming there was a "quoting convention" on Nasdaq, the fact is (as documented by the DOJ) that it did not exist on Instinet, a competing proprietary trading system. Therefore, I believe that the "quoting convention" is a convenient fiction. Nasdaq requires the identity of market makers and their quotations to be disclosed; Instinet keeps them confidential. That is the key difference, and the reason the same market makers who berated and harassed those who "broke the spread" on Nasdaq would break it themselves with impunity on Instinet.

Nothing in the DOJ's proposals would require anonymity of quotations over Nasdaq. Nothing in the DOJ's proposals would require disclosure of market makers' bids and offers over Instinet. Thus, any market maker wishing to punish economically any other market maker that narrowed a spread and violated an "unwritten" quotation convention would be able to do so with impunity, since "unadvertised" economic reprisals appear not to be prohibited by the DOJ proposal, and would be almost impossible to prove.

Here is an example. Assume the following situation:

50 market makers are quoting hypothetical stock XYZA at an inside spread of ¼ point (\$.25/share), such as 20 bid, offered at 20½. Under Nasdaq and Commission rules, investors' orders must be executed at these prices or better (sales at \$20/share; purchases at \$20.25/share) to meet the Commission's "best execution" mandate. Further assume that a fifty-first "maverick" market maker, "Competitive Markets & Co.," raises its bid to 20½, narrowing the spread to 20½ bid, offered at 20¾, or ¼ spread.

Despite the fact that not a single one of the other 50 market makers has raised its bid, all would now be required to execute any sell orders received from firms with which they have preferencing agreements (typically retail firms which may or may not also be Nasdaq market makers) at 20½ per share, since the highest bid on Nasdaq is at that price. By raising its bid, Competitive Markets & Co. has cut the potential market making profits of all 50 competitors in half, from \$.25/share to \$.125/share. Interestingly enough, Competitive Markets & Co. may not receive any sell orders to execute at its best bid, since it probably has no preferencing arrangements with other firms. Under Nasdaq rules, it will receive only unpreferenced orders.

What form could this retaliation take without violating the DOJ's list of prohibited conduct? Here are some examples:

- A refusal to deal (or a reduction of dealings) with the "offending" market maker;
- Cancellation (or cost increase) of a clearing arrangement;
- Reduction or refusal to continue sending research reports;
- Removal of the offender from participation in desirable underwritings;
- Stoppage or reduction of reciprocal order flow;
- Delays in answering the telephone in trading room; and/or
- Removal of a private telephone connection.

A small or new firm, such as Competitive Markets & Co., does not wish to antagonize the larger ones, especially those as prestigious as are many of the 24. As a result, regardless of any specific prohibitions against certain conduct, the mere fact that the entire world will see better bids or offers than have been posted by the leaders will serve as a significant deterrent to firms like Competitive Markets & Co. against bettering prices, regardless of other competitive forces.

So long as the Nasdaq system requires the disclosure of the identity of market makers, and so long as the NASD permits the practice of "preferencing," in which market makers

agree with other firms to execute trades at the best prices being displayed on Nasdaq, regardless of whether or not that particular market maker is quoting that price, investors will not achieve the "national market system" the SEC was mandated to "facilitate" a generation ago.

Please let me know if there is anything else I should do. The reason this letter is so brief is that my wife had major cancer surgery earlier this week, and I have spent most of the time at her bedside. I am confident you understand my situation. However, I believe the American investor is entitled to the finest and most efficient market possible, and wanted to do my best to ensure that will be the case.

Respectfully submitted,

Junius W. Peake

John F. Greaney, Esq.,

Chief, Computers and Finance Section,
Antitrust Division, Room 39600, U.S.
Department of Justice, 600 East Street,
N.W., Washington, D.C. 20530

Re: 96 Civ 5313, U.S.A. v. Alex Brown & Sons, Inc., U.S.D.C., S.D.N.Y.

Dear Mr. Greaney: I refer to the "newspaper notice" that has appeared on August 5, 1996 in the New York Times relative to the above.

From the tenor of the notice, it would appear that the complaint does not state a claim upon which relief could be granted because there is no Case or Controversy present in the constitutional sense. Apparently, the defendants, who do not appear to have been served with the summons and complaint, have "consented" to a proposed order as a result of discussions with the Division before they were even charged with any wrongdoing. Such a procedure removes the matter from the Case or Controversy category and relegates it to a contract between the Division and the putative defendants. I see no jurisdictional basis for a Federal district court to enforce such a contract through contempt proceedings for violation of the contract since the putative defendants are not subject to the jurisdiction of the court unless and until they have been served.

Assuming the truth of the allegations made in the complaint, the real parties in interest appear to be the members of the public who buy or sell securities on the NASDAQ and who have suffered, and may continue to suffer, damages as a result of the alleged conduct. Millions of shares are traded every day on the NASDAQ which may or may not have been traded in violation of the acts complained of. The "newspaper notice" does not state how members of the public who have sustained injury and damage as a result of such conduct may invoke remedies based on the proposed order. Ordinarily this would be by intervention in the case.

The "newspaper notice" refers "interested persons" to the office of the court clerk for an examination of the file. This would entail spending several hours during a business day and the expenditure of money at 25 cents per page for copies of the documents on file. As a minimum of Due Process of Law, your office should have negotiated an agreement with the putative defendants to have the

papers printed and mailed at their expense to each and every buyer and seller of NASDAQ stocks. Each and every "interested person", that is, each person aggrieved by the putative defendants' conduct, should be given an opportunity to decide whether or not to invoke the "remedies available to persons who may have been injured by the alleged violations" after studying the papers. At the present time, each aggrieved person is required to go to the court clerk's office and determine for himself or herself just what these remedies are. This constitutes an imposition on millions of people who are innocently trading on NASDAQ.

This letter constitutes an initial comment on the matter. Please send me a complete set of the papers filed by the Division with the court for my further examination and comment. Thank you for your attention to this matter.

Security

	Number of shares traded during the week of August 22, 1996	Illegal charge per share	Damage to the public
Omega	292,092,000	25¢	\$73,023,000
Cisco	259,053,000	25¢	73,013,250
Intel	249,473,000	25¢	62,368,250

Multiplying these huge amounts by the number of weeks covered by the complaint (this period of time is not specifically defined at paragraph (32)), it follows that the public has been "fleeced" of hundreds of millions of dollars and is left without any remedy. The complaint does not seek recovery of these sums of money but it does seek "such other relief as the Court may deem just and proper". Such relief should consist of monetary awards to those who have been damaged and injured. The promise that there will be no damages or injury to those who will trade on NASDAQ in the future (the "post-judgment class") does not constitute an adequate remedy for those already the victims of the proscribed conduct (the "pre-judgment class"). Apparently, there are pending before the Court actions on behalf of the pre-judgment class none of which have been certified as class actions and none of which can claim the benefit of the proposed Stipulation and Order. If approved by the Court, the stipulation and order will enable the "defendants" to resist any meaningful judgment against them based on the facts recited in the complaint.

Moreover, the complaint is fatally defective for a number of reasons. First, it does not appear that the complaint has been served on the "defendants". The "defendants" have allegedly appointed twenty-five law firms, paying substantial fees, in order to enter into a "stipulation and order". There is no proof that these law firms have the authority to bind the "defendants" to the terms of the proposed order. Any "defendant" who so chooses may dismiss the attorney who has signed the stipulation and claim the Court's lack of jurisdiction over its person. The "stipulation" is not the equivalent of the process prescribed by F.R.Civ.P. 4.

Sincerely,
William Leighton
John F. Greaney, Esq.,
Chief, Computers and Finance Section,
Antitrust Division, DOJ, 600 E Street,
N.W., #9500, Washington, DC 20530
Re: 96 Civ. 5313 RWS U.S.A. v. Alex Brown & Sons, Inc.

Dear Mr. Greaney: This is in further reference to the newspaper notice ("notice"), copy attached, that has appeared in The New York Times of August 5, 1996 inviting comments on the proposed settlement of the captioned action. At my request, your office has since provided me with copies of (1) the complaint, (2) the proposed stipulation and order and (3) the competitive impact statement. I have also received the Division's letter of August 30, 1996 replying to my letter dated August 7, 1996. I have traded in NASDAQ stocks during the period before and

after the filing of the complaint and, therefore, I am a person aggrieved and adversely affected by the proposed order.

The relief sought, which leaves the defendants in possession of the fruits of their unjust enrichment, does not amble those injured and damaged by the actions of the "defendants" to recover their losses. There is no provision for disgorgement by the "defendants" of the enormous profits which they have realized and which have occasioned huge losses to the public. For example, according to the August 25, 1996 issue of the New York Times, copy attached, during the week ending on August 22, 1996, the following securities, among others, were traded on the NASDAQ in the stated amounts. Assuming an illegal "inside spread" as charged at paragraph (39) of the complaint, the loss to the public amounts to hundreds of millions of dollars, as follows:

Court's contempt power. In the S.D.N.Y., the contempt power in a civil case is exercised pursuant to Civil Rule 43. Therefore, to provide in a "stipulation and order" for the exercise of the contempt power means that the Court's docket would be flooded by proceedings pursuant to Civil Rule 43. The defendants' unjust enrichment leaves them particularly apt to resist any enforcement action by the Division. There is no provision for security for the costs of enforcement to be posted by the "defendants". In effect, the Division contemplates providing the "defendants" with a free ride in the event enforcement proceedings become necessary. Another objectionable provision in the "stipulation and order" is the "defendants' right" to engage in conduct protected under *Noerr-Pennington* doctrine. The proposed "stipulation and order" is in the nature of an injunction which requires observance of F.R.Civ.P. 65(d). The "*Noerr-Pennington*" doctrine is not spelled out in the "stipulation and order", thus creating the possibility of unlimited litigation, in the context of a contempt proceeding, concerning the meaning of that doctrine.

Conclusion

For the foregoing reasons, the proposed "Stipulation and Order" should be rejected and the complaint dismissed, with leave to amend. A hearing on this matter should be held with the participation of persons who have filed objections or comments on the proposed action. Please advise me of the time and place of such a hearing.

Sincerely,
William Leighton

Chart and newspaper notice have not been reprinted here, however they may be

inspected in Room 3229, Department of Justice, Washington, D.C. and at the Office of the Clerk of the United States District Court for the Southern District of New York.

John F. Greeney, Esq.,
Chief, Computers and Finance Section,
Antitrust Division, DOJ, 600 E Street,
N.W., #2500, Washington, D.C. 20530

Re: 96 Civ. 5313 RWS, U.S.D.C., S.D.N.Y.,
U.S.A. v. Alex Brown & Sons, Inc. et al.

Dear Mr. Greeney: This is a further comment to the newspaper notice concerning the above case concerning which I have submitted comments on August 7 and September 9, 1996.

I have examined the docket entries in this case and have noted that on August 5, 1996, an order was entered permitting the defendants to waive service of summons, acknowledge receipt of the complaint and consent to *in personam* jurisdiction etc. I note that the Division's letter to me dated August 30, 1996 did not include a copy of the August 5 order.

As to those defendants who have complied with this order, my comments and objections concerning issues under F.R.Civ.P. 12(b)(2) and (3) no longer apply. The fact remains that these defendants have consented to be sued by signing the proposed stipulation and order on or about July 17, 1996, some three weeks before they have entered their appearances within the meaning of F.R.Civ.P. 4. The defendants' actions converts this case into a consent proceeding, not to a Case or Controversy in the constitutional sense.

I also note that on August 28, a motion to intervene was filed and is awaiting adjudication. Please send me a copy of the Division's papers answering that motion. No such papers were docketed as of September 26.

Sincerely,
William Leighton

Hon. Robert R. Sweet,
U.S.D.J., U.S.D.C., S.D.N.Y., 500 Pearl Street,
New York, N.Y. 10007

Re: U.S.A. v. Alex Brown & Sons, Inc., et al.
96 Civ. 5313 RWS

Dear Judge Sweet: The comment period with respect to this case has expired on October 2, 1996. As a person aggrieved and adversely affected by the defendants' actions, I have filed comments with the Antitrust Division of the U.S. Department of Justice.

1. On August 5, 1996, an Order has been entered on the docket extending and adjourning *sine die* the defendants' time to answer or move with respect to the complaint. For ready reference, copies of the first two pages of that Order are attached.

The Order refers to a stipulation and proposed order submitted for the Court's consideration on July 17, 1996. As I have already advised the Antitrust Division, I would like to be heard in opposition to the entry of that proposed order. Thus, the purpose of this letter is to ensure that the request for oral argument is before the Court.

I would also like to take the witness stand and testify as to my own recent (1996) experiences in NASDAQ trading. F.R. Evidence 614(a) and 701. There are literally thousands of trades in NASDAQ stocks being

consummated every business day. The record should show how some of these trades were made. The stipulation and proposed order of July 17, 1996 provides that no testimony should be heard. Thus, thousands of other individuals, similarly situated, will not be heard for want of a procedure to bring them before the Court.

2. I would also like to point out that the public is not represented before this Court and was not represented before the Antitrust Division for want of notice. The Antitrust Division first gave public notice of this matter on August 8, 1996. It has not given notice of a hearing before the Court. It has submitted a proposed order, copy attached, which recites that "the entry of this stipulation and order is in the public interest". Whereas the defendants have pocketed millions of dollars from their illegal conduct and thus have the means to retain counsel in support of their positions, the public is totally unrepresented. It is unrealistic to expect that the public, which has lost the money pocketed by the defendants, would engage in litigation over these losses. Issues such as these should be heard and decided by this Court before the matter is settled by the entry of an order. I fail to see how the "public interest" can be served by the elimination of the public from a proceeding looking to foreclose the assertion of damages suffered by the public.

3. Finally, I would like to point out that because no answers have been filed by the defendants, this case does not present this Court with a Controversy in the constitutional sense, see Article III of the Constitution of the United States. The proposed order would require the Court to (i) "review the complaint", that is the allegations of the Antitrust Division, without knowing how the defendants would plead, (ii) decide that it has "jurisdiction over the parties to this stipulation and order", (iii) open the courthouse doors to many contempt proceedings during the next ten years, which would require the appointment of several magistrate judges, and (iv) under these circumstances, grant "such other relief as to the Court may seem proper". There were no defendants before this Court on July 17, 1996 because the Order permitting them to file notices of appearance was not entered until August 5, 1996.

Respectfully,

William Leighton

cc: Hays Gorey, Jr., Esq.,

John F. Greeney, Esq.,

Attorneys for the plaintiff, United States of America, U.S. Department of Justice, Antitrust division, 600 E. Street, NW, #2500, Washington, DC 20530, and to all attorneys for the defendants:

Lewis A. Noonberg, Esq., Piper & Marbury,
Robert M. Heller, Esq., Kramer, Levin,
Naftalis & Frankel

Frank M. Holozubiec, Esq., Kirkland & Ellis
Stuart M. Gerson, Esq., Epstein Becker &
Green, P.C.

John L. Warden, Esq., Sullivan & Cromwell
Jeffrey Q. Smith, Esq., Cadwalader,
Wickersham & Taft

Catherine A. Ludden, Esq., Morgan Lewis &
Bockus

A. Douglas Melamed, Esq., Wilmer Cutler &
Pickering

Norman J. Berry, Jr., Esq., Donahue Brown
Mathewson & Smyth

James J. Calder, Esq., Rosenman & Colin
Robert H. Munheim, Esq., Salomon Brothers,
Inc.

Brian J. McMahon, Esq., Cruminy, Del Deo,
Dolan Griffinger & Vecchione

Paul B. Unlenhof, Esq., Lawrence, Kamin,
Saunders & Unlenhof

Richard A. Cirillo, Esq., Rogers & Wells
Robert F. Wise, Jr., Esq., Davis Polk &
Wardwell

Charles E. Koob, Esq., Simpson Thacher &
Bartlett

James T. Halverson, Esq., Shearman &
Sterling

Otto G. Obermaier, Esq., Weil, Gotshal &
Manges

Neil Cartusciello, Esq., Shanley & Fisher
William P. Frank, Esq., Skadden Arps Slate
Meagher & Flom

Charles A. Gilman, Esq., Cahill Gordon &
Reindel

Howard Schiffman, Esq., Dickstein Shapiro
Morin & Oshinsky

Phillip L. Graham, Jr., Esq., Sullivan &
Cromwell

Stipulation and Order

It is hereby stipulated and agreed by the counsel of record for the parties that:

1. Defendants waive service of summons, acknowledge receipt of the Complaint, and consent to *in personam* jurisdiction before this Court.

2. Each defendant hereby enters its general appearance in the action by counsel of record listed below.

The Clerk is directed to enter the appearances as shown herein. Unless specifically objected to for reasonable cause by any party within twenty (20) days after the attorney appears herein, each attorney not a member of the Bar of this Court who is a member of the bar of any United States District Court or the highest court of any state and is acting as counsel for a party herein shall be deemed admitted *pro hac vice* to practice before this Court in connection with these proceedings.

3. The time for defendants to answer or move with respect to the Complaint is extended and adjourned *sine die* pending consideration by the Court of a stipulation and order submitted for approval on July 17, 1996.

For Plaintiff

United States of America:

Hays Gorey, Jr. (HG-1946)

John D. Worland, Jr. (JW-1962),

Attorneys, U.S. Department of Justice,
Antitrust Division, 600 E. Street, N.W., Room
8500, Washington, D.C. 20530, 202/616-5119
phone, 202/616-8544 fax.

The Court having reviewed the Complaint and other filings by the United States, having found that this Court has jurisdiction over the parties to

this stipulation and order, having heard and considered the respective positions of the United States and the defendants (at a hearing on _____, 1996,) and having concluded that entry of this stipulation and order is in the public interest, it is hereby ORDERED:

THAT the parties comply with the terms of this stipulation and order;
THAT the Complaint of the United States is dismissed with prejudice;

THAT the Court retains jurisdiction to enable any of the parties to this stipulation and order to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this stipulation and order, for the enforcement or modification of any of its provisions, or for punishment by contempt.

So ordered this _____ day of _____, 1996.

United States District Judge

Ms. Janet Reno.

US Attorney General, 10th & Constitution
Avenue NW, Washington, DC 20500

Dear Ms. Reno: I wrote to you a month ago concerning Goldman Sachs and their abuse of the system that we are all generally supposed to adhere to. Since that time even more abuses have surfaced including a disgusting report on Prudential Bache, and their own nefarious style of doing business.

In today's Wall St. Journal, and LA Times we see an egregious price fixing example that has been going on for thirty years. Instead of our Justice Dept. moving to stop these same offenders from ever doing business again, we see another compromise. They pay off the government with a fine, and get away "scot free" without so much as having to plead guilty. I am embarrassed for the Attorneys that work for you. If there is smoke and they prove it why are these thieves allowed to continue the rape of our investment community?

If your office will not stop this ongoing parade of malfeasance, then who in our government shall I write to in order to voice my concerns? How is it that companies like Goldman Sachs, Prudential Bache, Smith Barney and many more are able to continue this type of behavior as typified by their everyday course of conduct?

Please look into this situation personally. We in the investment community regardless of how small an entity, have nowhere else to turn in order to find the kinds of law enforcement necessary to prevent these financial highwaymen from their antics. The unfortunate truth is, that as long as we allow these activities to continue, our greater financial community suffers in confidence. Ask any small investor what he or she feels about this issue and see for yourself. Who do you invest with? Please help.

Respectfully yours,

Joel Steinberg

Ms. Janet Reno,
US Attorney General, 10th & Constitution
Avenue NW, Washington, DC 20500

Dear Ms. Reno: I know you are busy, and would not be writing this letter were it not for the significance of the issue. I want to inform you of the course of conduct of the Goldman Sachs Company. I would not be privy to this information, but for the fact that I am involved in a lawsuit with them for fraud among other things. I am not alone in my complaints against them, thus my statement about their course of conduct.

In California they are being sued by the State Attorney General's Office, for many things, and as the investigation moves forward the suit has grown from \$180,000,000.00 to a whopping \$600,000,000.00 with the potential for even more as the state pursues its' claims.

At the SEC we have determined a long list of securities violations, that have resulted in fines, censure, restrictions for doing business, and the list goes on in states all over the country.

The point is this, if a outlaw commits a crime in one state, and then crosses a state line for the commission of yet another crime, my understanding is that the federal government is now a potential partner in the prosecution of the offender. This is exactly the case with Goldman Sachs, and there is substantial proof to support this claim. If this is the case why are they able to keep paying fines for all these incidents of criminal activity.

In my case they have stolen my business with Fraud, Fraud in the Inducement, Lies, and blatant misrepresentation, and we have proved it in the Arbitration phase of our lawsuit against them. Nonetheless they are free to operate without any disciplinary actions against them short of perhaps a monetary fine. Charging them with financial penalties for transgressions in the business community, is tantamount to charging a Cocaine dealer Crack for what he has done wrong to society.

Goldman Sachs has thousands of tenants in dozens of shopping centers that we know of, and I can assure you that many people have been financially injured by these people.

With the false premise of being part of a redevelopment agency they have positioned themselves, and executed Mello Roos Bonds to renovate a privately owned mall outside of the redevelopment zone. This parcel of land is a distance away from the redevelopment zone, but made to look contiguous to the Thousand Oaks Blvd. Zone for the necessary approvals.

Because this Mall is privately owned, and as such would not qualify for the Mello Roos Bonds, they have manufactured a parking deck to donate to the city for the purpose of qualifying for the bonds. As I understand Mello Roos this is also inappropriate. They have misrepresented information to this community, so the Thousand Oaks City Council would approve the bond request. The City Attorney for the City of Thousand Oaks was the only one privy to much of this information until the completed bond books were in place. Accordingly the votes taken at the City Council meetings might in fact have been different. The bondbooks themselves have several misrepresentations including a bold faced distortion of fact relative to our lawsuit against the beneficiary of the Mello Roos Bonds, as well as others.

It is our hope in the writing of this letter to have you please look into this matter prior to the conclusion of any mediation, between the State of California and the Goldman Sachs Company.

We hope that you will take a much closer look into the activities for they should not have the privilege of doing business in this or any other state. If this sounds excessive, I will remind you that they are causing extreme hardship in my family for their purposeful acts. At the age of fifty I am first beginning to search for employment in the work force. They have stolen a business, with purposeful fraud that we loved, and operated for thirteen years. I do not have the luxury of a huge lawfirm to take our case on a contingency. So far at least the larger lawfirms that we have spoken with fear the cost, expense, and strain on their resources to get involved in a protracted battle with Goldman Sachs. We have spent our entire life savings on defending ourselves from Goldman Sachs.

I am a Veteran, a proud American, I vote always, and try to live my life as an example to my two children. My incredible loving wife of almost thirty years, and I have worked so hard to build the business they stole from us, that it defies description.

One would have to realize what it is to struggle through the retail world starting from nothing, and developing the reputation for quality and service to even begin to comprehend the enormous sacrifices we have made for our business. That struggle has all been for naught for they are trying to grind us into submission with legal fees, so that they can win by attrition, as opposed to proving their case. Please help us before we become another Goldman Sachs statistic. We are desperate for help.

We appreciate any assistance you can provide.

Very truly yours,
Joel Steinberg

Second Request for Action

From wdcun1.usdoj.gov/wdcun11daemon
Thu Aug 1 17:10:23 1996

Date: Thu, 1 Aug 1996 17:14:09 -0400
From: httpd server login <www@justice2>
Message-Id:

<9608012114.AA06382@justice2>

Reply-To: joelybrew@earthlink.net

MMDF-WARNING: Parse error in original version of preceding line at justice.usdoj.gov

Apparently-To: antitrust@justice.usdoj.gov
content-length: 2636

WWW comments (Forms submission)
joelybrew@earthlink.net (Joel Steinberg) sent the following comment about The Antitrust Division's WWW server:
Joel Steinberg PO Box 2134 Thousand Oaks, CA 91358 805 497 1366

Dear Sir: I have watched in astonishment, as article after article has been written relevant to rogue dealers and brokers. In my utter amazement as virtually every newspaper that has established itself in the reporting of financial matters continues to report these violations, no one seems to take definitive action.

Where are our Government agencies, and why is this allowed to continue? In the last

year or so we have seen dozens of articles on companies like Goldman Sachs, Prudential Bache, Merrill Lynch and many others. How long will these large trading corporations be permitted to legally steal from investors throughout this country, and get away with a slap on the hand or some other ludicrous compromise? These bandits and their normal course of conduct have cost the private sector billions. Is there no agency in this country that seeks to look out for and protect the private investor from the pirates. The recent expose on the Prudential Bache fiasco left billions of dollars lost from the pockets of the private sector. The Goldman Sachs company has a disciplinary file a mile long at the SEC and no one does anything about it. Is our government incapable of protecting its citizens, or is the hive too sweet to tamper with? Goldman Sachs donated to both the Clinton and Bush campaign. Is that why they are still in business?

They do business interstate, intrastate, internationally, and also provide Local, State and Federal Banking Services.

Among a host of other services not the least of which is the highly abused Bond business, they have been charged with the most egregious activities in the field. Their refusal to meet the criteria set up by the SEC is substantiated by the fact that their latest publicized violation show the IRS on the case for 2.5 Billion Dollars with some other offenders as well. If our officials let out the perception that any Broker, Bond Dealer, Securities Company can operate with out a care when committing these crimes they will set the tone for disaster. Why should these thieves be allowed to operate with impunity? If they only have to concern themselves with the fine they might have to pay then why should they care at all.

Sincerely,

Server protocol: HTTP/1.0 Remote host:
206.250.91.54 Remote IP address:
206.250.91.54

Birgitta C. Dickerson,
US Department of Justice, Anti-Trust
Division, Bicentennial Building, 600 E
Street NW, Washington DC 20530

Re: United States v. Alex. Brown & Sons Inc.,
et al., Civil No. 96 CIV 5313 (RWS)
(S.D.N.Y., July 17, 1996)

Dear Ms. Dickerson: I want to thank you for your response to my correspondence. It is my feeling that if enough people in the appropriate agencies are involved in a dialogue, that there will be a positive result.

I would like to first clarify my position. I applaud and appreciate the Justice Department's agents being involved in the process of searching out the many culprits that violate the laws that make our society so great.

My problem has more to do with the favorite son treatment the violators are given. The slap on the hand is no longer appropriate, once a company has established a recognizable "course of conduct." Why allow them to pay a fine, when the conduct is repetitive?

When companies like Prudential Bache, Goldman Sachs, Morgan Stanley, and many others demonstrate their company's willingness to pay fine after fine, as

settlement for their crimes and malfeasance in the market, then something is amuck. In courts all over this great land when a criminal repeatedly violates the law, the judge usually applies sterner penalties with each offense. Not so in the market dealings taking place today. Only monetary compensation seems to be the punishment for what amounts to thoroughly outrageous behavior on the part of many large traders.

In the newest well spring, Mello Roos Bonds through the Community Facilities District, large traders like Goldman Sachs find inexpensive money through redevelopment agencies, and there are repeated violations using US Government Money.

My personal mission because I am a victim of just such a ploy, has become to expose this wherever and whenever I find it. For instance, in my case the Mello Roos Bonds were used to renovate a "Privately Owned Shopping Center." All my research shows me this is a clear violation of the rules. About 15 local businesses that were hardworking, taxpaying, solid Americans with families were put out of business, by this abuse of the rules for Mello Roos Bonds. Thus my interest in the punishment of these scoundrels. As a veteran and a family man I am trying to stop these abuses from going further, and hopefully find some agency that cares enough to take a closer look.

It is too late to help us, for we have lost everything in this ruse, but perhaps a stronger stance from the government will match the punishment to the crime. Conceivably when this begins, the deliberate conduct against the rules in pursuit of the easy profits will begin to ebb.

Sincerely yours,

Joel Steinberg

Hays Corey Jr.,

U.S. Department of Justice, Antitrust
Division, Bicentennial Building, 600 E
Street NW 20530

Re: United States v. Alex. Brown & Sons Inc.,
et al., Civil No. 96 CIV 5313 (RWS)
(S.D.N.Y., July 17, 1996)

Dear Mr. Hays, Thank you for your letter dated August 6, 1996, delivered August 12, 1996.

In your letter you have raised several points I am compelled to respond to. Although not my preference you raised some issues that as an American I can not let stand.

I think it is admirable that as stated in your letter, "As a result of the proposed settlement, millions of investors will no longer be subject to the anti-competitive conduct which resulted in higher trading costs for individual investors and institutions who bought or sold stocks." That is great but where do those who lost as a result of these activities find their recompense?

You are correct in your assumption, I do not share the view that your agency has accomplished some great feat for justice. The Antitrust Division taking the position that the proposed relief, given the violation of law as alleged in the complaint, is adequate and effective, in my view is part of the problem. It is tantamount to charging a thief part of what he has stolen, to allow him to continue doing business, in lieu of genuine punishment for the crime.

The act of monetary compensation for the constant purposeful violations in this case and others, simply allows the "Course of Conduct" to continue. So you are correct I do not share your enthusiasm. In my opinion there is no equity in matching the punishment, to these crimes. It would gratify investors all over, if the Justice Department categorized these actions as criminal, because that is exactly what they are. Large dealers throughout the investment community have repeatedly demonstrated a history of trying to use loopholes to not be punished after being caught, or claim foul to misdirect the blame when cast in their direction. The pure lack of ethical conduct is demonstrated persistently in articles daily in the national print media.

Lastly, as your innuendo implies in the closing paragraph of your letter, you may presume anything you like, but in fact we have been in contact and supplied all the documentation to the President of the United States, SEC, The Attorney General for the State of California, The Attorney General for the United States Janet Reno, and in each case have done what we could to impart the relevant information as requested. It is no coincidence that Goldman Sachs is being sued by the State of California for \$600,000,000.00. Perhaps you should look to see what states are involved in similar cases. You are aware or should be that they have a disciplinary file. Read it for yourself.

In our case, Mello Roos Bonds through the Community Facilities District, being compromised by the skillful manipulation of procedure, and regulation served to induce our lawsuit. So your inference, to that being my reason for correspondence with your office, is also patently incorrect.

We have learned through our own personal experience, and it is our opinion formed from investigating issues relative to our case, that the new "in vogue" place to violate, is the Mello Roos cache for large traders. In our case used on privately owned property, which as I understand it, is in itself a violation.

Your lack of compassion is obvious, and your tone naive. Someone needs to reexamine the whole industry, and that is the point. Punish, not settle when you find abuses. Restrict from any profit taking for one day at each offense. Charge a day or two of trading for each offense after that. Progressively increase the punishment for each offense against any faction of the investment community or the marketplace. After several offenses charge them a week.

The point is that monetary compensation for the crimes against the marketplace is not a deterrent. The Justice Department should do something about it.

Sincerely,

Joel Steinberg,

Citizen who cares.

Memorandum of Plaintiffs in the In Re:
Nasdaq Market-Makers Antitrust
Litigation to Intervene or to Appear as
Amicus Curiae

Arthur M. Kaplan, Esq. (AK 6357),
Fine, Kaplan and Black, 23rd Floor, 1845
Walnut Street, Philadelphia, PA 19103,
(215) 567-6565

Christopher Lovell, Esq. (CL 2395),
Robert A. Skirnack, Esq. (RS 2636),
LOVELL & SKIRNACK, L.L.P., 63 Wall Street,
New York, NY 10005 (212) 606-1900
Leonard B. Simon, Esq. (LS 2068),
Milberg Weiss Bershad Hynes & Lerach, 800
West Broadway, 1800 One America
Plaza, San Diego, CA 92101-5050, (619)
231-1058

Co-Lead Counsel for Plaintiffs in the In Re:
Nasdaq Market-Makers Antitrust
Litigation MDL 1023 (RWS)

I. Introduction

This memorandum is submitted in support of the motion by plaintiffs in the In re: Nasdaq Market-Makers Antitrust Litigation,² pursuant to Section 2(f)(3) of the Tunney Act and Rules 24(a) and 24(b) of the Federal Rules of Civil Procedure, to intervene or, in the alternative, to appear as *amicus curiae* in the above-captioned case. Plaintiffs make this motion for the purpose of (a) requiring the Department of Justice to disclose the compilation of evidence it made available to the twenty-four defendants who are parties to the Consent Decree in the process of negotiating that decree, and all evidentiary materials expressly referenced in that compilation of evidence (collectively, the "Compilation of Evidence"); and (b) challenging the Consent Decree to the extent that it is intended or interpreted to impair the discoverability or admissibility of audiotapes made in accordance with the Consent Decree, as described in the proposed Stipulation and Order at Paragraph IV(C)(6), p. 13 and in the Competitive Impact Statement at 42-44 (the "future audiotapes").

The Consent Decree is the culmination of an intensive investigation during which the Antitrust Division amassed a huge volume of documents, enormous computerized data, and extensive testimony (i.e., the Civil Investigative Demand ("CID") materials. From these materials, the Department of Justice ("DOJ") prepared the Compilation of Evidence. All twenty-four defendants who are parties to the Consent Decree have reviewed the Compilation of Evidence. Press reports reveal that the Compilation of Evidence was instrumental in the parties' entering into the Consent Decree.

Importantly, this is a "now or never" moment for discovery of the Compilation of Evidence. The Court expressly has discretion to disclose this evidence to plaintiffs in the Multidistrict litigation under 15 U.S.C. § 16(b) or (f)(3) at the time of consent decree approval, and as a condition of

² MDL No. 1023, 94 Civ. 3996 (RWS) (the "Multidistrict litigation").

consent decree approval. After consent decree approval, the Court's power to do so disappears. Since defendants contend that the Compilation of Evidence is not within their "custody, possession, or control" for purposes of civil discovery, the Compilation of Evidence will slip out of the Court's control, unless it is impounded now for use in the Multidistrict litigation.

There are two separate, independently sufficient, reasons for impounding the Compilation of Evidence and releasing it to plaintiffs (pursuant to the terms of the existing Confidentiality Order). First, plaintiffs are entitled to the Compilation of Evidence to assist them in the prosecution of the private antitrust claims. Those claims, which overlap substantially with the government's allegations at issue here, have now been pending for more than two years. During that time, defendants have resisted all merits discovery.

This Court already has ruled that the CID materials are relevant to the plaintiffs' case, and not privileged. See *In re Nasdaq Market Makers Antitrust Litigation*, 929 F. Supp. 723 (S.D.N.Y. 1996). Indeed, the Department of Justice itself acknowledged the relatedness of the government and multidistrict cases by filing the government action as a related case for assignment to this Court. Release of the Compilation of Evidence will greatly expedite discovery in the Multidistrict litigation.

Second, the disclosure of the Compilation of Evidence will substantially assist the Court in deciding, pursuant to 15 U.S.C. § 16(e), whether the proposed Stipulation and Order ("Consent Decree") is in the interest of "the public generally and individuals alleging specific injury from the violations set forth in the complaint." * * *. Indeed, only following disclosure of the Compilation of Evidence (which is material that the Antitrust Division itself considered key in settlement negotiations) can plaintiffs comment on the adequacy of the Consent Decree in an informed way.

Plaintiffs currently challenge the Consent Decree only to the extent that it purports to impair the discoverability and admissibility of audiotapes made in accordance with the Consent Decree. (See Stipulation and Order at Paragraph IV(C)(6), p. 13.) This provision is an apparently unprecedented effort by defendants to withhold raw evidence from victims of anticompetitive acts, and should not be countenanced.

Significantly, 15 U.S.C. § 16(e)(2) expressly provides that in approving, rejecting or modifying proposed consent decrees, the Court shall consider not only the interests of the public

generally, but also specially the interests of "individuals alleging specific injury from the violations set forth in the Complaint."

II. Relevant Background

A. The DOJ Investigation

The Department of Justice began its investigation in October, 1994. As is clearly demonstrated by the Competitive Impact Statement, that investigation was extensive. The Department of Justice deserves congratulations on the vigor of its investigation.³

During its nearly two-year investigation, the Antitrust Division amassed a huge volume of documents, enormous computerized data, and extensive testimony, i.e., the CID materials. According to the Competitive Impact Statement at 5, the Antitrust Division took "over" 225 depositions.

On July 17, 1996, twenty-four market makers entered into a settlement of the civil antitrust claims brought by the United States for engaging in price fixing of spreads in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Along with its Complaint, the DOJ filed a Competitive Impact Statement, which summarizes a portion of the enormous body of evidence accumulated by the DOJ during the course of its two-year investigation. According to the Competitive Impact Statement:

The Department has reviewed thousands of pages of documents that were produced by the defendants and other market participants in response to over 350 Civil Investigative Demands ("CIDs"). * * * [and] has reviewed hundreds of responses to interrogatories that were submitted by the defendants (and others). The Department has taken over 225 depositions. * * *

The Department has reviewed and analyzed substantial quantities of market data produced in computer-readable format by the NASD * * *. Finally, the Department reviewed numerous transcripts of depositions taken by the Securities and Exchange Commission ("SEC") in a concurrent inquiry into the operations and activities of the NASD and the Nasdaq market since the fall of 1994.

Competitive Impact Statement at 5-6 (emphasis added).

It was not until after the DOJ provided the defendants with the Compilation of Evidence, that the defendants agreed to settle the government's antitrust charges. For example, according to a May 21, 1996 *Los Angeles Times* report:

³ The Competitive Impact Statement has been filed by the DOJ in support of the proposed consent decree, and is appended for convenience as Exhibit A hereto. Likewise, for convenience the proposed Stipulation and Order ("Consent Decree") is appended hereto as Exhibit B.

The Justice Department, nearing the end of its antitrust investigation of the Nasdaq Stock Market, is poised to notify major Wall Street trading firms of the evidence against them. . . . sources close to the investigation said Monday.

Justice is now prepared to show its cards, the sources said.

"Antitrust Probe is Bearing Down on Nasdaq," *Los Angeles Times*, May 21, 1996 (Exhibit C hereto).

Subsequently, on June 7, 1996, the *Los Angeles Times* reported the impact that the disclosure of the Compilation of Evidence had on these defendants:

Big Wall Street firms are scrambling to come up with a strategy after being shown what the Justice Department contends is massive evidence of collusion in setting prices of Nasdaq stocks, sources close to the civil antitrust investigation said Thursday.

Over the last week, more than 20 Nasdaq dealer firms . . . were finally shown a compilation of the department's evidence in an investigation that has been underway since late 1994 . . .

After months of intense investigation, the department decided to show its strongest cards in hope of persuading dealers to negotiate a settlement . . . The sources said lawyers for these firms are now mulling over the evidence and consulting with their clients on whether to begin settlement talks.

"Nasdaq Dealers Mull Next Move in Light of U.S. Probe Evidence," *Los Angeles Times*, June 7, 1996 (Exhibit D hereto, emphasis added).

In a follow-up article on July 13, 1996, the *Los Angeles Times* reported that, according to a source close to the government, "the strength of the Justice Department's evidence convinced the firms that they would probably lose if the case came to trial." "Nasdaq Dealers Reportedly Settle in Federal Probe," *Los Angeles Times*, July 13, 1996. (Exhibit E hereto.)

B. The Multidistrict Litigation

The first of the private lawsuits against Nasdaq market makers alleging collusion to widen spreads was filed in May, 1994. Those lawsuits were all consolidated before this Court by the Judicial Panel for Multidistrict Litigation.

The allegations in the Multidistrict litigation overlap substantially with those in the DOJ's complaint. However, as a result of two successive stays obtained by defendants in the Multidistrict litigation (first pending defendants' motion to dismiss and later pending class determination)

defendants have not even begun an independent production of documents and audiotapes pursuant to plaintiffs' first set of discovery requests served in January 1995, and have declined to accept service of Plaintiffs' second set of requests. Currently, discovery is stayed by Paragraph 24 of Pretrial Order No. 3.

V. Future Audiotapes Should Not Be Rendered Unavailable to Plaintiffs in the Multidistrict Litigation

According to the Competitive Impact Statement:

[T]apes made pursuant to the proposed Order are required to be retained by each defendant for at least 30 days from the date of recording. The tapes made pursuant to the proposed Order are not subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD or any other self-regulatory organization. The proposed Order directs that such tapes not be admissible in evidence in civil proceedings, except in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization.

Competitive Impact Statement at 43 (emphasis added). The proposed Stipulation and Order provides at Paragraph IV (C)(6), p. 13 (emphasis added):

Tapes made pursuant to this stipulation and order shall not be subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization. . . . Such tapes shall not be admissible in evidence in civil proceedings, except in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization . . .

Plaintiffs do not believe that this proposed provision, limiting discovery or admissibility of future audiotapes, is

binding or enforceable in private antitrust litigation, as against plaintiffs and other non-parties to the Consent Decree. However, unless the Department of Justice and defendants join in this remedial construction, then plaintiffs necessarily object to this provision of the proposed Decree.

Unlike, for example, the reports by defendants' monitors regarding the tapes (see Competitive Impact Statement at 43), the audiotapes are raw evidence that is ordinarily discoverable to the victims of the market makers' collusion. To purportedly render future audiotapes undiscoverable and inadmissible is to tie the hands of this Court in the current Multidistrict proceedings, and those of other District Courts in any future proceedings, in advance of a concrete dispute concerning the admissibility or discoverability of particular tapes, and without briefing and argument by future adverse parties.

This proposed provision is inconsistent with and fundamentally contradicts the intended complementary roles of private and public antitrust enforcement discussed at 24-25, *supra*. Furthermore, this proposed provision creates a significant risk that defendants will resist the production of any future audiotapes whatsoever, using the argument that they were created in compliance with, and are therefore insulated by, the Consent Decree. Certainly, it is unrealistic to assume that audiotaping under the consent decree will not be commingled with the audiotaping done in the ordinary course of defendants' business.

Plaintiffs therefore request that the Court reject this provision, or clarify that, by entering the Consent Decree, the Court does not bind any non-party to the Consent Decree (including the Multidistrict plaintiffs or proposed Class) by the above language. If the Court believes that any future Court might be influenced in matters of discoverability or admissibility by defendants' self-serving effort to conceal raw evidence, then the Court should require the parties to modify the Consent Decree.

Dated: August 28, 1996
Arthur M. Kaplan, Esquire (AR 6357),
Melinda L. deLisle, Esquire,
Fine, Kaplan and Black,
1845 Walnut Street, 23rd Floor, Philadelphia,
PA 19103
Christopher Lovell, Esquire (CL 2595)
Lovell & Skirnack, L.L.P.,
63 Wall Street, New York, NY 10005-2818
Leonard B. Simon, Esquire (LS 2068),
Dennis Stewart, Esquire,
Sharon T. Maier, Esquire,
Milberg, Weiss, Bershad, Hynes & Lerach
600 West Broadway, 1800 One America Plaza,
San Diego, CA 92101-5050

and

Patricia M. Hynes, Esquire, Milberg, Weiss,
Bershad, Hynes & Lerach,
One Pennsylvania Plaza, New York, NY
10019-0165
Robert A. Skirnack, Esquire (RS 2636),
Lovell & Skirnack, L.L.P.,
63 Wall Street, New York, NY 10005-2818

Co-Lead Counsel for Plaintiffs in the In re:
NASDAQ Market-Makers Antitrust
Litigation, MDL 1023 (RWS)

Stanley M. Grossman, Esquire,
Pomerantz Haudek Block & Grossman,
100 Park Avenue, New York, New York
10017-5516

Bruce E. Gerstein, Esquire,
Jerald M. Stein, Esquire, Garwin, Bronzart,
Gerstein & Fisher
1501 Broadway, Suite 1416, New York, New
York 10036

Briefing Co-Chairs for Plaintiffs in the In re:
NASDAQ Market-Makers Antitrust
Litigation, MDL 1023 (RWS)

Reply Memorandum in Support of Motion of Plaintiffs in The In RE: NASDAQ Market-Makers Antitrust Litigation to Intervene or to Appear as Amicus Curiae

Arthur M. Kaplan, Esq. (AK 6357),
Fine, Kaplan and Black,
23rd Floor, 1845 Walnut Street, Philadelphia,
PA 19103, (215) 567-6565
Christopher Lovell, Esq. (CL 2595),
Robert A. Skirnack, Esq. (RS 2636),
Lovell & Skirnack, L.L.P.,
63 Wall Street, New York, NY 10005, (212)
606-1900

Leonard B. Simon, Esq. (LS 2068), Milberg
Weiss Bershad Hynes & Lerach,
600 West Broadway, 1800 One America Plaza,
San Diego, CA 92101-5050, (619) 231-1058

Co-Lead Counsel for Plaintiffs in the In re:
NASDAQ Market-Makers Antitrust
Litigation MDL 1023 (RWS)

Preliminary Statement

The Tunney Act is a "sunshine" act that was intended to allow significant participation by interested persons in a

district court's consideration of proposed consent decrees and prevent "judicial rubber stamping" of proposed decrees. The principal disclosure provision under the Tunney Act, 15 U.S.C. § 16(b), is mandatory.

The Department of Justice and the defendants seek to prevent the "sunshine" that the Act envisions. They oppose all participation by multidistrict plaintiffs—who are the victims of the antitrust violations being addressed by the proposed consent decree. This Court should follow both the letter and the spirit of the Tunney Act by allowing the multidistrict plaintiffs to intervene in the government action to protect their interests.

The principal interests of multidistrict plaintiffs are two-fold. Multidistrict plaintiffs seek: (1) to hold the government to its mandatory disclosure obligations under the Tunney Act, particularly in regard to determinative documents; and (2) to prevent approval of section IV(C)(6) of the proposed decree, which is a protective order provision purporting to limit the discoverability and admissibility of future tape recordings in the multidistrict litigation.

Section IV(C)(6) of the proposed decree is an impermissible arrogation of power by the parties. As the Ninth Circuit stated in *Olympic Refining Company v. Carter*, 332 F.2d 260, 265 (9th Cir.), cert. denied, 379 U.S. 900 (1964), "neither in the express nor implied terms of the statutes or rules is there any indication that a consenting defendant could gain the additional benefit of holding under seal, or stricture of nondisclosure, for an indefinite time, information which would otherwise be available to the public or at least to other litigants who had need of it."

Regardless of whether formal intervention is granted, the Court can and should require that the Compilation of Evidence be disclosed to the multidistrict plaintiffs.¹ That result would best serve the interests of justice by obviating the need for extensive duplicative discovery in the multidistrict litigation, including the retaking of over 225 depositions. Such an outcome specifically was endorsed in

¹ Defendants and the government have chosen to designate the Compilation of Evidence presented to defendants as "the Settlement Memorandum," which reflects (indeed emphasizes) its determinative role in settlement negotiation. It is class plaintiffs' understanding that this "Settlement Memorandum" consisted of several loose-leaf notebooks of raw evidence. Thus, class plaintiffs believe that it is accurate to use the terminology "Compilation of Evidence" and "Settlement Memorandum" interchangeably.

both the House and Senate Reports on the Tunney Act.

I. Multidistrict Plaintiffs Should Be Granted Intervenor Status in the Government Enforcement Action

The defendants and the Department of Justice ("DOJ") erroneously argue that multidistrict plaintiffs fail to meet the standards for intervention of right, and they further argue that the court should use its discretion to deny permissive intervention, or even *amicus* status. This Court should reject those arguments. Multidistrict plaintiffs meet all of the requirements for intervention of right. If the Court disagrees, it should nevertheless exercise its discretion and allow permissive intervention or *amicus* participation.

A. Multidistrict Plaintiffs Meet the Standards for Intervention of Right

The government argues that multidistrict plaintiffs do not meet the requirements for intervention of right because they have not demonstrated an "interest" that will be impaired by entry of the consent decree. Private plaintiffs have two important interests that are not represented by any party. First multidistrict plaintiffs have a crystal clear interest in challenging Section IV(C)(6) of the proposed consent decree, which prohibits the discoverability and admissibility of evidence in plaintiffs' own separate civil action. Second, multidistrict statutory disclosure obligations under the Tunney Act, so that they can comment meaningfully on the proposed consent decree and so that important evidence already gathered by the government can be impounded and utilized. The multidistrict plaintiffs' interest in these matters is diametrically opposed to positions taken by the parties to the consent decree, and the intervention of right therefore should be granted to multidistrict plaintiffs to protect their own interests.²

² This case, therefore, is diametrically different from *Cook v. Pan American World Airways, Inc.*, 636 F. Supp. 693 (S.D.N.Y. 1986) (Sweet, J.), where this Court found that intervention by certain union members in an age discrimination suit was not appropriate because the defendant union would adequately represent union members' interests. The Court held that "the movants' interest in preserving the present system is adequately represented by existing defendants" and "movants' interests and defendants' interests are identical". 636 F. Supp. at 697.

United States v. Simmonds Precision Products, Inc., 319 F. Supp. 620 (S.D.N.Y. 1970) is closer to the situation at hand. In that case, the court permitted a union to intervene in government antitrust consent decree proceedings because its interest was opposed to the position taken by the parties. 319 F. Supp. at 621.

1. Multidistrict Plaintiffs Alone Have an Interest in Challenging Section IV(C)(6) of the Proposed Consent Decree

In the proposed consent decree, the parties have agreed to a provision that harms the multidistrict plaintiffs. Paragraph IV(C)(6) of the proposed consent decree is a protective order prohibiting the discoverability and admissibility of raw evidence, i.e., certain future audiotapes, for everyone except the government and other specified regulatory entities. As argued below in Section III, this is an illegal arrogation of power, for which the parties seek this Court's judicial imprimatur. Multidistrict plaintiffs are the only ones with an interest in preventing this abuse, and they should be allowed to intervene for that purpose.

As this Court already held in the *In re Nasdaq Market-Makers Antitrust Litigation*, 164 F.R.D. 346, 351 (S.D.N.Y. 1996), "Rule 24 is the proper mechanism for a non-party to seek modification of a protective order and thus to gain access to information generated through judicial proceedings." See also *Northern States Power Company v. Westinghouse Electric Corp.*, 156 F.R.D. 168, 171 (D.Minn. 1994) ("every circuit to address the issue has concluded that intervention is the proper procedure for non-parties to challenge protective orders") (citing cases).

The future audiotapes are not, as defendants claim, of insubstantial value to multidistrict plaintiffs. In the multidistrict action, tape recordings of the conversations among the defendants' market makers constitute some of the most important direct evidence of defendants' conspiracy.

Moreover, the multidistrict plaintiffs have alleged an ongoing conspiracy, and have sought injunctive relief. Thus, any evidence of future discussions between market makers will provide a fertile ground for discovery.

Additionally, one of multidistrict plaintiffs' theories for measuring damages involves comparing defendants' profit levels after the conspiracy ends to profit levels during the conspiracy. Of course, a before and after calculation is meaningless (or misleadingly conservative) unless plaintiffs can determine that the conspiracy no longer prevails in the designated "after" period. Evidence of future conversations along the market makers will be valuable in making this determination as well.

Although the defendants and the government cite a number of cases in which intervention has been denied to private plaintiffs challenging a proposed

consent decree, in none of those cases has the proposed consent decree attempted to prohibit the discoverability or admissibility of raw evidence in litigation brought by the private plaintiffs. Multidistrict plaintiffs have a right to have questions of discoverability and admissibility of evidence in their case decided in their own case, not predetermined by agreement among parties in a different action. Therefore, under this Court's prior decision *In re Nasdaq Market-Makers Antitrust Litigation*, 164 F.R.D. at 351, the multidistrict plaintiffs have a right to intervene to challenge the protective order provision of the proposed decree.

B. In the Alternative, Permissive Intervention Should Be Granted

The DOJ concedes, as it must, that the multidistrict action shares questions of law and fact in common with the government action, and thus the requirements for permissive intervention are satisfied. However, the DOJ urges this Court to exercise its discretion and deny intervention based on its unsupported assertion that intervention might "unduly delay or prejudice the adjudication of the rights of the original parties." No explanation has been provided by the DOJ or the defendants of any actual prejudice or delay that would in fact result.

Multidistrict plaintiffs do not want to prolong these proceedings. Multidistrict plaintiffs have two principal objectives: (1) compelling the disclosure of the Compilation of Evidence (and any evidentiary materials expressly referenced therein) pursuant to the Tunney Act (and receiving an opportunity to participate meaningfully in the consent decree approval process after reviewing these materials); and (2) removing Section IV(C)(6) of the proposed consent decree. There is no reason why these objectives cannot be accomplished without undue delay.

The parties seek a judicial rubber stamp of their decision, without any meaningful comment from or participation by the victims of these antitrust violations. This Court should not grant the parties' desire to exclude injured persons from the Consent Decree approval process, particularly since 15 U.S.C. § 16(e)(2) suggests that the court should specifically consider, in addition to the more general public interest, the impact of the proposed decree on injured persons.

This Court plainly has discretion to permit permissive intervention in these circumstances. E.g., *United States v. American Cyanamid Co.*, 719 F.2d 558,

563 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984) (affirming the district court's decision to permit permissive intervention in antitrust consent decree proceedings). For example, in *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 131, 218-19 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), after initial denial, intervenor status later was granted to all who moved to intervene, and the court permitted the intervenors to file briefs, participate in proceedings and oral argument, and appeal the entry of the consent decree. 552 F. Supp. at 218-19.

III. Section IV(C)(6) of the Proposed Consent Decree is an Arrogation of Power, and It Should Not Be Approved by This Court

Under the terms of the proposed consent decree, the defendants have agreed to tape record and monitor not less than 3.5 percent of their Nasdaq trader telephone conversations (up to a maximum of 70 hours per week). However, Section IV(C)(6) of the consent decree contains a protective order providing that tapes made pursuant to the decree are neither discoverable nor admissible in private civil actions.¹¹ Thus, by agreement, the parties have purported to exempt the defendants from the Federal Rules of Civil Procedure and the Federal Rules of Evidence in the multidistrict litigation, by creating their own category of non-discoverable and inadmissible documents. There is nothing that gives either an antitrust defendant or the DOJ the power to enact such a result. This Court should not put its imprimatur of approval on this illegal arrogation of power.

The only case cited in support of this unprecedented expansion of power by either the DOJ or the defendants is *In re LTV Securities Litigation*, 89 F.R.D. 595 (N.D. Tex. 1981). This case provides no support at all. In *LTV Securities* the Court held that materials generated by an attorney, functioning as a "Special Officer" appointed by the corporation to implement a consent decree, were entitled to a hybrid of the attorney-

¹¹ Under the protective order provision of the consent decree, "The tapes made pursuant to the proposed Order are not subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization. The proposed Order directs that such tapes not be admissible in evidence in civil proceedings, except in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization." Competitive Impact Statement at 43 (emphasis added).

client privilege and the privilege afforded SEC investigations.

Although the position of the "Special Officer" may be loosely analogous to that of the anticipated tape-monitors in this case, the discoverability of the monitors' reports, of course, has nothing to do with the underlying raw evidence—the tapes themselves. Moreover, the reasoning in *LTV Securities* depended heavily on the fact that the Special Officer was still involved in an ongoing investigation of LTV that would be impacted adversely by the discovery requested. 89 F.R.D. at 618-19. That too is not the case here. *LTV Securities* simply has no relevance to the entry of a protective order prohibiting the discovery and admissibility of raw evidence.

Olympic Refining Company v. Carter, 332 F.2d 260 (9th Cir.), cert. denied, 379 U.S. 900 (1964), is far more analogous. In *Olympic Refining*, documents in a government antitrust suit had been sealed pursuant to a consent decree. A private party filed a civil action against the defendants from the government action, and sought to subpoena the sealed documents from the government's case (some of which were filed with the court under seal and some of which were retained by the government). 332 F.2d at 262-63 n.3. The district court refused to permit the protective order to permit the private plaintiffs to examine the documents. The Court of Appeals issued a writ of mandamus ordering the district court to modify the protective order to permit the private plaintiffs to have access to the previously sealed documents.

In issuing the writ of mandamus, the Court of Appeals noted that "[p]rivate treble-damage actions are an important component of the public interest in 'vigilant enforcement of the antitrust laws.'" 332 F.2d at 264, quoting *Lawlor v. National Screen Serv. Corp.*, 349 U.S. 322, 329 (1955). The Court further held that, although there are numerous benefits that a defendant can gain from entering into a consent decree, nothing in the law permits an antitrust defendant to gain a non-disclosure right over its evidence:

[A] consenting defendant in a Government antitrust suit gains whatever benefit there may be in accepting the terms of the consent decree rather than risking a more onerous

decree entered after litigation. A consenting defendant also benefits from the saving in litigation expense which is made possible by a consent decree. But neither in the express nor implied terms of the statutes or rules is there any indication that a consenting defendant could gain the additional benefit of holding under seal, or stricture of nondisclosure, for an indefinite time, information which would otherwise be available to the public or at least to other litigants who had need of it.

332 F.2d at 265 (emphasis added).

The defendants and the DOJ argue that but for the consent agreement, the future tape-recorded evidence in this case would not even exist. The premise for this argument, of course, is as faulty as its conclusion, as this Court well knows from the fact that at least ten defendants already were taping their traders before the government investigation even began. There is simply no way to determine how many of the tapes made and monitored "pursuant" to the consent decree would have been made (and would have been admissible evidence) even without the decree.¹²

From this erroneous premise, the DOJ and defendants illogically concluded that they have the power to do whatever they want with "their" evidence. This contention is without any judicial support. In *Ex parte Uppercu*, 239 U.S. 435, 36 S. Ct. 140 (1915), Justice Holmes, writing for a unanimous Court, noted that once evidence exists, it exists for everyone.

Uppercu arose after the government brought a civil action against Dwight Manufacturing Company. That case was settled and, with the consent of the parties, all of the depositions and exhibits in the case were sealed by the district court. Under the terms of the sealing agreement, the transcripts and exhibits would be available only to the government and the defendant in the original action. *Uppercu*, who was not a party to the original suit, sought access to the sealed depositions and exhibits in the case. The district court enforced the sealing order and denied *Uppercu* access.

¹² It cannot logically be argued that all calls monitored under the consent decree will be additional calls, since at least some of the defendants were taping every call before the government investigation began.

The Supreme Court issued a writ of mandamus ordering the district court to enforce *Uppercu*'s right of access to the sealed depositions and exhibits. Justice Holmes stated:

So long as the object physically exists, anyone needing it as evidence at a trial has a right to call for it, unless some exception is shown to the general rule. We discover none here. Neither the parties to the original cause nor the deponents have any privilege, and the mere unwillingness of an unprivileged person to have the evidence used cannot be strengthened by such a judicial fiat as this, forbidding it, however proper and effective the sealing may have been as against the public at large.

Uppercu, 239 U.S. at 440, 36 S. Ct. at 141 (emphasis added).

Similarly, in this case, if the parties voluntarily choose to create evidence, it is beyond their power to limit anyone with a legal interest in the evidence (other than themselves) in regard to how that evidence can be used. See *In re Agent Orange Product Liability Litigation*, 821 F.2d 139, 144 (2d Cir.) (parties that obtained sealing agreement as part of settlement of class action doubtless were aware that their settlement agreement could not limit non-parties to the agreement), cert. denied, 484 U.S. 953 (1987). Here, remarkably, the parties purport to do just the opposite. They purport to limit everyone in the world except themselves.

Section IV(C)(6) of the proposed consent decree is beyond the power of the parties. It should not be approved by the Court.

Conclusion

This Court should follow both the letter and the spirit of the Tunney Act by granting multidistrict plaintiffs' motion to intervene in this proceeding, and by ordering the government to disclose the Compilation of Evidence and the evidentiary materials referenced therein. Finally, because the protective order embodied in section IV(C)(6) of the proposed consent decree is excessive and improper, this Court should refuse to put its imprimatur on it.

Dated: Oct. 14, 1996.

Respectfully Submitted,
 Arthur M. Kaplan, Esquire (AK 6357)
 Melinda L. deLisle, Esquire
 Glenn J. Moremarco, Esquire
 Fine, Kaplan and Black
 1845 Walnut Street, 23rd Floor, Philadelphia,
 PA 19103
 Christopher Lovell, Esquire (CL 2595),
 Lovell & Skirnick, L.L.P.
 63 Wall Street, New York, NY 10005-2818

and
 Leonard B. Simon, Esquire (LS 2066),
 Dennis Stewart, Esquire,
 Sharon T. Maier, Esquire,
 Milberg, Weiss, Bershad, Hynes & Lerach
 800 West Broadway, 1800 One America Plaza,
 San Diego, CA 92101-5050

and
 Patricia M. Hynes, Esquire,
 Milberg, Weiss, Bershad, Hynes & Lerach
 One Pennsylvania Plaza, New York, NY
 10019-0185

Robert A. Skirnick, Esquire (RS 2636),
 Lovell & Skirnick, L.L.P.,
 63 Wall Street, New York, NY 10005-2818.

Co-Lead Counsel for Plaintiffs in the *In re*;
Nasdaq Market-Makers Antitrust Litigation,
 MDL 1023 (RWS).

[FR Doc. 96-29965 Filed 11-22-96; 8:45 am]
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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10318, et al.]

Proposed Exemptions; GE Capital Investment Advisors, Inc.

AGENCY: Pension and Welfare Benefits
 Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains
 notices of pendency before the
 Department of Labor (the Department) of
 proposed exemptions from certain of the
 prohibited transaction restriction of the
 Employee Retirement Income Security
 Act of 1974 (the Act) and/or the Internal
 Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to
 submit written comments or request for
 a hearing on the pending exemptions,
 unless otherwise stated in the Notice of
 Proposed Exemption, within 45 days
 from the date of publication of this
 Federal Register Notice. Comments and
 request for a hearing should state: (1)
 The name, address, and telephone

number of the person making the
 comment or request, and (2) the nature
 of the person's interest in the exemption
 and the manner in which the person
 would be adversely affected by the
 exemption. A request for a hearing must
 also state the issues to be addressed and
 include a general description of the
 evidence to be presented at the hearing.
 A request for a hearing must also state
 the issues to be addressed and include
 a general description of the evidence to
 be presented at the hearing.

ADDRESSES: All written comments and
 request for a hearing (at least three
 copies) should be sent to the Pension
 and Welfare Benefits Administration,
 Office of Exemption Determinations,
 Room N-5649, U.S. Department of
 Labor, 200 Constitution Avenue, N.W.,
 Washington, D.C. 20210. Attention:
 Application No. stated in each Notice of
 Proposed Exemption. The applications
 for exemption and the comments
 received will be available for public
 inspection in the Public Documents
 Room of Pension and Welfare Benefits
 Administration, U.S. Department of
 Labor, Room N-5507, 200 Constitution
 Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions
 will be provided to all interested
 persons in the manner agreed upon by
 the applicant and the Department
 within 15 days of the date of publication
 in the Federal Register. Such notice
 shall include a copy of the notice of
 proposed exemption as published in the
 Federal Register and shall inform
 interested persons of their right to
 comment and to request a hearing
 (where appropriate).

SUPPLEMENTARY INFORMATION: The
 proposed exemptions were requested in
 applications filed pursuant to section
 408(a) of the Act and/or section
 4975(c)(2) of the Code, and in
 accordance with procedures set forth in
 29 CFR Part 2570, Subpart B (55 FR
 32836, 32847, August 10, 1990).
 Effective December 31, 1978, section
 102 of Reorganization Plan No. 4 of
 1978 (43 FR 47713, October 17, 1978)
 transferred the authority of the Secretary
 of the Treasury to issue exemptions of
 the type requested to the Secretary of
 Labor. Therefore, these notices of
 proposed exemption are issued solely
 by the Department.

The applications contain
 representations with regard to the
 proposed exemptions which are
 summarized below. Interested persons
 are referred to the applications on file
 with the Department for a complete

statement of the facts and
 representations.

GE Capital Investment Advisors, Inc.,
 Located in New York, New York

[Application No. D-10318]

Proposed Exemption

The Department is considering
 granting an exemption under the
 authority of section 408(a) of the Act
 and section 4975(c)(2) of the Code and
 in accordance with the procedures set
 forth in 29 C.F.R. Part 2570, Subpart B
 (55 F.R. 32836, 32847, August 10, 1990).
 If the exemption is granted, GE Capital
 Investment Advisors, Inc. (GECIA) and
 GECIA Holdings, Inc. (Holdings) shall
 not be precluded from functioning as a
 "qualified professional asset manager"
 pursuant to Prohibited Transaction
 Class Exemption 84-14 (PTE 84-14, 49
 FR 9494, March 13, 1984) solely because
 of a failure to satisfy section I(g) of PTE
 84-14, as a result of General Electric
 Company's ownership interest in them,
 including any of their subsidiaries or
 successors which provides investment
 advisory, management or related
 services and is registered under the
 Securities and Exchange Act of 1934, as
 amended, or the Investment Advisors
 Act of 1940, as amended; provided the
 following conditions are satisfied:

(A) This exemption is not applicable to any
 affiliation by GECIA or Holdings with any
 person or entity convicted of any of the
 felonies described in part I(g) of PTE 84-14,
 other than General Electric Company; and
 (B) This exemption is not applicable with
 respect to any convictions of General Electric
 Company for felonies described in part I(g) of
 PTE 84-14 other than those involved in the
 G.E. Felonies, described below.

Effective Date: This exemption, if
 granted, will be effective as of January
 29, 1996.

Summary of Facts and Representations

Introduction: General Electric
 Company (G.E.), an indirect 100 percent
 owner of GECIA Holdings, Inc. (Holdings),
 has been convicted during
 the past ten years of certain felonies
 relating to G.E.'s government contracts
 operations. In 1995-1996, Holdings
 created a subsidiary, GE Capital
 Investment Advisors, Inc. (GECIA),
 solely to purchase an unrelated
 investment advisory and management
 business. G.E.'s felony convictions
 could bar GECIA from acting as a
 "qualified professional asset manager"
 (QPAM) under Prohibited Transaction
 Class Exemption 84-14 (PTE 84-14, 49
 FR 9494, March 13, 1984). Part I(g) of
 PTE 84-14 requires that no person
 owning, directly or indirectly, 5 percent
 or more of the QPAM has been

convicted of certain felonies within ten
 years preceding the transaction for
 which the QPAM intends to utilize PTE
 84-14. GECIA and Holdings are
 requesting an exemption to enable
 GECIA to qualify as a QPAM without
 regard to any failure to satisfy part I(g)
 of PTE 84-14 by reason of G.E.'s
 ownership of GECIA, under the terms
 and conditions described herein.

1. GECIA is a real estate investment
 advisory and management business
 located in San Francisco, California.
 GECIA is a wholly-owned subsidiary of
 Holdings, a wholly-owned subsidiary of
 GE Capital Services, Inc. (GECS), which
 is entirely owned by G.E. GECIA and
 Holdings (the Applicants) were
 organized and established by GECS
 solely to acquire and continue the real
 estate investment advisory and
 management business of MacFarlane
 Partners (MacFarlane), which was
 unrelated to G.E. and its affiliates.
 MacFarlane obtained consent from each
 of its existing clients to the transfer of
 MacFarlane client accounts to GECIA,
 and GECIA commenced operations on
 January 29, 1996 immediately following
 completion of the acquisition of
 MacFarlane. As part of the acquisition,
 GECIA has hired all of the investment
 professionals and other employees of
 MacFarlane, including Victor
 MacFarlane as the chief executive
 officer of GECIA.

The Applicants represent that the
 clientele served by GECIA's operations
 include large employee benefit plans
 subject to the Act. They maintain that,
 given the size and number of the plans
 which GECIA represents, the large
 number of financial service providers
 engaged by such plans, the breadth of
 the definition of "party in interest"
 under the Act, and the array of services
 offered by GECIA, it would not be
 uncommon for GECIA to propose a
 transaction involving a party in interest
 with respect to a plan for which GECIA
 is acting in a fiduciary capacity. The
 Applicants represent that the proposing
 of such transactions is occasionally
 necessary to offer plan clients adequate
 investment diversification
 opportunities, and that such
 opportunities will be missed if GECIA is
 not permitted to function as a QPAM
 pursuant to PTE 84-14.

2. The Applicants represent that prior
 to January 29, 1996, G.E. did not have
 any ownership interests in any of the
 operations of MacFarlane, which are
 now the operations of GECIA. They
 represent that Holdings and GECIA were
 established solely to acquire, operate
 and expand the business of MacFarlane,
 and that GECIA and Holdings do not
 engage in any of the business to which

the G.E. Felonies, described below,
 pertain. The Applicants further
 represents that GECIA and Holdings are
 intended and structured to be operated
 and maintained separately and
 independently from the G.E. business
 operations to which the G.E. Felonies
 pertain, which did not involve any
 investment advisory, management or
 related services.

3. On three occasions from 1986
 through 1992, G.E. pled guilty or was
 convicted of felonies relating to the
 government contract activities of G.E.
 and its subsidiaries (the G.E. Felonies).
 The Applicants represent that the G.E.
 Felonies did not in any way relate to
 any employee benefit plan or any
 person's authority with respect to an
 employee benefit plan. The Applicants
 describe the G.E. Felonies more
 specifically as follows:

(a) On May 13, 1986, G.E. pled guilty
 to four counts of filing false claims with
 the United States Air Force and 104
 counts of filing false statements with the
 United States Air Force in connection
 with work performed in 1980 by G.E.'s
 Re-Entry Systems Operation. The
 Applicants represent that these counts
 primarily related to individual time
 cards that were improperly charged to
 certain government contracts.

(b) On February 2, 1990, G.E. was
 convicted of mail fraud and violations
 of the False Claims Act relating to the
 conduct in 1983 of two contract
 employees of a G.E. subsidiary,
 Management and Technical Services
 Co., involving failure to notify the
 United States Army that subcontractors
 had agreed to prices lower than those
 contained in projections for the project.
 The Applicants represent that neither
 G.E. nor any officer or employee of G.E.
 was accused of having knowledge of the
 discrepancy and withholding it from the
 United States Army.

(c) On July 22, 1992 G.E. pled guilty
 to violations of 18 U.S.C. 237
 (submitting false claims against the
 United States), 18 U.S.C. 1957 (engaging
 in monetary transactions in criminally
 derived property), 15 U.S.C.
 78m(b)(2)(A) and 78ff(a) (inaccurate
 books and records), and 18 U.S.C. 371
 (conspiracy to defraud and commit
 offenses against the United States). The
 Applicants represent that these
 violations related to a series of events
 between 1984 and 1990, involving false
 statements made by employees of G.E.
 Aircraft Engines Division to a foreign
 government that led such foreign
 government to submit false claims to the
 United States relating to the purchase of
 weapons.

4. The Applicants represent that the
 G.E. Felonies did not relate in any way

to the conduct or business of
 MacFarlane, or any investment advisor
 or fiduciary of an employee benefit
 plan. The Applicants maintain,
 however, that although none of the
 unlawful conduct involve MacFarlane's
 or GECIA's investment management
 activities or any plans covered by the
 Act, the criminal activities described
 above could preclude GECIA, as an
 affiliate of G.E., from serving as a
 "qualified professional asset manager"
 (QPAM), due to the provisions of
 sections I(g) and V(d) of PTE 84-14.
 Section I(g) of PTE 84-14 precludes a
 person who otherwise qualifies as a
 QPAM from serving as a QPAM if such
 person or an affiliate thereof has within
 the 10 years immediately preceding the
 transaction been either convicted or
 released from imprisonment as a result
 of certain criminal activity, including
 any crime described in section 411 of
 the Act. Because the G.E. Felonies
 involved crimes described in section
 411 of the Act and monies transferred to
 or claimed by G.E., the Applicants
 represent that GECIA may be barred
 from qualifying as a QPAM.

5. Accordingly, the Applicants
 request an exemption to enable GECIA
 to function as a QPAM despite the
 failure to satisfy section I(g) of PTE 84-
 14 solely because of the G.E. Felonies
 and GECIA's affiliation with G.E. The
 Applicants request that the exemption
 apply not only to GECIA but to Holdings
 as well, in order to enable flexibility in
 the growth and development of GECIA's
 operations and to enable potential
 corporate reorganizations. The
 Applicants state that they intend that
 GECIA's relationships with employee
 benefit plans will be developed by
 increasing the types and amounts of
 services provided, or by extending the
 relationships into new areas. GECIA
 may prefer, for example, to establish a
 related registered investment advisor to
 service a particular niche of the market.
 However, the Applicants represent that
 GECIA is structured such that
 subsidiaries will not be established
 under GECIA, and any new corporate
 entities needed to accommodate expanded
 operations of GECIA will be subsidiaries
 of Holdings. The Applicants further
 maintain that inclusion of Holdings in
 the requested exemption is also
 necessary to allow GECIA or Holdings to
 participate in any reorganization which
 might eliminate one of them or change
 their relative position with respect to
 GECS, or they may be repositioned for
 reasons unrelated to their activities,
 such as a public offering of their stock.
 For these reasons, the Applicants are
 requesting that the exemption be

applicable to GECIA and Holdings and any subsidiary or successor which provides investment advisory, management or related services and is registered under the Investment Advisors Act of 1940, as amended.

The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84-14. If granted, the exemption will enable GECIA to qualify as a QPAM by satisfying all conditions of PTE 84-14, except that G.E.'s convictions and guilty pleas in connection with the G.E. Felonies shall not prevent satisfaction of the condition stated in section I(g) of PTE 84-14 because of affiliation with G.E. The exemption, if granted, will relate only to the Applicants' affiliation with G.E. and not to any affiliation with any other persons or entities.¹

6. The Applicants represent that the G.E. Felonies do not create any concern that they will endanger employee benefit plans for which GECIA proposes to serve as a QPAM. The Applicants note that all of the G.E. Felonies occurred before the creation of GECIA and its acquisition of the MacFarlane business, and that all of the G.E. Felonies involved areas of business unrelated to employee benefit plans and the activities of GECIA. The Applicants represent that prior to its incorporation, substantial efforts were devoted to identifying possible relationships between its proposed provision of real estate management services to plans and the existing business activities of G.E. and its affiliates, and understanding the potential legal issues related thereto. As a result, the Applicants represent that care has been taken to situate GECIA and Holdings separate from other unrelated business activities of G.E. and its affiliates, particularly those involved with the G.E. Felonies, and that GECIA and Holdings are isolated organizationally from the G.E. operations and entities formerly involved in the G.E. Felonies.

Furthermore, the Applicants represent that they are committed to a strong legal compliance program, developing their own policies and procedures to promote compliance with applicable laws including the Act. In this regard, the Applicants note that GECIA has

established its own general counsel, independent of G.E., with responsibility for supervising legal compliance. Under the general counsel's direction, GECIA has adopted written compliance policies designed to ensure compliance with the Act, and written materials relating to such policies have been provided to applicable employees. The Applicants represent that GECIA conducts employee training programs, including on-site seminars by outside counsel, on the requirements of the Act. The Applicants conclude that the efforts in these compliance measures constitute substantial amounts of time, effort and resources to avoid any failure by GECIA to comply with the Act and other applicable laws.

7. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied for the following reasons: (a) The G.E. Felonies occurred prior to any affiliation between G.E. and GECIA, and did not involve any conduct on the part of GECIA; (b) GECIA constitutes a continuation of the operations of MacFarlane, which was not involved in any of the G.E. Felonies and which was unrelated to G.E. prior to acquisition by GECIA; (c) GECIA has committed to a legal compliance program featuring written policies and procedures to prevent illegal activity; and (d) The exemption will permit the Applicants to engage in a broader variety of investments and services on behalf of client employee benefit plans which demand diverse investment opportunities.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Summit Sheet Metal, Inc. Defined Benefit Pension Plan (the Plan) Located in Anaheim, California

(Application No. D-10330)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing,

parties in interest with respect to the Plan; provided that the following conditions are satisfied: (a) the Sale is a one-time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; and (c) the Plan will incur no commissions or any other expenses from the proposed Sale.

Summary of Facts and Representations

1. The sponsoring employer of the Plan is the Summit Sheet Metal, Inc. (the Employer), a California corporation, which has manufactured sheet metal for over 20 years for the construction industry located primarily in southern California. The Employer has formerly resolved to terminate its business operations and is in the process of dissolution. Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing, who each own a one-third interest in the Employer, are its only remaining employees.

2. The Plan is a defined benefit plan with approximately \$3.18 million in total assets, as of October 16, 1996, and three participants who are equal owners of the Employer. The trustee and administrator of the Plan are the three owners of the Employer. CalTrust, located in Costa Mesa, California, is the third-party recordkeeper for the Plan.

The Employer has formally resolved to terminate the Plan, and has received a determination from the Pension Benefit Guaranty Corporation that the Plan is no longer insured. In addition, the Plan is currently in termination process with the Internal Revenue Service.

The remaining three participants in the Plan have attained normal retirement age and intend to retire within the next few months and transfer their respective interests in the Plan to their respective Individual Retirement Accounts (IRA).

3. The Property, acquired solely as an investment in 1988 by the Plan from an unrelated person, is an unencumbered, fully developed parcel of commercial real estate, which is located at 12707 and 12717 Los Neitos Road, Santa Fe Springs, California on approximately 1.17 acres. The applicants represent that the Property is serviced by all the necessary public utilities and consists of a single story metal building and a single story concrete block building with a mezzanine for office space, and has been leased and used only by unrelated third-parties with respect to the Plan. The Property was determined in 1993 by the Environmental Protection

Agency (EPA) to be located within a potential toxic waste clean-up site.

The applicants represent that several attempts to sell the Property by the Plan to unrelated persons have been unsuccessful, primarily, because of the uncertainty of the costs in cleaning up the toxic waste found by the EPA.

Mr. Claude J. Demers, Real Estate Broker with California Real Estate Properties, Inc. of Huntington Beach, California, in a letter dated September 3, 1996, represented that his listing agreement on the Property had expired August 31, 1996, after every major industrial broker in Orange County was contacted with little response and no serious inquiries received. Mr. Demers further represented that the lack of market demand for the Property and the potential liability because of the hazardous materials on the Property effects the value of the Property. In addition, Mr. Demers represented that several financing institutions commented that even if a serious buyer were found, financing the Property would still be a major obstacle to overcome.

The Property was appraised as of June 20, 1996, and determined to have a fair market value of \$410,000. The appraisal was done by the Grubb & Ellis Company Appraisal and Consulting Services, Orange, California and signed by Paul M. Meade, Vice President, State Certification #AG001947, and Donald L. Hoelzel, Independent Review Appraiser, State Certification #AG00732. The appraiser represented that it had no interest in the Property and was independent of the Employer and the participants of the Plan. The appraiser also represented that the only impact on the Property of the EPA determination is the stigma associated with its proximity to the contained toxic waste and the subsequent value reduction.

4. The applicants represent that the Plan has been unable to interest anyone in purchasing the Property because of the EPA determination, and the trustees of the Plan are unable to locate an IRA custodian willing to accept the Property as an asset of an IRA. Therefore, the three remaining participants of the Plan desire to purchase the Property so that the Plan may be terminated and its assets rolled-over into their respective IRAs.

The applicants represent that the Sale would be in the best interests of the Plan and its participants and beneficiaries because the Sale would avoid the risk of future costs of clean-up and the anticipated depreciation in value of the Property. Also the parties involved expect to terminate as soon as possible the Plan and the Employer.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction for cash; (b) the Plan will not incur any payment of commissions or any other expenses from the Sale; (c) the Plan will be able to terminate and roll-over its remaining assets into three separate IRAs for the benefit of the three remaining participants; (d) the Property has been appraised by a qualified, independent appraiser; and (e) the Plan will receive as consideration for the Sale no less than the fair market value of the Property as of the date of the Sale.

Notice to Interested Persons: Because Messrs. Chasin, Hanson, and Searing, the applicants, are the sole participants of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the Federal Register.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Skana Enterprises, Inc. Defined Benefit Pension Plan (the Plan) Located in Kodiak, Alaska

(Application No. D-10342)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed loan (the Loan) of \$157,500 by the Plan to Skana Enterprises, Inc. (Skana), the Plan's sponsor and a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loan by Mr. Ralph Bolton (Mr. Bolton), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Plan; (c) the Loan is secured by a first deed of trust on real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of the

Loan; (d) the fair market value of the Property remains at least equal to 150% of the outstanding balance of the Loan throughout the duration of the Loan; (e) the Plan's independent fiduciary has determined that the Loan is appropriate for, in the best interest of, and protective of the Plan; and (f) the Plan's independent fiduciary will monitor compliance with the terms of the Loan and conditions of the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.²

Summary of Facts and Representations

1. Skana is a corporation located in Kodiak, Alaska, which is engaged in the business of commercial fishing for seafood. The Plan is a defined benefit plan with one participant, Mr. Bolton. The approximate aggregate fair market value of the Plan's assets is \$870,000.

2. Skana wishes to borrow \$157,500 from the Plan to purchase a parcel of real property in Kodiak, Alaska. The Loan will be amortized over a 15 year period, with equal semi-annual payments of principal and interest over the 15 year term. The interest rate for the Loan will be 9.25% per annum. The proposed terms of the Loan were submitted to Mr. Duane E. Dudley, Vice President of the Bank of America Alaska, N.A. in Anchorage, Alaska. Mr. Dudley approved the Loan, but recommended that certain of the proposed terms should be amended, such as raising the interest rate to 9.25% per annum. Mr. Dudley has represented that the terms of the Loan, as amended, are commercially reasonable.

3. The Loan will be secured by the Property, which consists of land and the timber located thereon, situated on East Devils Road in Lincoln City, Oregon. Char Brown of The Prudential Taylor & Taylor Realty Company in Lincoln City, Oregon, has appraised the land as having a fair market value, excluding the timber value, of \$200,000 as of September 17, 1996. Ms. Brown represents that she is a qualified, independent realtor who has worked in the small town of Lincoln City for five years and is well acquainted with the values of all the properties in the area. The timber on the Property has been valued by D.J. Davis Cutting, Inc. of Otis, Oregon as having a fair market value of \$193,277.75 as of September

² Since Mr. Bolton is the sole owner of Skana and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

¹ For example, any affiliation of the Applicants with any company or individual convicted of any of the felonies described in section 411 of the Act, other than G.E. with respect to the G.E. Felonies described herein, is not within the scope of the exemption proposed herein. Furthermore, any future convictions of or guilty pleas by G.E. for felonies described in part I(g) of PTE 84-14 are not within the scope of the exemption proposed herein.

15, 1996. Thus, independent experts have determined that the fair market value of the Property is \$393,277.75, which is approximately 2.5 times the principal amount of the Loan. The applicant represents that the Plan will have first priority interest in the collateral, and the Plan's interest will be perfected under applicable state law. Mr. Bolton will also personally guarantee the Loan to the Plan.

4. The Plan has appointed Druggé & Associates (Druggé), a CPA firm in Seattle, Washington, as its independent fiduciary for purposes of this transaction. Druggé represents that it performs accounting and tax services for Skana, but fees generated from Skana represent less than one percent of its annual service revenues. Mr. Jon Krueger of Druggé has represented that all terms and conditions of the Loan are at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party, and represent fair market value terms. Druggé has determined that the Loan is appropriate for the Plan, in the Plan's best interests as an investment for its portfolio, and protective of the Plan and its participant. Druggé represents that it will monitor compliance by Skana with the terms and conditions of the Loan and of the exemption proposed herein throughout the term of the Loan, taking whatever action is necessary to safeguard the Plan's interest, including foreclosure on the collateral in the event of default.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code for the following reasons: (a) The Loan represents less than 25% of the assets of the Plan; (b) the terms of the Loan will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the Loan will be secured by a first deed of trust on the Property, which has been appraised by qualified, independent experts to have a fair market value approximately 2.5 times the Loan amount; (d) Mr. Bolton will personally guarantee the Loan; (e) Druggé, the Plan's independent fiduciary, has determined that the transaction is appropriate for the Plan and in its best interests; (f) Druggé will monitor the transaction and take whatever action is necessary to enforce the Plan's rights under the Loan; and (g) Mr. Bolton is the only participant in the Plan to be affected by the transaction, and he desires that the transaction be consummated.

Notice to Interested Persons: Since Mr. Bolton is the only Plan participant to be affected by the proposed

transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of November 1996.

Ivan S. Sarnoff,
Director of Exemption Determinations,
Pension and Welfare Benefits Administration.
[FR Doc. 96-29900 Filed 11-22-96; 8:45 am]
BILLING CODE 4510-06-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [96-136]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Subcommittee on Propulsion Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

DATES: December 11, 1996, 8:30 a.m. to 5 p.m.; and December 12, 1996, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, Lewis Research Center, Building 86, Room 100, 21000 Brookpark Road, Cleveland, OH 44135, 216/433-2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- NASA Aeronautics Program Overview
- NASA Lewis Aeropropulsion Overview
- Restructured Base Overview
- Materials & Structures ARTS Overview

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: November 18, 1996.
Leslie M. Nolan,
Advisory Committee Management Officer.
[FR Doc. 96-29905 Filed 11-22-96; 8:45 am]
BILLING CODE 7501-01-M

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activity Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice announces that an information collection request has been submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for processing under 5 CFR 1320.10. The information collection request is for the proposed information collection contained in the recent revision of Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions," published in the Federal Register on May 8, 1996 (61 FR 20880). The first notice, as required by the Paperwork Reduction Act, was published in the Federal Register on May 30, 1996 (61 FR 27109).

The information collection request involves a submission of the Cost Accounting Standards Board's (CASB) Disclosure Statement (DS-2) by educational institutions receiving more than \$25 million in federally-sponsored agreements. Circular A-21's information collection requirement covers approximately 20 educational institutions not subject to CASB's regulatory requirement for filing the DS-2, pursuant to Public Law 100-679, which was previously approved and assigned OMB control number 0348-0055 (which expires August 31, 1997).

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the revision, contact Gilbert Tran, Office of Federal Financial Management, OMB (telephone: 202-395-3993).

ADDRESSES: Written comments should be sent by February 24, 1997 to: Edward Springer, Office of Information and Regulatory Affairs, OMB, Room 10236, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Pursuant to the May 30, 1996, notice, OMB received one comment on this proposed information collection. The comment and OMB's response is summarized below.

The commenter stated that the OMB estimate of 120 hours for completing the Disclosure Statement (DS-2) is understated. Instead, the commenter estimated preparation time for the DS-2 to range from 200 hours to 2000 hours per affected institution.

OMB disagrees that the preparation of the DS-2 can take as much as 2000 hours to complete unless a university does not currently have adequate written cost accounting policies for Federal grants and contracts. The DS-2 is a 20-page document that provides a summary of an educational institution's cost accounting system for Federal grants and contracts. OMB's estimated time for the completion of DS-2 does not include the development of any cost accounting policies for Federal grants and contracts; instead, it reflects the effort by a university to document the existing cost policies at the institution. Furthermore, the cost accounting practices used for Federal grants and contracts should be already documented as required by Subpart C, Section 21, Standards for financial management systems, in OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations."

G. Edward DeSeve,
Controller.

[FR Doc. 96-29997 Filed 11-22-96; 8:45 am]
BILLING CODE 3110-01-P

PENSION BENEFIT GUARANTY CORPORATION

Request for Comment on Proposed Extension of Approval of Collection of Information Under the Paperwork Reduction Act; Qualified Domestic Relations Order Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget ("OMB") extend the approval for a collection of information under the Paperwork Reduction Act. The information collection relates to model forms contained in a PBGC booklet ("Divorce Orders & PBGC") providing guidance on how to submit a proper qualified domestic relations order to the PBGC. The effect of this notice is to advise the public of, and to solicit public comment on, the extension of approval of this collection of information.

DATES: Comments should be submitted to the PBGC by January 24, 1997.

ADDRESSES: All written comments should be addressed to: The Office of

the General Counsel, Pension Benefit Guaranty Corporation, Suite 340, 1200 K Street, NW., Washington, DC 20005. The comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m. Copies of the booklet, "Divorce Orders & PBGC," may be obtained by calling PBGC's Customer Service Center at 1-800-400-PBGC or writing to the PBGC QDRO Coordinator, P.O. Box 19153, Washington, DC 20036-0153. The booklet also is available from the PBGC Homepage on the World Wide Web, at <http://www.pbgc.gov>.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTAL INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the OMB with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

On September 10, 1996, the PBGC published a notice (61 FR 47774) of its request for approval, on an emergency basis, of a new collection of information relating to guidance on the submission of qualified domestic relations orders ("QDROs") to the PBGC. OMB approved the collection of information with an expiration date of March 31, 1997. The PBGC intends to seek three-year approval for this collection of information.

The PBGC is a federal agency that insures the benefits of nearly 42 million working men and women in about 55,000 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child

support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a QDRO. The PBGC reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee.

The PBGC receives many inquiries on the requirements for QDROs. Many domestic relations orders, both in draft and final form, do not meet the applicable requirements. The PBGC works with practitioners on a case-by-case basis to ensure that their orders are amended to meet applicable requirements. This process is time-consuming for practitioners and for the PBGC.

To simplify the process, the PBGC has included model QDROs and accompanying guidance in a booklet, "Divorce Orders & PBGC," that attorneys and other professionals who are preparing QDROs for plans trustee by the PBGC may submit to the PBGC after receiving court approval. These models and the guidance are intended to assist parties by making it easier to comply with ERISA's QDRO requirements in plans trustee by the PBGC.

The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements and will result in a reduction of the statutory burden. The PBGC estimates that it will receive 333 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be 1/4 hour of the alternate payee's time and \$400 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 113 hours and \$132,000.

The PBGC is soliciting public comments to:

- (i) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued at Washington, DC, this 20th day of November 1996.

Martin Slate,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96-30027 Filed 11-22-96; 8:45 am]
BILLING CODE 7790-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37984; File No. SR-CHX-96-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Clearing the Post

November 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 4, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") proposed to amend Article XX, Rule 10, interpretations and policies .01.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 30, 1996 the Securities and Exchange Commission approved a proposed rule change that established a minor rule violation plan (the "Plan").³ A violation of the Exchange's clearing the post rule (Article XX, Rule 10) is included within the plan.⁴ Under current procedures, violators may be fined either by the Minor Rule Violation Panel or by the Exchange's Committee on Floor Procedure but not both.⁵ If a violation is handled under the Plan, violators may be fined not less than \$100 nor more than \$2,500 per violation. Alternatively, the exchange's Committee on Floor Procedure currently has the authority to impose a \$50 fine for violations of the clearing the post rule.⁶ The Exchange believes, however, that minor violations of the clearing the post rule are better handled through the Plan rather than by the Committee on Floor Procedure. The Exchange believes that using the Plan as the lone summary fine procedure will achieve a uniform procedure for imposing fines for violations of this Exchange rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

¹ See Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 25918 (approving File No. SR-CHX-95-23).

² See supra note 1.

³ The Minor Rule Violation Panel is appointed by the President of the Exchange and consists of three floor members (one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees.) See supra note 3.

⁴ CHX Article XX, Rule 10, Interpretations and Policies .10.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-96-28 and should be submitted by December 18, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-30025 Filed 11-22-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37982; File No. SR-PHLX-96-40]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Equity Margin Rules

November 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 1, 1996, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

the PHLX, pursuant to Rule 19b-4 of the Act,² hereby proposes to amend Rules 721, 722, and 723.

1. The proposed amendment to PHLX Rule 721 will now provide for initial customer margin requirements. Specifically, a customer must deposit at least the greater of the amount specified by Regulation T or \$2,000 equity, except that cash need not be deposited in excess of any security purchased.

2. The proposed amendment to PHLX Rule 722 will now provide for good faith margin requirements in instances where a member organization carries the proprietary account of another broker-dealer in compliance with the requirements of Regulation T. The rule will further provide that the member organization may not carry the account in a deficit position and must deduct from its own net capital the difference between the margin required by other sections of this rule and the equity on deposit.

3. Rule 723 will be completely restated. Revised Rule 723 will specifically be applicable to customer day-trading activities. This rule will require a customer to have sufficient equity to meet the margin required on either the long or short transaction, whichever occurred first on an intra-day basis. For purposes of this rule, the term "customer" will be defined, as it is in Rule 722(e)(2), to not include "a broker or dealer from whom a security has been purchased or to whom a security has

been sold for the account of a member organization or its customers."

In addition, a prohibition against free riding in a customer's cash account has been included in order to preclude a customer from making a practice of paying for a security by selling the same security on an intra-day basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PHLX intends to amend Rules 721, 722, and 723 in order to harmonize the PHLX's margin rules with those of the other self-regulatory organizations ("SROs").

Specifically, amended Rule 721 will be identical to the initial customer equity margin requirements of the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX") and the Pacific Stock Exchange ("PSE").³

The proposed amendment to Rule 722 is intended to provide for good faith margin in instances where a member organization carries the proprietary account of another broker-dealer in compliance with the requirements of Regulation T. The PHLX proposes adding these provisions so as to parallel its margin rule with that of the NYSE.⁴

Rule 723 is proposed to be completely restated. In this regard, Exchange research has identified that the current text of Rule 723 has not been amended since at least 1937.⁵ Accordingly, the arcane text predates all modern margin and capital rules of the PHLX. In lieu of the outdated provisions of Rule 723,

¹ See Rule 431(b); AMEX Rule 462; PSE Rule 2.15(e), 2.16(e).

² See Rule 431(e)(6).

³ In researching the history of Rule 723 the PHLX reviewed Exchange guides from as far back as the 1930's, wherein, the rule appeared exactly as it now reads. Furthermore, rule 723 itself makes no reference to ever having been amended. See PHLX Rule 723.

⁴ 15 U.S.C. 78e(b)(1).

⁵ 17 CFR 240.19b-4.

The Exchange proposes replacing such text with the current customer day-trading provisions and the prohibition against free-riding which have been promulgated by the other major SROs.⁶ The pre-amended version of Rule 723 applied to member and member firm trading which is now governed by PHLX Rules 722 and 703.⁷

Other major SROs do not have any intra-day margin requirements governing member trading.⁸ The "daylight" trading requirements of the PHLX serve no current purposes other than to force PHLX members to meet intra-day trading requirements on transactions which were not specifically exempted by the obsolete rule. In addition, because other major exchanges do not have these intra-day requirements, the PHLX has been placed at a competitive disadvantage. Members are forced to actively manage non-exempted transactions on an intra-day basis in order to maintain compliance with the rule, while other exchanges' margining and capital requirements are only imposed at the end of the business day. Furthermore, the proposed day trading and free riding provisions provide additional protection in the market where it is most needed. Accordingly, the PHLX rules should be brought into harmony with the other exchanges so as to relieve these competitive disadvantages.

2. Statutory Basis

The proposed rule change is based on Section 6(b)(5) of the Act in that it is designed to remove impediments to and perfect the mechanism of a national market system and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

⁶ The PHLX proposes adopting the language promulgated by the New York Stock Exchange. See NYSE Rule 431(f)(6)(B)(C) and (f)(9).

⁷ Rule 722 concerns margin accounts, and Rule 703 concerns financial responsibility and reporting.

⁸ The NYSE, AMEX and the PSE do not have intra-day margining requirements for members. The NYSE does, however, have intra-day margining requirements for customers.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PHLX-96-40 and should be submitted by December 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-30024 Filed 11-22-96; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request

approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202-205-8629.

SUPPLEMENTARY INFORMATION:

Title: "Annual Survey of Job Retention and Creation in the Delta Program."

Type of Request: New Request.
Form No.: 1989.

Description of Respondents: Delta Loan Recipients.

Annual Responses: 500.

Annual Burden: 83.5.

Comments: Send all comments regarding this information collection to Gregory Diercks Delta Program Manager, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S. W., Suite 8300 Washington, D.C. 20416. Phone No.: 202-205-7538.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,
Chief, Administrative Information Branch.

[FR Doc. 96-29967 Filed 11-22-96; 8:45 am]

BILLING CODE 8025-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on the Negotiation of a Bilateral Trade Agreement Between the United States and the Socialist Republic of Vietnam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the United States is in the process of negotiating a bilateral trade agreement with the Socialist Republic of Vietnam. USTR invites comments from the public on how the trade agreement can be used to address concerns or goals of U.S. persons and businesses with respect to trade with Vietnam. Comments in particular might address current Vietnamese practices that affect (a) market access for U.S. exports, such as tariffs and non-tariff measures, (b) trade and investment in services; and (c) any

other measure that impedes trade in goods and services with the United States. Comments received will be considered in developing U.S. positions and objectives in the process of negotiating the bilateral trade agreement.

DATES: Comments should be submitted on or before noon on Monday, December 16, 1996.

ADDRESSES: Comments may be submitted to Joseph Damond, Director for Southeast Asia, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Damond, Director for Southeast Asia, at (202) 395-6813, or Thomas Robertson, Associate General Counsel, at (202) 395-6800.

SUPPLEMENTARY INFORMATION: The United States is currently in the process of negotiating a bilateral trade agreement with Vietnam. That agreement will be subject to the terms of Title IV of the Trade Act of 1974, as amended (19 USC 401 et seq.), which defines the terms of trade relations with non-market economies. Title IV mandates that bilateral trade agreements between the United States and countries subject to its provisions address a number of issues, including (1) suspension or termination for national security reasons, (2) safeguard arrangements, (3) the protection of intellectual property rights, (4) the settlement of commercial differences and disputes, (5) the promotion of trade, and (6) consultations. In addition to these provisions, the trade agreement may address other issues, including the following: the grant of most-favored-nation treatment and national treatment to the products of the other country; the grant of trading rights; the elimination of market access barriers (e.g., tariffs, import and export restrictions, quotas, licensing requirements, customs valuation, and fees and charges); the transparency of legal and regulatory regimes; state trading and industrial subsidies; government procurement; trade-related investment measures; trade in services; and investment restrictions.

USTR invites written comments from the public on market access and any other issues to be addressed in the course of the negotiations with Vietnam on the bilateral trade agreement. All comments will be considered in developing U.S. positions and objectives during these negotiations on each of the issues noted above or otherwise raised by the public. Issues of interest might include, but are not necessarily limited to: (a) comments on possible tariff reductions and the removal of border

measures such as quotas or import licensing requirements; (b) uniform application of the trading system; (c) the provision of national treatment and nondiscriminatory treatment for imports, especially in the area of domestic taxation; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws concerning trade-related issues, such as protection and enforcement of intellectual property rights (IPR), foreign investment and services; (f) customs processing issues, such as document certification prior to export, fees, customs valuation, and certification requirements; (g) subsidies and domestic support and incentives; (h) safeguard and unfair trade practice procedures applied to imports; (i) plant, animal, and human health and safety requirements; (j) food standards and other technical barriers to trade; (k) activities of state trading enterprises, including restrictions and other trade-distorting practices; (l) price controls and policies; (m) government procurement practices; and (n) the trade-related aspects of investment policies and the protection and enforcement of IPRs. Market access issues for services include, but are not limited to, the right of establishment for U.S. services providers, the ability to provide services on a cross-border basis, and the ability of persons to enter temporarily to provide services. Information on products or practices subject to these negotiations should include, whenever appropriate, the relevant import or export tariff classification number used.

Public Comment: Requirements for Submissions

Comments must be in English and provided with fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenting party. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

A person requesting that information or advice contained in a comment submitted by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155)—

- (1) Must so designate that information or advice;

- (2) Must clearly mark the material as "CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy; and

- (3) Is encouraged to provide a non-confidential summary of the information or advice.

USTR will maintain a file containing the public versions of comments, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments made to USTR from the public with respect to the proceeding. An appointment to review the public file may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. Jennifer Hillman,
General Counsel.

[FR Doc. 96-30013 Filed 11-22-96; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-299 (Sub-No. 186X)]

Norfolk and Western Railway Company—Abandonment Exemption—In Polk County, IA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.21-mile line of railroad between Station 422+69.9 and Station 486+64 in Clive, Polk County, IA.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.*—

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 25, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29³ must be filed by December 5, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 16, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 29, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 18, 1996.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

By the Board, David M. Konechnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 96-30006 Filed 11-22-96; 8:45 am]
BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

International Trade Data System Project Office; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3505(c)(2)(A)). Currently, the International Trade Data System Project Office within the Department of the Treasury is soliciting comments concerning the North American Trade Automation Prototype (NATAP).

DATES: Written comments should be received on or before January 31, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to The Department of the Treasury, International Trade Data Systems Project Office, Attn.: William Nolle, 1301 Constitution Ave., NW, ICC-3130, Washington, DC 20229, Telephone (202) 927-1826.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the instructions should be directed to The Department of the Treasury, International Trade Data Systems Project Office, Attn.: William Nolle, 1301 Constitution Ave., NW, ICC-3130, Washington, DC 20229, Telephone (202) 927-1826. Information concerning NATAP can also be obtained at the following Web Site: www.itds.treas.gov.

SUPPLEMENTARY INFORMATION:

Title: North American Trade Automation Prototype (NATAP)
OMB Number: 1501-0162

Abstract: After extensive consultation with the trade community in the three countries, the NAFTA Information Exchange and Automation Working Group developed the North American Trade Automation Prototype (NATAP). NATAP is a prototype developed by the U.S., Canada, and Mexico to experiment with standardized data, advanced

automation, technologies, communications, and encryption designed to reduce costs and improve trade among the three NAFTA countries. This is mandated by Article 512 of the NAFTA. NATAP has been endorsed by the three governments and their trade communities as a limited six month test to be conducted at two US/Canada and four US/Mexico border locations. After the six month prototype, NATAP will stop; the governments and trade community will conduct joint and individual evaluations of the concepts experienced in NATAP and will determine the next steps in the development of improved North American trade processes.

In addition to the international aspects of North American trade, the intent of the U.S. Treasury, International Trade Data System Project Office is to demonstrate the integration of individual U.S. federal agency trade procedures into a comprehensive international trade process that includes the clearance and admissibility of goods, drivers/crew, and conveyances for purposes of enforcement, revenue, health and safety, etc.

Current Actions: The three governments have agreed to a six month test for NATAP. However, given the nature of NATAP and the extensive coordination of activities among the participating federal trade agencies in three separate countries and the installation of technology at all locations, involving federal, state/provincial, local, and private interests the Working Group and the trade community have agreed that the six month prototype period will begin for all six locations after NATAP becomes operational at the last location. While NATAP may be operational at the first location on November 1, 1996, the last location may not be operational until March 1, 1997. Accordingly, the official prototype period would not begin until March 1, 1997. Due to these unforeseen and unpredictable delays, the Department of Treasury is requesting that this clearance be effective until December 21, 1997.

Volunteers have agreed to participate in NATAP in order to provide traders with the opportunity to experiment with these advanced technologies and procedures with minimal expense. Through their evaluation of NATAP, they will have input into future trade processes and requirements.

Type of Review: Extension.

Affected Public: Importers, exporters, customs house brokers, carriers (truck and rail) who have volunteered to participate in NATAP.

Estimated Number of Respondents: There are approximately 120 U.S. participants. Estimated number of respondents is 120.

Estimated Time per Respondent: Each response will not exceed 7 minutes.

Estimated Total Annual Burden Hours: 6,300 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or include in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information and the prototype will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of this information to be collected; (d) ways to minimize the burden of information on respondents, including the use of automated collection techniques or other forms of information technology; (e) estimates of capital start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 19, 1996.

William L. Nolle,

International Trade Analyst.

[FR Doc. 96-30014 Filed 11-22-96; 8:45 am]

BILLING CODE 4810-25-M

Submission for OMB Review; Comment Request

November 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below during the mid-December 1996 to early-January 1997 timeframe, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 27,

1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545-1432.

Project Number: PC-V 96-022.

Type of Review: Revision.

Title: Opinion Research Group, Strategic Planning Division Refund Focus Group.

Description: The objective of these focus group interviews is to gather feedback from taxpayers on their expectations regarding refunds and the refund process. The groups will also solicit information regarding taxpayer perceptions of how long it should take to receive a refund and when during the process taxpayers decide to call IRS to inquire about the status of their refunds. This information will be used to help IRS design a plan on how to communicate the refund process with taxpayers.

Respondents: Individuals or households.

Estimated Number of Respondents: 54

Estimated Burden Hours Per Respondent:

Screening interviews—5 minutes

Focus group interviews—2 hours

Travel to site—1 hour

Frequency of Response: Other.

Estimated Total Reporting Burden: 195 hours.

Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96-30015 Filed 11-22-96; 8:45 am]

BILLING CODE 4820-01-P

[Treasury Directive 27-04]

Organization and Functions of the Office of the Under Secretary (International Affairs)

November 17, 1996.

1. Purpose. This Directive describes the organization and functions of the Office of the Under Secretary (International Affairs).

2. The Under Secretary (International Affairs) advises and assists the Secretary and Deputy Secretary in the formulation and execution of U.S. international policy. These responsibilities include the development of policies and guidance of the Department's activities

in the areas of international financial, economic and monetary affairs, trade and investment policy, international debt, environmental and energy policy, and U.S. participation in international financial institutions. The Under Secretary helps coordinate United States economic policies with finance ministries of the other G-7 industrial nations (France, Germany, Japan, United Kingdom, Canada, and Italy) and participates in preparing the President for annual G-7 economic summits. Reporting to the Under Secretary is the Assistant Secretary, including all of the functions of that office.

3. The Assistant Secretary (International Affairs) reports to the Secretary through the Under Secretary (International Affairs) and the Deputy Secretary. The incumbent is a principal advisor to the Secretary, Deputy Secretary, and Under Secretary (International Affairs) in their exercise of international financial, economic, monetary, trade, investment, environmental and energy policies and programs.

4. Organization Structure. The Assistant Secretary (International Affairs) supervises the Office of Program Services, the Counselor for Middle East Affairs, and six Deputy Assistant Secretaries: International Monetary and Financial Policy; Asia, the Americas and Africa; International Development, Debt and Environmental Policy; Trade and Investment Policy; Eurasia and the Middle East; and Technical Assistance Policy. The functions and responsibilities of the Deputy Assistant Secretaries are defined by the Assistant Secretary. The Deputy Assistant Secretaries serve under the policy guidance of the Assistant Secretary. Each Deputy Assistant Secretary supervises a number of offices managed by Directors. See the attached organization chart.

5. The Deputy Assistant Secretary (International Monetary and Financial Policy) supervises: the Office of International Banking and Securities Markets; the Office of International Monetary Policy; the Office of Foreign Exchange Operations; and the Office of Industrial Nations and Global Analyses. The incumbent serves as a policy advisor to the Assistant Secretary (International Affairs) and is responsible for the following functions.

- Formulates and implements Treasury policies concerning:
 - maintenance and operation of a smoothly functioning international monetary system;
 - coordination of economic policy among industrial nations through bilateral relationships, the Economic

Summit/G-7 process, the G-10 finance ministries and central banks, and the Organization for Economic Cooperation and Development (OECD) framework;

(3) development and conduct of U.S. monetary and financial relations with other nations;

(4) U.S. participation in the International Monetary Fund (IMF);

(5) foreign exchange operations and management of U.S. reserve assets; and

(6) international capital markets.

b. Provides analyses and forecasts of economic, monetary and financial developments in, and the policies of, the major industrial nations and maintains representatives at U.S. embassies in key industrial countries and at the OECD.

c. Analyzes and forecasts regional and global payment patterns and their implications for the functioning of the monetary system and the international economy.

d. Analyzes and assembles information relating to international banking, portfolio investment and insurance matters and the international practices of U.S. and foreign banks, their regulatory authorities, and the impact of their activities on the operation of the international monetary system.

e. Provides analyses relating to the formulation of coordinated international economic policies among major industrial nations.

f. Prepares analyses and reports on current developments and near-term prospects for the U.S. current-account balance and capital flows.

g. Develops analytic techniques for the study of current international economic issues, uses macroeconomic models as tools for analysis of issues, and provides econometrics modeling assistance to other offices.

h. Provides direction to the Federal Reserve Bank of New York concerning Exchange Stabilization Fund (ESF) operations under the authority of the Secretary of the Treasury and other Treasury officials who are delegated such authority to assure that operations of the Federal Reserve System concerning the ESF are coordinated. In this regard, the incumbent intensively monitors foreign exchange markets and maintains continuing monitoring of gold markets and related developments.

8. *The Deputy Assistant Secretary (Asia, the Americas and Africa)* supervises: the Office of East and South Asian Nations; the Office of African Nations; the Office of Latin American and Caribbean Nations; and the Mexico Task Force. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury policy and positions in the areas of international economics and finance dealing with the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa, and bilateral financial and economic assistance policies concerning these countries.

b. Monitors the relations of individual developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa with the international financial institutions (IFIs) and IFI programs in those countries; reviews and evaluates relations with, and programs developed by, the IFIs involving these developing and emerging market countries.

c. Formulates U.S. foreign economic policies and programs concerning developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa as they relate to international monetary stability and U.S. economic policy.

d. Develops, and monitors closely, policy recommendations regarding U.S. financial relations with the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa, including overseeing compliance with the U.S.-Mexico financial agreements of 1995, timely payment of principal and interest due from Mexico and debt repayment by other countries, rescheduling and other financial and economic policy issues.

e. Analyzes financial sector liberalization programs and foreign exchange systems in the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa and, as delegated by the Assistant Secretary, negotiates with various countries to encourage greater openness in their financial sectors and market-oriented exchange regimes.

f. Maintains acute awareness of financial and economic policies of these developing and emerging market countries, including stationing of Treasury representatives in key countries.

g. Assists senior Administration officials by identifying and evaluating existing programs, issues and projects and by developing new and viable approaches, techniques, and alternatives for programs involving such considerations as:

- (1) liberalization of capital markets;
- (2) more effective utilization of bilateral and development funds in the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa;
- (3) greater integration of these developing and emerging market

countries into the international financial and economic system;

(4) more effective utilization of multilateral channels for assistance;

(5) development of stable fiscal and monetary practices as well as a commitment to economic reform and adjustment in developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa; and

(6) protection of the U.S. balance of payments and similar international monetary matters affecting the finances of the developing and emerging market countries of Asia, the Americas, and sub-Saharan Africa.

7. *The Deputy Assistant Secretary (International Development, Debt and Environmental Policy)* supervises: the Office of Multilateral Development Banks (MDBs); and the Office of International Debt Policy. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury policy and positions on a wide range of economic, financial, and environmental issues pertaining to U.S. participation in the MDBs and international debt policy. This includes continuing liaison with nongovernmental organizations; foreign governments and international organizations; other Federal agencies; and academic and research institutions.

b. Advises the Assistant Secretary (International Affairs) on matters that concern:

- (1) MDB financial, lending, and governance policies;
- (2) MDB environmental policies and procedures;
- (3) U.S. business and export opportunities through MDB lending;
- (4) Treasury positions on specific MDB loans and technical assistance proposals; and
- (5) economic and financial issues pertaining to U.S. international debt policy.

c. Develops and presents Treasury positions for Federal interagency and international discussions concerning formulation of negotiating objectives, strategies, and tactics, as well as implementation of MDB replenishment, lending, and borrowing practices, programs, and objectives.

d. Coordinates, within Treasury and with other agencies, implementation of the Enterprise for the Americas Initiative including, among other things, working with Congress to gain needed authorization and appropriations, leading negotiations on bilateral debt reduction, and carrying out Treasury's

role as Chair of the President's Enterprise for the Americas Board.

a. Develops, evaluates and implements Treasury policies, positions, and initiatives concerning commercial bank debt, capital market developments, official bilateral debt, and U.S. Government bilateral debt.

f. Reviews policies of international and interagency bodies involved in development financing, such as the Development Assistance Committee of the OECD, the United Nations (UN) Conference on Trade and Development and other UN organizations, the Interagency Country Risk Assessment System, the Overseas Private Investment Corporation, and the National Advisory Council on International Monetary and Financial Policies.

g. Provides technical advice on issues involved in international debt management and policies.

h. Prepares policy guidance for U.S. participation in the Boards of Directors of the MDBs and for use by the Secretary of the Treasury in that official's role as U.S. Governor of the MDBs.

8. *The Deputy Assistant Secretary (Trade and Investment Policy)* supervises: the Office of International Trade; the Office of International Investment; the Office of Trade Finance; and the Office of Financial Services Negotiations. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury positions on:

- (1) U.S. trade and commercial policy in general;
- (2) multilateral and bilateral trade negotiations;
- (3) financial services negotiations, concerning such matters as the General Agreement on Trade in Services;
- (4) trade finance matters with respect to the Export-Import Bank, the Commodity Credit Corporation, and international organizations, such as the OECD;
- (5) U.S. military sales abroad;
- (6) trade programs, such as the General System of Preferences and textile regimes;
- (7) direct investment issues, including matters pertaining to national security implications of mergers and acquisitions of U.S.-based firms by foreign entities, expropriation, the Overseas Private Investment Corporation, and bilateral investment treaties; and
- (8) basic natural resources which are not energy-related, in particular, non-fuel minerals and agricultural commodities.

b. Provides the staff chair of the interagency Committee on Foreign Investment in the United States established by Executive Order 11858, as amended, and chaired by Treasury.

c. Coordinates investigations under the Exon-Florio amendment (section 5021 of Public Law 100-418) to the Defense Production Act to determine the effects on national security of foreign acquisitions, mergers, or takeovers of U.S. companies.

d. Drafts recommendations to the President on whether to prohibit or suspend transactions which are investigated under Exon-Florio, and drafts, in cooperation with the Office of the General Counsel, regulations issued pursuant to Exon-Florio.

e. Develops and implements Treasury policies within the incumbent's areas of responsibility which arise in such international fora as the World Trade Organization (WTO), the IMF, the International Bank for Reconstruction and Development, and various committees of the OECD.

f. Develops trade finance policy and provides the lead U.S. Government negotiator on OECD Export Credit Arrangement issues; and leads and coordinates interagency, U.S. Government implementation of Arrangement policies and agreements.

g. Develops negotiating objectives and strategy, and provides the lead U.S. negotiator on financial services, excluding insurance matters, in the WTO.

9. *The Deputy Assistant Secretary (Eurasia and the Middle East)* supervises: the Office of Central and Eastern European Nations; and the Office of Middle Eastern and Central Asian Nations. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) and is responsible for the following functions.

a. Formulates, evaluates, and implements Treasury policies and positions in the areas of international economics and finance dealing with countries in Central and Eastern Europe, the Middle East, North Africa, and Central Asia, and bilateral financial and economic assistance policies concerning these countries.

b. Advises the Assistant Secretary (International Affairs) on the implications of financial and economic developments in these areas.

c. Develops U.S. foreign economic policies and programs with respect to Central and Eastern Europe, the Middle East, North Africa, and Central Asia as they relate to international monetary stability and U.S. economic policy.

d. Formulates, and monitors closely, policy recommendations regarding U.S.

financial relations with Central and Eastern Europe, the Middle East, North Africa, and Central Asia, including debt repayment and rescheduling and other financial and economic policy issues.

e. Reviews and evaluates the relations with and programs developed by IFIs and other Federal agencies involving countries of Central and Eastern Europe, the Middle East, North Africa, and Central Asia.

f. Maintains acute awareness of financial and economic policy of these countries including stationing of Treasury representatives in key countries.

g. Identifies and evaluates existing projects, programs and issues, and develops new and viable approaches, techniques, and alternatives to assist Treasury officials in developing policies regarding Central and Eastern Europe, the Middle East, North Africa, and Central Asia involving such considerations as:

- (1) more effective utilization of development funds;
- (2) greater integration of countries of Central and Eastern Europe, the Middle East, North Africa, and Central Asia into the international financial and economic system;
- (3) more effective utilization of multilateral channels for assistance;
- (4) development of stable fiscal and monetary practices and a commitment to economic reform and adjustment; and
- (5) protection of the U.S. balance of payments and similar international monetary matters affecting the finances of countries of Central and Eastern Europe, the Middle East, North Africa, and Central Asia.

10. *The Deputy Assistant Secretary (Technical Assistance Policy)* supervises the following offices: the Office of Technical Assistance and the U.S.-Saudi Arabian Joint Commission Program Office. The incumbent serves as a policy adviser to the Assistant Secretary (International Affairs) on economic and financial technical assistance and is responsible for the following functions.

a. Develops, evaluates and implements Treasury policies and positions on economic and financial technical assistance to transitional and developing countries including Eastern Europe and the former Soviet Union.

b. Serves as U.S. coordinator of the U.S.-Saudi Arabian Joint Commission on Economic Cooperation and chairs its Interagency Advisory Policy Group.

c. Serves as principal Treasury representative in interagency meetings and international negotiations concerning the provision of economic and financial technical assistance to foreign countries.

BILLING CODE 4810-35-5

[FR Doc. 96-29970 Filed 11-22-96; 8:45 am]
BILLING CODE 4110-01-C

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA); Amendments to Previously Published Notice for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of funds availability; amendment to previously published notice.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") to provide assistance to insured depository institutions for the purpose of promoting investments in Community Development Financial Institutions ("CDFIs") and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms under an interim rule (12 CFR part 1806) published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996. The BEA Program is subject to the interim rule. The interim rule establishes the program requirements. This notice amends a Notice of Funds Availability published in the Federal Register on October 19, 1995. The notice is amended to permit applicants to select, with the consent of the Fund, a six-month Assessment Period that differs from the six-month period specified in the previously published NOFA. The notice also gives the Fund more flexibility with respect to establishing any limitations on the maximum amount that may be awarded to an applicant.

ADDRESSES: All questions concerning this notice should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund at (202) 622-8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increased availability of credit and investment capital in distressed communities, the Community Development Banking and

Financial Institutions Act of 1994 provides that a portion of funds appropriated to the Fund be distributed through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991 although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The program is designed to encourage insured depository institutions to make equity investments or otherwise support Community Development Financial Institutions or increase lending and other services provided within distressed communities. This Notice amends the Notice of Funds Availability published in the Federal Register on October 19, 1995 inviting applications for assistance.

II. Award Amounts

The October 19, 1995 notice indicated that "the anticipated maximum award under this Notice is \$1 million. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of \$1 million for applications of exceptional merit." This notice revises the earlier notice by deleting the last two sentences under the heading III. "Designation Factors" and substituting in their place the following sentence: "The Fund may, in its sole discretion, establish any limitations on the maximum amount that may be awarded to an applicant, as deemed appropriate by the Fund."

III. Baseline Period and Assessment Period Dates

In the notice published in the Federal Register on October 19, 1995, Applicants were instructed to project Qualified Activities that they anticipated carrying out during a six-month Assessment Period. Such Assessment Period began on January 1, 1996 and ended on June 30, 1996. However, the Fund has determined that in order to achieve the purposes of the Bank Enterprise Award Program it is necessary to permit Applicants to select from several alternative six-month Assessment Period options. Such alternative Assessment Period options are intended to give Applicants adequate time to complete the activities proposed in their original application. Since the Fund, for a variety of reasons, took longer than originally anticipated to complete all reviews and evaluations necessary to estimate whether any Applicant potentially qualified for a Bank Enterprise Award, and since Applicants reasonably waited to hear from the Fund with respect to whether they potentially qualified for an award

before completing many of their proposed activities, the Fund concluded that in order to be fair to Applicants it needed to allow Applicants the option of choosing a different six-month Assessment Period from the one originally contemplated by the October 19, 1995 Notice. All Applicants were notified of their Assessment Period options through written correspondence issued on August 19, 1996.

The October 19, 1995 notice is revised in the fourth sentence under the heading IV. "Baseline and Assessment Period Dates." In the notice, the sentence currently reads as follows: "Such assessment period will begin January 1, 1996 and end on June 30, 1996." It is hereby amended to read as follows: "Unless another six-month period is agreed to by the Fund and the Applicant, such assessment period will begin on January 1, 1996 and end on June 30, 1996."

IV. Other Matters

(a) Paperwork Reduction Act. For details on the information collection requirements of the rule and this Notice, the reader should refer to the interim rule (12 CFR Part 1806) published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996.

(b) Environmental Impact. Pursuant to Treasury Directive 75-02, the Department of the Treasury has determined that implementation of the BEA Program under the interim rule is categorically excluded from the National Environmental Policy Act of 1969 (21 U.S.C. 4332) and does not require an environmental review. The determination is available for public inspection between 9:30 a.m. and 4:30 p.m. weekdays at the offices of the Fund at 1777 F Street, N.W., 7th Floor, Washington D.C. 20006.

Authority: 12 U.S.C. 4703, 4717; Chapter X, Pub. L. 104-19, 109 Stat. 237; 12 CFR 1806.206(a).

Dated: November 18, 1996.

Kirsten S. Moy,
Director, Community Development Financial Institutions Fund.

[FR Doc. 96-29994 Filed 11-22-96; 8:45 am]
BILLING CODE 4810-70-P

Fiscal Service

Proposed Collection of Information: Pools and Associations Annual Letter

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the report "Pools and Associations—Annual Letter."

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Direct all written comments to Financial Management Service, 3361-L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Room 630-F, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874-6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Pools and Associations—Annual Letter

OMB Number: 1510-0008

Form Number: None.

Abstract: This report is sent to pools and associations recognized by Treasury Department as authorized reinsurers of non-federal businesses. The information collected identifies, for certified companies, a range of acceptable reinsurers, based on the number of companies in the association and the percentage of participation in the pool or association.

Current Actions: Extension of currently approved collection

Type of Review: Regular

Affected Public: Business or other for-profit

Estimated Number of Respondents: 100

Estimated Time per Respondent: 1 hour 30 minutes

Estimated Total Annual Burden Hours: 150 hours

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will

become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: November 20, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96-30028 Filed 11-22-96; 8:45 am]

BILLING CODE 4810-35-M

Proposed Collection of Information: States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the report "States Where Licensed for Surety."

DATES: Written comments should be received on or before January 24, 1997.

ADDRESSES: Direct all written comments to Financial Management Service, 3361-L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Martin, Room 630-F, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874-6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995,

(44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: States Where Licensed for Surety

OMB Number: 1510-0013

Form Number: FMS 2208

Abstract: This information is collected to provide Federal bond approving officers with a current list of states where insurance companies are licensed to transact surety business. Bond approving officers must be assured that all licensing requirements have been met before they can accept a bond written by a specific surety company.

Current Actions: Extension of currently approved collection

Type of Review: Regular

Affected Public: Business or other for-profit

Estimated Number of Respondents: 318

Estimated time Per Respondent: 1 hour

Estimated Total Annual Burden Hours: 318 hours

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimate of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: November 20, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96-30029 Filed 11-23-96; 8:45 am]

BILLING CODE 4810-35-M

Corrections

Federal Register
Vol. 61, No. 228
Monday, November 25, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration [Docket No. 94-15]

Michael J. Selter, D.O., Grant of Request To Modify Continuation of Registration With Restrictions

Correction

In notice document 96-26321, beginning on page 53762, in the issue of Tuesday, October 15, 1996, make the following correction:

On page 53762, in the second column, in the tenth line "825(a)(4)" should read "824(a)(4)".

BILLING CODE 1506-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33-7361; 34-37912; IC-22310; IA-1696]

Adjustments to Civil Monetary Penalty Amounts

Correction

In rule document 96-28596 beginning on page 57773 in the issue of Friday, November 8, 1996, make the following correction:

On page 57774, in the third column, beginning in the third line the amendatory instruction is corrected to read as follows:

"For the reasons set forth in the preamble, part 201, Title 17, Chapter II of the Code of Federal Regulations is amended by adding Subpart E to read as follows."

BILLING CODE 1506-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PS-142; Notice 3]

Program Framework for Risk Management Demonstrations

Correction

In notice document 96-29367 beginning on page 58605 in the issue of Friday, November 15, 1996 make the following corrections:

1. On page 58605, in the third column, in the fourth line from the bottom, "(Insert 60 days from publication date)" should read "January 14, 1997".

2. On page 58606, in the first column, in the seventh line, "(Insert 30 days from publication date)" should read "December 16, 1996".

BILLING CODE 1506-01-D

federal register

Monday
November 25, 1996

Part II

Environmental Protection Agency

40 CFR Part 261, et al.

Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, 264, 265, 270, and 271

[EPA-62-5807; FRL-5834-4]

FEN 2000-AG44

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has published standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the "subpart CC" standards due to their inclusion in subpart CC of parts 264 and 265 of the RCRA subtitle C regulations). These air standards apply to certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

The EPA previously has stayed the effective date of those rules administratively in order to receive and evaluate comments and ultimately to revise the rules in an appropriate manner. Today's action amends and clarifies the regulatory text of the final standards, clarifies certain language in the preamble to the final rule, and in doing so provides additional options for compliance that give owners and operators increased flexibility in meeting the requirements of the rules while still providing sufficient controls to be protective of human health and the environment. In addition, today's action suspends the applicability and implementation of subpart CC of Parts 264 and 265 from October 6, 1996, to December 6, 1996.

DATES: These amendments are effective October 6, 1996. The applicability and implementation of Subpart CC of Parts 264 and 265 is suspended from October 6, 1996, to December 6, 1996.

ADDRESSES: This document is available on the EPA's Clean-up Information Bulletin Board (CLU-IN). To access CLU-IN with a modem of up to 28,800

band, dial (301) 589-8366. First time users will be asked to input some initial registration information. Next, select "D" (download) from the main menu. Input the file name "RCRAAMEN.ZIP" to download this notice. Follow the on-line instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this type "B 104" from the main menu. For additional help with these instructions, telephone the CLU-IN help line at (301) 589-8366.

Docket. The supporting information used for this rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F-91-CESP-FFFFF, F-92-CESA-FFFFF, F-94-CESF-FFFFF, F-94-CE2A-FFFFF, F-95-CE3A-FFFFF and F-96-CE4A-FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability, permitting, enforcement and rule determinations, contact the appropriate regional representative:

Region I:

Stephen Yee, (617) 565-3550, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203-0001

Region II:

Abdool Jabar, (212) 637-4131, John Brogard, 637-4162, Jim Sullivan, 637-3812, U.S. EPA, Region II, 290 Broadway, New York, NY 10007-1866

Region III:

Linda Matyskiela, (215) 566-3420, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107

Region IV:

Denise Housley, (404) 562-8495, Rick Gillam, 562-8498, Judy Sophianopolous, 562-8604, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365

Region V:

Charles Slaustas, (312) 886-6190, Ros Del Rosario, 886-6195, Uylaine McMahan, 886-4454, U.S. EPA, Region V, 5AE-26, 77 West Jackson Street, Chicago, IL 60604

Region VI:

Michelle Peace, (214) 665-7430,

David McQuiddy, 665-6722, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733

Region VII:

Don Lininger, (913) 551-7724, Ken Horstowski, 551-7831, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101

Region VIII:

Mindy Mohr, (303) 312-6525, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466

Region IX:

Stacy Braye, (415) 774-2056, Jean Daniel, 774-2128, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA

Region X:

Linda Liu, (206) 553-1447, David Bartus, 553-2804, U.S. EPA, Region X, OAA-107, 1200 Sixth Avenue, Seattle, WA 98101

For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424-9346. For questions about testing or analytical methods mentioned in this notice, please contact the Emission Measurement Center (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5374. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Note: The EPA notes that this published preamble differs in two respects from that signed by the Administrator on October 4, 1996. First, the EPA has altered the wording of the DATES section of the rule to indicate that these amendments are suspended between the period October 4, 1996, and December 6, 1996. The alteration is in the use of the new term, "suspend." The result of this alteration is equivalent to that in the version of the rule signed October 4, 1996; namely, that the final regulations, as amended by the action signed October 4, 1996, take effect on December 6, 1996. The reason for the altered language is essentially due to conventions in printing format. The EPA has also added an explanation in the preamble to clarify that, in revising this terminology, the EPA is not altering its intent that the effective date of the regulations will be December 6, 1996.

Second, with respect to the issue of whether RCRA subpart AA and BB standards apply to recycling units (i.e., units performing the actual process of recycling) at 90-day generator facilities, the October 4, 1996, preamble did not clearly reflect the text of the regulation or the Agency's intention. The Agency's intent is that recycling units which are exempt from RCRA under 40 CFR 261.6(c)(1) are not subject to subpart AA and

BB standards under 40 CFR part 264 or 265, unless some other unit at the facility has to obtain a RCRA permit. In addition, it is the Agency's intent that units recycling waste that have permit-exempt status by virtue of the provisions of 40 CFR 262.34 (the 90-day unit provision), but are not exempt under the requirement of 40 CFR 261.6(c)(1), are subject to the 40 CFR part 265, subpart AA and BB standards. The preamble discussion contained in the version of this notice signed October 4, 1996, did not clearly distinguish between these two populations, and thus could have easily been interpreted to be contrary to this intent. The EPA has edited the preamble text to clearly reflect its intent.

The EPA believes that making this clarifying change can be done without re-proposing the edited preamble language. In promulgating the October 4, 1996, signed amendments, the EPA did not voice any intention to deviate from previous regulatory actions under this rulemaking that, when applying to generator facilities, subpart AA and BB requirements cover only 90-day tanks and containers (see December 6, 1994, promulgated rule 59 FR at page 62909; final rule Background Information Document, EPA-453/R-94-076b, at page 7-11; July 22, 1991, proposed rule at 56 FR at page 33530; proposed rule Background Information Document, EPA-450/3-89-023c, at page L-3). For this purpose, the EPA does not consider a recycling unit which is exempt from permitting under 40 CFR 261.6(c)(1) to be a 90-day tank or container. Any suggestion in the October 1996 preamble that these recycling units would all be covered would have expanded the scope of the underlying rule, contrary to EPA's stated intent.

The primary reason EPA is correcting the preamble language now (as opposed to a later Federal Register notice, perhaps with a public comment period) is to minimize any confusion on this issue. The best way to do so is to have the Federal Register publication be accurate, not to issue a later notice correcting and clarifying preamble language. The EPA is therefore making changes to be incorporated into this Federal Register notice, in an effort to correct any potentially confusing preamble discussions before publication. This revised notice will replace the version of the notice signed by the Administrator on October 4, 1996, which was previously available on the EPA's CLU-IN electronic bulletin board.

SUPPLEMENTARY INFORMATION:**Regulated Entities**

The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1080 and § 265.1080 of the RCRA subpart CC air rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities as may be necessary to protect human health and the environment. This requirement echoes the general requirement in section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265 subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA is today amending the final subpart AA, BB, and CC standards. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published three Federal Register documents to delay the effective date of that rule. The first (60 FR 26826, May 19, 1995) revised the

effective date of the standards to be December 6, 1995. The second (60 FR 58952, November 13, 1995) revised the effective date of the standards to be June 6, 1996. The third (61 FR 28506, June 5, 1996) further postponed the effective date for the rule requirements until October 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a Federal Register document entitled, "Proposed rule; data availability" (60 FR 41870) and opened RCRA Docket F-95-CE3A-FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1995 and into the present year, the EPA also engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

Sixty-four comment letters were received by the EPA in response to the August 14, 1995 notice of "Proposed rule; data availability;" the commenters included companies affected by the rules, trade associations, consulting companies, and one State environmental agency. Most comment letters contained multiple comments. Comments generally supported the proposed amendments although many offered specific criticisms and suggested changes. The EPA considered all comments on the proposed rule amendments in developing the final amendments published today.

In the August 14, 1995 notice of "Proposed rule; data availability," the EPA requested comment on specific revisions to the final subpart CC tank, surface impoundment, and container standards that the EPA was considering. The notice identified those provisions of the final rule that the revisions would potentially affect which included the waste determination procedures, the standards (or technical requirements) for tanks and containers, and the applicability of the final standards to units that operate with air emission controls in accordance with certain Clean Air Act standards. In addition, it was noted that the revisions would reduce the monitoring, inspection, recordkeeping, and reporting requirements for affected tanks, surface impoundments, and containers.

To further inform the affected public of the major clarifications, compliance options, and technical amendments

being considered, the EPA conducted a series of seminars during August and September of 1995. A total of six seminars were held nationally. (Refer to EPA RCRA Docket No. F-95-CE3A-FFFFF, Item No. F-95-CE3A-S0017.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers. These comments were also considered by the EPA in developing these amendments.

On February 9, 1996, the EPA published a Federal Register notice (61 FR 4903), "Final rule; technical amendment," which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

Today's action amends provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules. The amendments to subparts AA, BB, and CC that are being promulgated today are discussed below in various sections of this preamble. Comments received on the proposed amendments and the EPA's responses to those comments are also discussed together with the changes being made by today's action. Some commenters submitted comments on aspects of the original rule that were unaffected by, and not reopened by the proposed amendments. These comments are outside the scope of the rulemaking for the proposed amendments and, therefore, these comments, although perhaps mentioned, are not addressed in this rulemaking.

In today's amendments, certain sections of the subpart CC rules are reprinted in total; this accounts, in large part, for the lengthy amendatory language contained in today's amendments. Reprinting of entire sections of the rule is being done for two reasons. First, some sections of the rule have been entirely redrafted to improve organizational structure and drafting clarity and to avoid ambiguity while only making minor revisions to the basic control requirements of the rule. Second, in other sections of the rule, the technical requirements have been changed significantly or options added to increase flexibility for the source owner or operator. Therefore, to ensure the rule is implemented as intended and for the convenience of the public, the

EPA decided to reprint these entire sections. In doing so it was not intended to completely reopen these entire sections of the rule for judicial review or legal challenge. As provided by section 7006(a), judicial review is not newly available for aspects of the subparts AA, BB, and CC rules that were already finalized more than 90 days ago, and which are not substantively addressed by today's amendments.

The information presented in this preamble is organized as follows:

- I. Subpart I—Use and Management of Containers and Subpart J—Tank Systems
- II. Subpart AA—Air Emission Standards for Process Vents: Standards for Closed-Vent Systems and Control Devices
- III. Subpart BB—Air Emission Standards for Equipment Leaks
- IV. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers
 - A. Suspension of Subpart CC Rule Requirements
 - B. Retention of Final Compliance Date
 - C. Applicability
 - D. Definitions
 - E. Standards: General
 - F. Waste Determination Procedures
 - G. Standards: Tanks
 - H. Standards: Surface Impoundments
 - I. Standards: Containers
 - J. Standards: Closed-Vent Systems and Control Devices
 - K. Inspection and Monitoring Requirements
 - L. Recordkeeping and Reporting Requirements
- V. Administrative Requirements
 - A. Docket
 - B. Paperwork Reduction Act
 - C. Executive Order 12866 Review
 - D. Regulatory Flexibility Act
 - E. Unfunded Mandates
- VI. Legal Authority

I. Subpart I—Use and Management of Containers and Subpart J—Tank Systems

Under the existing RCRA regulations, hazardous waste generators who accumulate waste on-site for up to 90 days in tanks and containers ("90-day tanks and containers" or "90-day units") may permissibly do so without obtaining a storage permit provided the generator complies with certain conditions specified in 40 CFR 262.34(a). The conditions include compliance with the requirements of 40 CFR part 265, subpart I when the waste is accumulated in a container and 40 CFR part 265, subpart J when the waste is accumulated in a tank.

The subpart CC regulations proposed by the EPA on July 22, 1991 (56 FR 33491) contained provisions to amend the conditions with which a hazardous waste generator must comply to exempt 90-day tanks and containers from RCRA

subtitle C permitting requirements, namely to comply with standards set out in subparts AA, BB, CC applicable to tanks and containers. The EPA took comments on this proposed action and responded to those comments in (among other places) the preamble to the 1994 final subpart CC regulations. The 1994 final rules regarding 90-day tanks and containers were the same as those proposed.

As noted in Section VI.D of the preamble to the 1994 final subpart CC RCRA air rules (59 FR 62910, December 6, 1994), the organic air emissions from 90-day tanks and containers are sufficient to have an adverse and significant effect upon human health and the environment and therefore "led the EPA to require that these units comply with the appropriate air emission control requirements of the subpart AA, BB, and CC standards to maintain an exemption from permitting."

Commenters requested that EPA clarify precisely when 90-day units are subject to the subpart AA, BB, and CC standards, and, in a related question, requested clarification as to when these rules would apply to units that are engaged in recycling. With respect to when the subpart AA, BB, and CC rules apply to 90-day units that are not recycling units (for example, tanks or containers that store hazardous waste before recycling), the EPA intends that the subpart AA, BB, or CC standards apply so long as the substantive applicability provisions of one or more of these subparts is satisfied. This means, for example, that if the 90-day units are receiving hazardous waste with organic concentrations of at least 10 per cent by weight, the subpart BB standards would apply to the associated equipment components; on the other hand, if the units only receive hazardous waste below this applicability threshold, the subpart BB requirements would not apply (see § 265.1050(b)). Similarly, the subpart CC air emission control requirements would apply to a 90-day tank or container if the owner or operator does not demonstrate that the hazardous waste stored in the unit contains average volatile organic concentrations below 500 ppmw. It should be noted that the fact that one of these subparts applies does not automatically mean that the others apply as well. Thus, for example, if a generator manages hazardous waste with organic concentration of 500 ppmw in a tank

equipped with an open-ended valve, the unit would be subject to the subpart CC standards (See § 265.1080(a)). This does not mean that the open-ended valve is also automatically subject to the subpart BB standards; rather, the respective applicability section of those provisions would have to be satisfied before they would apply.

The EPA notes further, however, that the applicability of the subpart AA and BB standards, prior to publication of the final subpart CC rule in December 1994, was conditioned on there being another unit at the facility otherwise requiring a RCRA permit—the notion being that the subpart AA and BB rules by themselves would not require a facility to obtain a RCRA permit (see Section V of the preamble in 55 FR 25449, June 21, 1990, and §§ 265.1030(b)(2) and 265.1050(b)(2)).¹ This consideration does not apply to 90-day units, since these units are not subject to RCRA permitting requirements in any case. In addition, the risks posed by these units is the same whether or not another unit at the plant has received a RCRA permit; the EPA evaluated and discussed these risks when promulgating the December 1994 final rule and found that substantive controls were necessary to protect human health and the environment. See 59 FR at 62910 and also Appendix L, 90-Day Tanks and Container Impacts, in "Hazardous Waste TSD—Background Information for Proposed RCRA Air Emission Standards" (EPA-450/3-89-023c), June 1991. Consequently, subparts AA and BB apply to 90-day tanks and containers whether or not another unit at the facility has to obtain a RCRA permit (assuming the other applicability criteria in the rule are satisfied, as explained above). For this purpose, the EPA does not consider a recycling unit which is exempt from permitting under 40 CFR 261.6(c) to be a 90-day tank or container. The EPA is adding clarifying language as a part of today's rule amendments to make clear that applicability of subparts AA and BB to 90-day units is not conditioned on another unit at the generator's facility obtaining a RCRA permit.

With respect to the commenters' questions regarding applicability of the subpart AA, BB, CC rules to recycling units (i.e., units actually performing the recycling function, such as a solvent distillation column), EPA notes the following principles. The revised applicability sections to subparts AA and BB state that units that have permit exempt status by virtue of 40 CFR 262.34, including recycling units, will

¹ The subpart CC rules are not so conditioned.

now be subject to subparts AA and BB. In practice, the EPA does not believe that this will include many, if any, recycling units. This is because such units typically are exempt from RCRA permitting by virtue of 40 CFR 261.61(c)(1). Thus, the net effect of these amendments, with respect to recycling units, is to preserve the status quo of regulating those units which are located at a facility which must obtain a RCRA permit for some other unit.

In addition, subpart CC does not apply to recycling units. Section 261.6(d), Requirements for recyclable materials, for example, does not indicate that recycling units must comply with the subpart CC provisions. The reason these provisions do not apply is that the standards are not normally appropriate for recycling units handling volatile hazardous wastes; rather, the subpart AA standards are the appropriate standards. The emission mechanisms for traditional hazardous waste storage tanks (e.g. circular above-ground units with open tops or covered open tops) differ significantly from the emission mechanism of the distillation-type unit used for recycling and certain treatment operations (e.g. air strippers and thin-film evaporators) regulated under subpart AA. Recycling units typically emit air pollutants through some type of process vent, and consequently are controlled under the subpart AA process vent standards. The suppression-type controls (e.g. covers) prescribed for traditional storage and treatment tanks in subpart CC simply are not suitable for most distillation-type units.

Finally, EPA is slightly amending the applicability sections of subparts AA and BB to make clear that these standards can apply to non-recycling units that are located at either TSD sites or generator accumulation sites, assuming that the units otherwise satisfy the subpart AA or BB applicability requirements. Thus, for example, a steam stripper engaged in conventional hazardous waste treatment at a permitted TSD could be subject to the subpart AA standards. The risks posed by the types of units enumerated in subparts AA and BB are the same, whether or not they are recycling or non-recycling units, so any distinction between them is unfounded. In fact, today's language merely clarifies the coverage of the existing subpart AA and BB rules, since those rules already cover all units (i.e. recycling and non-recycling) that are subject to the permitting requirements of part 270, and thus covers non-recycling units.

The following examples illustrate these principles.

1. Generator A stores volatile spent solvents (F001) in 90 day tanks before recycling them in an on-site distillation column. The facility has one other unit requiring a RCRA permit. The volatile organic concentration of the waste exceeds the subpart AA, BB and CC applicability thresholds.

In this case, the 90-day storage tanks and associated equipment components are subject to the subpart BB and subpart CC standards, since the substantive applicability standards of both subparts are satisfied. Subpart AA does not apply to the spent solvent storage tanks (assuming the tanks are not distillation, fractionation, thin-film evaporation or other type of unit set out in § 265.1030(b), the subpart AA applicability section). The distillation column (and its associated equipment) is subject to the subpart AA and BB standards, but not the subpart CC standards since subpart CC does not apply to recycling units.

2. Same facts as Example 1 except that the waste contains less than 10 percent total organics and greater than 500 ppmw volatile organics.

In this case, the spent solvent storage tank is subject to the subpart CC standards but the associated equipment components are not subject to the subpart BB standards (since subpart BB does not apply to hazardous wastes with less than 10 percent total organic content). The distillation column is subject to the subpart AA standards for the reasons explained in Example 1. This example illustrates that applicability of one of the subparts (AA, BB, or CC) does not automatically mean that the standards from the other subparts also apply. The substantive applicability provisions of each subpart still must be satisfied.

II. Subpart AA—Air Emission Standards for Process Vents: Standards for Closed-Vent Systems and Control Devices

On the subject of closed-vent systems and control devices, commenters requested a provision for control device downtime to allow for preventive, routine, or non-routine maintenance; an exemption for control devices subject to 95 percent efficiency requirements in other rules from performance test and design analysis requirements; an exemption from monitoring requirements for closed-vent system components that operate under negative pressure; a revision such that only spent carbon removed from a carbon adsorption system that is a hazardous waste must be managed in accordance with subpart CC requirements; and a reduction in the closed-vent system and

control device inspection and monitoring requirements.

The EPA has decided to amend certain of the control device and closed-vent system standards of subpart AA in 40 CFR parts 264 and 265 so that these requirements are consistent and up-to-date with the general decisions the EPA has made regarding inspection, monitoring, maintenance, repair, malfunctions, recordkeeping, and reporting requirements for organic air emission control devices and associated closed-vent systems installed and operated to meet requirements of other regulations under the Clean Air Act or RCRA (e.g., National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations, 61 FR 34140, July 1, 1996). These revisions are both consistent with the integration provisions of RCRA Section 1006(b), which require that RCRA standards be consistent and not duplicative of Clean Air Act standards, and also are a part of the EPA's overall approach of allowing unit-specific Clean Air Act standards to be used in lieu of control requirements under RCRA subpart CC. (See § 265.1080(b)(7) in today's amended rule.) The changes to the control device and closed-vent system standards in no way affect the overall performance or emission reductions achieved by the control devices and closed-vent systems. Therefore, the revised standards are considered by the EPA to be equally protective to those already adopted, and thus adequate to protect human health and the environment. The revisions to the standards for closed-vent systems and control devices in subpart AA of 40 CFR parts 265 and 264 include the changes described below.

The monitoring requirement for a condenser in § 264.1033(f)(2)(vi)(B) and § 265.1033(f)(2)(vi)(B) is being revised such that only the temperature of the exhaust vent stream from the condenser exit must be continuously monitored; the requirement to monitor the coolant fluid temperature exiting the condenser is being dropped. This revision reduces the owner's or operator's monitoring and recordkeeping burden while maintaining the EPA's ability to ensure that the emission control equipment is properly operated and maintained to achieve the required emission reduction.

The closed-vent system requirements in § 264.1033 and § 265.1033 are being revised such that a closed-vent system that is designed to operate at a pressure below atmospheric pressure is not required to be monitored by Method 21 procedures either initially or annually. For those negative pressure systems, an

initial visual inspection and annual follow-on inspection is required; in addition, a pressure gauge or other pressure measurement device is required to verify that negative pressure is maintained in the closed-vent system when the control device is operating. As noted in section 10 of the preamble to the earlier subpart CC rule clarifications (61 FR 4910, February 9, 1996), "the EPA had intended to not require annual monitoring of closed-vent system components which operate under pressure such that all emissions are routed to a control device even if a leak or hole exists in the component. A component that continuously operates under negative pressure would satisfy this intent." In today's action, the EPA is removing the requirement for the initial leak detection monitoring for negative pressure systems; this change reduces owner or operator burden resulting from any redundant or non-productive monitoring.

Unsafe-to-monitor and delay of repair provisions for closed-vent systems are being added. Corresponding recordkeeping requirements also are being added. This common sense change is made to avoid creating any unsafe conditions as a result of the monitoring requirements of subpart AA, § 264.1033 and § 265.1033. This revision adds the same type of unsafe-to-monitor and delay of repair provisions that are contained for pumps and valves in the subpart BB—Air Emission Standards for Equipment Leaks as well as in other equipment leak standards promulgated under the Clean Air Act.

On April 23, 1996, the EPA published a notice of data availability (61 FR 17863) addressing the narrow issue of whether "Other Thermal Treatment Facilities" subject to regulation under subpart P of part 265 (40 CFR 265.370 through 265.383) are eligible to receive for regeneration spent activated carbon which is a hazardous waste. In the December 6, 1994 final subpart CC standards (59 FR 62896), the EPA established a requirement that spent activated carbon removed from a control device had to be managed at particular types of facilities, namely regulated boilers or industrial furnaces, or "thermal treatment units that (are) permitted under subpart X of 40 CFR part 264 or subpart P of (part 265)." See 40 CFR 265.1033(l)(1) as promulgated at 59 FR 62935 (December 6, 1994). A parallel requirement was contained in 40 CFR 264.1033(m), but no reference to subpart P was included (59 FR 62827). In the February 9, 1996 technical correction notice, the EPA amended these provisions to clarify that they apply only to activated carbon which is

a hazardous waste, and that interim status boilers and industrial furnaces which had certified compliance and interim status incinerators could treat such activated carbon. (See 61 FR 4910, 4911, and 4913.) In doing so, the EPA removed the reference to subpart P facilities in § 265.1033(l)(1); thus removing such facilities from eligibility to receive hazardous waste spent activated carbon.

As a part of today's amendments, EPA is restoring the eligibility of subpart P facilities to treat hazardous waste spent activated carbon. So long as the hazardous waste spent activated carbon is managed safely by such facilities, there is no automatic reason to preclude such facilities' eligibility to manage the spent carbon. However, because the subpart P standards do not contain substantive air emission control provisions that assure that any hazardous organic constituents described from the carbon are adequately controlled rather than emitted to the atmosphere during regeneration or other treatment, the EPA is requiring that units receiving such hazardous wastes meet the control requirements of the subpart CC rules or are units which are subject to emission control requirements under 40 CFR part 61 or part 63. With respect to this last point, this means that the actual unit must meet a part 61 or 63 control standard for hazardous air pollutants. If the standard is no control or if compliance with the standard is determined on a plant-wide (viz. averaging among units) basis, then it could not be used in place of the subpart CC standards.

It should be noted that the EPA is imposing this requirement regardless of the organic content of the carbon being regenerated, so long as the activated carbon is a hazardous waste. This is because the purpose of the carbon is to capture organic emissions, and it is the Agency's judgment that in light of this purpose, the carbon will be saturated with organics which would need to be captured or destroyed and not released indiscriminately during the regeneration process (see 56 FR 7200, February 21, 1991).

Finally, in order to assure maximum flexibility for protective compliance, the EPA is adding that permitted facilities (i.e., Part 264 facilities) complying with either the subpart CC standards, or a part 61 or 63 Clean Air Act standard, are also eligible to receive spent carbon (which is a hazardous waste) for regeneration. Such facilities certainly would be operating protectively and so should be eligible to receive spent carbon. The EPA notes, however, that this provision may be redundant in light

of the provision in the existing rule stating that units which have received a subpart X permit are eligible to receive such activated carbon (§ 265.1033(m)(1)(ii)), but commenters indicated a preference for this clarification of eligibility. In order that there be no confusion, the EPA is adding it to the final rule.

III. Subpart BB—Air Emission Standards for Equipment Leaks

Commenters requested that the EPA incorporate into the subpart BB standards recent changes that have been made to other national standards that require equipment leak detection and repair programs. In response, revisions to the emission standards for equipment leaks consist of incorporating changes to the requirements so that the subpart BB requirements in parts 264 and 265 are consistent and up-to-date with the general decisions the EPA has made regarding leak detection and repair program requirements for organic air emission control in other regulations under the Clean Air Act (e.g., National Emission Standards for Hazardous Air Pollutants (NESHAP): Off-Site Waste and Recovery Operations, 61 FR 34140, July 1, 1996, or the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, 40 CFR part 63, subpart H, 59 FR 19402, April 22, 1994, i.e., the HON). These revisions are consistent with the integration provisions of RCRA Section 1006(b) which require that RCRA standards be consistent and not duplicative of Clean Air Act Standards and are a part of the EPA's overall approach of allowing Clean Air Act standards to be used in lieu of control requirements under RCRA TSDF air rules. The changes to the subpart BB equipment leak standards in no way affect the overall performance or emission reductions achieved. Therefore, the revised standards are considered by the EPA to be equally protective as those being replaced. The revisions to the standards for equipment leaks in subpart BB of 40 CFR parts 265 and 264 include the changes described below.

The applicability provisions of subpart BB (§ 264.1050 and § 265.1050) are revised to exclude equipment that contains or contacts affected hazardous waste for a period of less than 300 hours per calendar year from the equipment leak control requirements. This change parallels the applicability provisions in the Hazardous Organic National Emission Standard for Hazardous Air Pollutants ("HON"). (Supporting information for this decision is contained in the CAA docket A-90-20, item II-B-5.)

The sampling connection system requirements of subpart BB are being revised consistent with the HON such that gases displaced during filling of the sample container are not required to be collected or captured. In the context of the HON, EPA explained that it was not necessary to require control of those vapors. Also, the requirement for no detectable emissions to the atmosphere during return of the purged hazardous waste stream to the hazardous waste management process line, or during collection and recycling of the purged hazardous waste, is being eliminated. Upon further review, the EPA has determined that the emissions from these extremely small amounts of hazardous waste can be adequately controlled if the owner or operator stores the sample waste in a covered container, and ensures it is treated or disposed in a manner consistent with the requirements for the waste stream from which it was extracted.

Under today's amendments, any connector that is inaccessible or is ceramic or ceramic-lined is exempt from the monitoring and recordkeeping requirements of subpart BB as is the case in recent EPA rules such as the HON. (See Section VI.C of the HON preamble for further discussion regarding the rationale for these changes to EPA's equipment leak standards, 59 FR 19445, April 22, 1994)

IV. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

A. Suspension of Subpart CC Rule Requirements

Today's rule is being signed on October 4, 1996, and the substantive requirements of the rule take effect on December 6, 1996. The EPA is clarifying here that, for all practical purposes, December 6, 1996, is the effective date of the rule. The EPA is further clarifying that the December 6, 1994, rule, which was stayed until October 8, 1996, is not taking effect during the two months between October 6, 1996, and December 6, 1996, the reason being that it is superseded by these October 4, 1996, amendments.

To accomplish this result, the EPA is indicating (in the DATES block of this Federal Register document), that the applicability and implementation of Subpart CC of Parts 264 and 265 is suspended until December 6, 1996. The result, as just stated, is that: (1) The December 1994 rules are replaced by the amended rules as of October 4, 1996; and (2) members of the regulated community are not subject to any of the requirements in the October 4, 1996,

amended rule between October 4, 1996, and December 6, 1996.

The EPA specified in the 1994 final rule a schedule that established the compliance dates by which different requirements of the final rule must be met. These requirements and compliance dates (all of which are December 6, 1996, or later) are explained further in the final rule (59 FR 62896, December 6, 1994) under SUPPLEMENTARY INFORMATION. Today's amendments do not change the dates by which compliance with all the requirements must be achieved. Thus, all compliance dates for the final rule, as amended today, remain as published in the 1994 final rule (59 FR 62896).

Given that the EPA is amending the rule in ways that would increase compliance flexibility and reduce certain regulatory requirements (and in no cases would increase the stringency of the standards or eliminate a previously existing compliance option), the EPA considers it appropriate to suspend the requirements that became effective October 6, 1996, for two months to December 6, 1996. By December 6, 1996, affected sources will have had ample time to make any necessary alterations to their compliance plans in response to today's amendments. Affected sources have been on notice of the final regulations since they were published in December 1994. The EPA expects that by early 1995, most facilities had begun preparing their implementation strategies and planning for any necessary equipment modifications, in anticipation of the originally scheduled implementation date of June 6, 1995. Thus, the EPA considers a two-month suspension to provide sufficient time for affected facilities to become familiar with the revised requirements contained in the amended standards, and to make any necessary revisions to their implementation strategies.

B. Retention of Final Compliance Date

The December 6, 1994 published rule set a final compliance date of December 8, 1997, by which time all required air emission control equipment must be operating (59 FR 62897). The EPA does not believe that suspending the rule requirements necessitates any postponement of the December 8, 1997 compliance date. The final compliance date was chosen to allow time for facility modifications that may be involved in the compliance approach of certain facilities. The EPA believes that, for many air emission control applications, the required control devices can be installed and in operation within several months.

However, the EPA agrees that under some circumstances, the owner's or operator's approach to complying with the air emission control requirements under the subpart CC standards may involve a major design and construction project which requires a longer time to complete. In recognition of these cases, the EPA decided that it is reasonable to allow up to December 8, 1997, for affected facilities to install and begin operation of air emission controls required by the subpart CC standards (See Hazardous Waste TSDF Background Information Document for Promulgated Organic Air Emission Standards, EPA-453/R-94-076b, page 9-7).

The final rule requirements that may necessitate a major modification, as described above, for tanks are paragraphs (b) through (d) of 40 CFR 264.1084 and 265.1085. These paragraphs specify air emission control equipment that must be operated on tanks receiving affected hazardous waste. Similarly, the requirements that may necessitate such a major modification for surface impoundments are paragraphs (b) through (e) of 40 CFR 264.1085 and 265.1086. These paragraphs specify air emission control equipment that must be operated on surface impoundments receiving affected hazardous waste. To comply with these requirements for tanks and surface impoundments, facilities may choose to construct new hazardous waste management units to replace existing units, or may choose to modify existing hazardous waste management units. Examples of facility equipment modifications that could require an extended period of compliance would be replacing a large open surface impoundment with a series of covered tanks, or fitting an existing open tank with a fixed roof vented to a control device. The EPA recognizes that such major modifications or new construction can require several months or more, and therefore allows until December 8, 1997, for facilities to comply with the air emission control requirements of the final subpart CC standards.

In addition, certain States may require that a facility obtain a permit modification prior to performing a major modification such as those described above. The EPA recognizes that such a permit modification can be a lengthy process, and therefore felt it was appropriate to afford an extended compliance period to allow such modifications to be obtained (59 FR 62919). The EPA does not expect that such a lengthy period of implementation would be required in

circumstances other than those described above, although § 264.1082(c) allows that such a period is available if necessary.

The final rule provisions that justified a compliance date of December 8, 1997, are not among those that are affected by the revisions being made under today's action. Specifically, the EPA is not considering either a broader applicability or more stringent control requirements for covers and air emission controls on tanks and surface impoundments. All affected facilities thus have been on notice of the final rule air emission control requirements for these units since the final CC rule publication on December 6, 1994. Therefore, the EPA does not consider it appropriate to postpone the compliance date of December 8, 1997, by which all required air emission control equipment must be operating.

It should be noted that the Regional Administrator may elect to extend the implementation date for control equipment at a facility, on a case by case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of the subpart CC rules (see § 265.1082).

C. Applicability

Numerous comments were received concerning overlap between the RCRA subpart CC rules and Clean Air Act NESHAP, particularly the HON. Most commenters argued that subpart CC requirements should not apply to units, either 90-day generators or TSDF, meeting Clean Air Act control requirements, including units meeting standards through emissions averaging.

The EPA fully recognizes that in developing air standards to meet congressional directives established by provisions in the Clean Air Act and Resource Conservation and Recovery Act, the potential exists for regulatory overlap. However, it is the EPA's intention to minimize, if not eliminate, regulatory overlap to the extent that the Agency is allowed under the different legislative acts. Section 1006(b) of RCRA indeed requires that the air standards be consistent with and not duplicative of Clean Air Act standards. Similarly, the Clean Air Act voices a strong preference for consistency of CAA section 112 standards and RCRA standards where practicable (see section 112(n)(7)).

The EPA is aware that at some sites managing hazardous wastes, the owner or operator of the hazardous waste

treatment, storage, and disposal facility could be subject to the RCRA air rules under subparts AA, BB, and CC and also subject to a Clean Air Act NESHAP standard such as the Off-Site Waste rule or the HON. At a particular TSDF, some waste management units may be required to use air emission controls under one or the other, but not both, a Clean Air Act NESHAP and the RCRA air rules. However, some other waste management units could be subject to using air emission controls to comply with both sets of rules. It is unnecessary for owners and operators of those waste management units subject to air standards under both sets of rules to perform duplicative testing and monitoring, keep duplicative sets of records, or perform other duplicative actions.

In Section VI.A, *Development of Air Standards Under RCRA*, of the preamble to the final rule (59 FR 62906, December 6, 1994), the EPA discussed the potential for duplication between the RCRA air rules and various rules being developed under the Clean Air Act maximum achievable control technology (MACT) program but noted that the air standards developed under RCRA section 3004(n) did not duplicate or contradict existing NESHAP or new source performance standards (NSPS). As the MACT program has matured and additional standards have been developed, the EPA is now aware that the possibility for overlap is greater than was originally thought.

The EPA has decided that the best way to eliminate any regulatory overlap is to amend the RCRA rules to exempt units that are using air emission controls in accordance with the requirements of applicable Clean Air Act NESHAP or NSPS regulations. Therefore, the subpart CC applicability is amended to exempt any hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63, with the sole exception of tanks being controlled through the use of an enclosure rather than a cover. (The EPA's rationale for placing additional conditions on that control approach is explained in detail in sections E and G of this preamble.) Providing this exemption eliminates the possibility of duplicative or conflicting requirements for those TSDF tanks, surface impoundments, or containers using organic emission controls in compliance with a NESHAP but also subject to requirements under the RCRA standards. It is important to note that this exemption only applies to those

units using organic air emission controls. This seems to EPA to be the best way to assure that air emissions from hazardous waste management units are controlled to the extent necessary to protect human health and the environment. A unit that does not use the required air emission controls but is in compliance with a NESHAP through an "emission averaging" or "bubbling" provision does not qualify for the exemption since EPA lacks assurance that emissions from the unit are controlled to the extent necessary to protect human health and the environment.²

Similarly, if the Clean Air Act standard for the particular unit is no control (for example, because the MACT floor for the source category is no control and the Agency decided not to apply controls more stringent than the floor), the exemption from the RCRA standards would not apply since the unit would not actually be controlled under provisions of the MACT standard. Again, as stated above, the EPA believes the best way to assure protectiveness in this national rule is to require controls on each particular unit.

Section 3004(n) of RCRA, of course, requires that EPA control emissions from (among other things) tanks, surface impoundments, and containers as may be necessary to protect human health and the environment. Some of the Clean Air Act standards, in contrast, are technology-based controls implementing the provisions of section 112(d) of the Clean Air Act. The EPA, however, has found that under some circumstances a technology-based standard may satisfy the RCRA protectiveness requirement by adequately controlling air emissions and thus adequately controlling risk or controlling risk sufficiently that the

²EPA believes it is both reasonable and legally permissible to interpret section 3004(n) to apply to specific waste management units. Section 3004(n) addresses specific unit types ("open tanks, surface impoundments, and landfills"), and the overarching requirement to control air emissions at hazardous waste management "facilities" can reasonably be construed as applying to individual units. See *Mobil Oil Corp. v. EPA*, 871 F.2d 140, 152-54 (D.C. Cir. 1989). On the other hand, "facilities" might also be construed to apply to an entire plant, *id.* at 153. Consequently, EPA is not indicating by the discussion in the text that an averaging approach is legally foreclosed. Certain types of site-specific demonstrations, for example, might indicate the appropriateness of an averaging approach to demonstrating that air emissions from hazardous waste management are sufficiently controlled. In such a situation, EPA could interpret the term "facility" as applying to an entire plant. What EPA is finding in this rule is that for this national rule (i.e., in the absence of potential case-specific demonstrations), the best way of assuring that emissions from hazardous waste tanks, containers, and impoundments are sufficiently controlled is to require control of each particular unit.

Clean Air Act section 112(f) residual risk process need not be interdicted. See 60 FR at 32593 (June 23, 1995), the preamble for final MACT standards for the secondary lead source category, and 61 FR at 17369-370 (April 19, 1996), the preamble for proposed MACT standards for hazardous waste combustion units.

The EPA is finding here that where there are MACT air emission control requirements for a specific unit otherwise covered by subpart CC, the MACT requires the same technical air emission controls as would be required under subpart CC. Thus, it follows that compliance with the MACT requirements would thus afford equal protectiveness as would be achieved under subpart CC, and therefore can be considered to satisfy the RCRA protectiveness requirements. This is a conscious effort on the Agency's part to provide consistency of requirements where at all possible in its rulemakings.³

The technical requirements for the RCRA air rules in subpart CC as amended are essentially the same as those published by the EPA under the MACT program (e.g., those in subparts OO, PP, and QQ of part 63). A unit controlled under one or the other set of

³For example, EPA, in promulgating the final requirements for the Off-Site Waste and Recovery Operations NESHAP (61 FR 34147, July 1, 1996), added a series of new subparts to 40 CFR part 63. These subparts included Subpart OO—National Emission Standards for Tanks—Level 1, Subpart PP—National Emission Standards for Containers, Subpart QQ—National Emission Standards for Surface Impoundments, Subpart RR—National Emission Standards for Individual Drain Systems, and Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators. These standards are essentially identical to the requirements for tanks, containers, and impoundments found in the RCRA subpart CC rule under discussion in this notice.

The EPA set out at length in the Off-Site Waste rule preamble (59 FR 62906) the Agency's goal as to integration of these various air standards, "the EPA decided to promulgate the air emission control requirements for selected types of units in individual subparts for ease of reference, administrative convenience, and as a step towards assuring consistency of the air emission control requirements applied to similar types of units under different rules. The EPA believes adopting the format of codifying the air emission control requirements for specific unit types in individual subparts will provide significant advantages to both regulated industries and to the Agency."

"A major advantage for using the unit-specific subpart format for NESHAP and other air rules is for those situations when more than one rule applies to a particular source (e.g., a tank) and each of these rules requires use of air emission controls on that source (e.g., a fixed roof). By establishing unit-specific subparts, all of the rules will reference a common set of design, operating, testing, inspection, monitoring, repair, recordkeeping, and reporting requirements for air emission controls. This eliminates the potential for duplicative or conflicting air emission control requirements being placed on the unit by the different rules, and assures consistency of the air emission control requirements applied to the same types of units."

requirements would achieve the same emission reduction and performance level; and the various requirements thus provide the same level of protection.

D. Definitions

Definitions are being added for closure device, continuous seal, enclosure, hard-piping, in light material service, malfunction, metallic shoe seal, no detectable organic emissions, safety device, and single-seal system and other definitions are being revised consistent with their use in the amended regulation. These amended or added definitions do not directly affect the substance of the subpart CC standards, but rather, serve to clarify the 1994 final provisions, or today's amended provisions, of the final regulations.

E. Standards: General

1. Action Level

Several major changes are being made to the general standards for the final subpart CC rule. First, the average VO concentration action level for hazardous waste required to be managed in the units using air emission controls under the rule is being changed to 500 ppmw (as determined at the point of waste origination). Units managing hazardous wastes determined by the owner or operator to have average VO concentrations that remain less than 500 ppmw are not required to use air emission controls under the rule.

The EPA considered a range of possible values to establish the VO concentration limit for the Subpart CC RCRA air rules. The EPA proposed a VO concentration value of 500 ppmw to be used as the action level for the rule (56 FR 33491, July 22, 1991) and promulgated an action level of 100 ppmw in the 1994 final subpart CC rule (59 FR 62907). However, in promulgating this value, the EPA acknowledged that some hazardous waste management units subject to the subpart CC RCRA air rules could be subject to other Clean Air Act NESHAP and NSPS with differing action levels (59 FR 62903, 62906, and 62907).

The EPA received comments in response to the August 14, 1995 Federal Register notice, stating that the 100 ppmw VO concentration action level promulgated by the EPA for the subpart CC RCRA air rules is inappropriate (e.g., the action level cannot be justified on the basis of risk and the action level is too close to the detection limit of method 25D; this results in numerous waste determination errors such as false positives) and is inconsistent with other applicable Clean Air Act NSPS and NESHAP (i.e., the Off-Site Waste rule,

the HON, and the proposed new source performance standard (NSPS) for volatile organic compound emissions from the synthetic organic chemical manufacturing industry wastewater (59 FR 46780, September 12, 1994), all apply to wastes and/or wastewaters and all have higher action levels. The commenters recommended that the EPA select a higher action level of 500 ppmw for the rule, consistent with the above noted Clean Air Act rules.

The EPA considered the comments received regarding the action level, other revisions being considered for the final subpart CC RCRA air rules, and changes that the EPA anticipates making for other waste and wastewater-related rules. The EPA concluded that a reexamination of the action level determination was appropriate. Based on consideration of the information available to the Agency regarding emissions from hazardous waste management TSD operations, the EPA has concluded that an average VO concentration value of 500 ppmw is reasonable and accomplishes an adequate general level of protection, as compared with the 100 ppmw action level of the 1994 published rule. As was discussed in Section V.C. of the preamble published on December 6, 1994 (59 FR 62905), all five of the control options considered for the final rule are estimated to achieve similar levels of substantial reductions in nationwide organic emissions from TSD and in annual cancer incidence. Under the new action level of 500 ppmw, the MIR for most of the 2,300 TSD nationwide are estimated to be below the target MIR range of between 1×10^{-4} and 1×10^{-6} .

Thus, while the action levels at 100 ppmw and 500 ppmw are not equally protective of human health and the environment to the extent ascertainable by the modeling methodology used, these action levels do achieve the same general range of protection and were in the zone of reasonable values being considered by EPA for selection as the action level for the final rule. After further consideration, the EPA has concluded that the degree of incremental risk reduction at the 500 ppmw action level is so small as to not warrant the inconsistency and attendant disruption with other air rules applicable to hazardous waste TSD. This incremental risk reduction is made less relevant by the fact that the EPA has already stated in the preamble to the final rule (59 FR 62905) that (even at the 100 ppmw action level), "the EPA is further evaluating the waste management practices and the specific chemical compounds composing the

organic emissions from those individual TSD for which the MIR values are estimated to be greater than the historical RCRA target MIR levels. Following this evaluation, the EPA will determine what other actions, such as the use of section 3005(c)(3) omnibus permitting authority or additional rulemaking, are necessary to attain the health-based goals of RCRA section 3004(a)."

2. Treatment Alternatives

The treatment alternatives in the General Standards (§ 264.1083 and § 265.1083) are being revised where appropriate to reflect the new action level of 500 ppmw. The treatment alternatives contained in the General Standards of the subpart CC RCRA air rules provide owners or operators with a selection of alternative provisions for determining when a treated hazardous waste is no longer required to be managed in units meeting the air emission control requirements of the rule. The alternatives contained in the final CC rules published December 6, 1994 are being revised as a result of the change in the action level. The volatile organic concentration criteria contained in some of the alternatives are being revised upward to reflect the higher action level of 500 ppmw. Additional alternatives also are being added to the rule to provide greater flexibility to the owner or operator in the treatment of hazardous waste. The changes being made to the General Standards by today's action are described below.

For the treatment option that requires an organic reduction efficiency for the process of at least 95 percent and an average VO concentration of the waste at the point of waste treatment of less than 50 ppmw (§ 264.1082(c)(2)(ii)), the criteria for the average VO concentration of the treated waste is raised to 100 ppmw in direct response to the change in the action level. The value of 50 ppmw was chosen for the 1994 final rule to provide some added level of demonstration that co-mingled wastes streams had achieved a level of organic reduction through treatment, rather than through dilution (see 59 FR 62915, December 6, 1994). The selection of 50 ppmw in the 1994 final rule guaranteed that hazardous waste streams with VO concentrations of 2,000 ppmw or less at their point of waste origination were being reduced by 95% organics through treatment, as opposed to dilution. For today's final rule, EPA considers it appropriate to modify that 50 ppmw value to be 100 ppmw. In part, EPA is making this modification in response to comments that the value of 50 ppmw was too close to the level of detection

for the test method 25D, and was therefore a very difficult and costly demonstration for the facility. After further consideration, the EPA feels that an exit concentration value of 100 ppmw is much less difficult and costly for a facility to make. Further, when combined with the revised action level of 500 ppmw for the overall rule, an exit value of 100 ppmw will ensure that the majority of hazardous waste streams are achieving the 95% reduction through treatment, as opposed to dilution that may occur through commingling.

For the treatment option that allows mixed hazardous waste to be treated by an organic destruction or removal process that reduces the VO concentration of the hazardous waste to meet a site-specific treatment process exit concentration limit (§ 264.1082(c)(2)(v)); the requirement that only hazardous waste enter the process is being removed. The exit concentration limit is being revised to be the lowest average VO concentration at the point of waste origination for each individual waste stream entering the process or 500 ppmw, whichever value is lower (this latter change is consistent with the revised action level for the standards also contained in today's action). Upon evaluation of this option, the EPA agreed with commenters that making these revisions will allow operators to use this option with a greater number of waste management systems, while still ensuring that reductions in VO concentrations are achieved through organic treatment or removal, as opposed to dilution.

A treatment option (§ 264.1082(c)(2)(vii)) is being added that requires an organic reduction efficiency for the process equal to or greater than 95 percent, and the average VO concentration of each individual waste stream entering the process is certified by the owner or operator to be less than 10,000 ppmw at the point of waste origination. This option is being added in response to commenters' concerns that many waste treatment operations have a multitude of waste streams being co-mingled early in the treatment process, and it would be infeasible for an operator to evaluate each waste stream. Further, the commenters stated that for these same treatment systems, the concentration of the hazardous waste streams at their point of waste origination is relatively low (e.g. 600 ppmw), and the exit concentration that would be required to demonstrate a 95% removal efficiency (in this example 30 ppmw) is below the level of detection of many organic test methods. Therefore, the EPA considered it reasonable to allow the owner or

operator to document the 95% organic removal efficiency of the control device, and certify that no waste streams greater than 10,000 ppmw at their point of origination were entering the centralized treatment process. The EPA chose the upper value of 10,000 ppmw because any waste stream with less than 10,000 volatile organic concentration, when treated with a 95% efficient organic control device, would be reduced to below 500 ppmw (and thus would not require further control under the subpart CC regulations. The EPA considers the combination of these two criteria (95% efficient organic control device, and waste streams below 10,000 ppmw VO concentration at their point of waste origination) to be adequate to ensure that any waste stream entering the treatment process is adequately treated for the purpose of the subpart CC standards.

3. Exemptions

An exemption from subpart CC control requirements is added to the General Standards to further clarify that a tank or surface impoundment used for biological treatment of hazardous waste in accordance with provisions in the subpart CC General Standards (§ 265.1082(c)(2)(vi) or § 264.1082(c)(2)(vii)) is exempt from the control device requirements under the rule. This was the Agency's intent in the 1994 promulgated rule, but several commenters advised the EPA that this intent was not evident. Therefore, the EPA is making this addition to the General Standards to more clearly describe this intent.

The following two exemptions are being added to the subpart CC General Standards in order to avoid the potential overlap of the subpart CC rules with RCRA standards established as part of the Land Disposal Restrictions (LDR) and to avoid overlap with the recently promulgated Benzene Waste Operations NESHAP.

In response to commenters' requests that compliance with applicable LDR treatment standards be reinstated as a subpart CC treatment alternative, an exemption from the subpart CC control requirements is being added for a tank, surface impoundment, or container if the material placed in the unit is a hazardous waste that meets the numerical concentration limits for organics applicable to the hazardous waste, as specified in 40 CFR part 268 (Land Disposal Restrictions) under Table—"Treatment Standards for Hazardous Waste" in 40 CFR 268.40, or has been treated by the treatment technology established by EPA for the waste in 40 CFR 268.42(a), or treated by

an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

The EPA in fact originally proposed such a provision (see 56 FR 33491, July 22, 1991), and commenters stressed again that wastes meeting LDR requirements for organics would have reduced organic concentrations sufficiently so that there need not be air emission controls on the units receiving the wastes. Upon reflection, EPA now agrees with these comments. The LDR treatment standards are based on the performance of Best Demonstrated Available Technology and are deemed sufficient to minimize threats to human health and the environment posed by land disposal of the waste. See 51 FR 40572, November 7, 1986 and RCRA section 3004(m)(1). In fact, the standards for most organics reflect the performance of combustion technology, which destroys organics to non-detectable levels, so that the treatment standard is actually the analytic detection limit for the organic times a factor which reflects technological variability. Consequently, it is EPA's finding here that units receiving wastes that satisfy these standards for organics need not be controlled further, since the organics in the wastes are already reduced to levels where threats posed by release of the organics have been minimized.

The EPA notes that, to be exempt from the subpart CC standards, the waste must meet the LDR treatment standards for that waste whether or not the waste actually is prohibited (or restricted) from land disposal, i.e., whether or not the waste is going to be ultimately land disposed. Thus, for example, if an organic ignitable waste is going to be managed in tanks and ultimately disposed of in a manner not involving land disposal, in order for the tanks to be exempt from subpart CC (assuming the subpart CC rules otherwise apply), the waste would have to meet the treatment standards for D001 wastes. It should be clear from this example that the treatment standards are being used here as a means of demonstrating that further control of air emissions from the waste is not necessary to protect human health and the environment. This determination does not hinge on whether the waste is being land disposed (i.e., on whether the waste would otherwise have to be treated to meet the standard as a precondition to land disposal).

The EPA is amending the 1994 final rule to address certain of the commenters' concerns regarding applicability of the subpart CC rules to incinerator bulk feed tanks (that is,

tanks used for bulk feed of hazardous waste to an incinerator). A standard industry practice is to control the air emissions from these tanks by enclosing the tank and feed operation, and venting emissions for the enclosure through a closed-vent system to an organic emission control device. The EPA has received comments stating that some industry members have alternate designs which allow them to effectively operate bulk incinerator feed systems using a tight-fitting cover on the tank and enclosing the feed line, with all emissions vented to a control device.

The EPA is addressing two issues with respect to those former bulk feed operations. The first is the efficiency of the organic control device, and whether existing facilities must replace those devices previously installed to comply with the Benzene Waste Operations NESHAP. The second issue is whether an enclosure can provide adequate capture and control of organic emissions from an open tank, when compared with a tight-fitting cover on that tank.

The subpart CC rules require 95% reduction of total organics in vapor streams, by weight. The Benzene Waste Operations NESHAP (40 CFR part 61, subpart FF) requires 98% reduction of benzene in vapor streams. This distinction is appropriate, given the Benzene Waste Operations NESHAP's purpose to control benzene specifically, and the subpart CC rule's purpose to control total organics (including benzene). However, incinerator bulk feed operators have installed non-combustion control devices (such as activated carbon systems and condensers) which achieve 98% reduction of benzene, but do not effectively achieve 95% reduction of total organics. (This is because benzene is more amenable to certain reduction technologies than other organic compounds.)

The EPA has decided that it is not justified to require owners and operators to replace these relatively new control devices, which were installed pursuant to EPA regulation, and is therefore adding an exemption for control devices installed on such systems.⁴ The EPA is making this decision chiefly due to the high replacement cost, action in reliance on EPA's Benzene Waste Operations

⁴ Although there is probably some degree of decrease in protectiveness between these control devices and the proscribed 95% total organic control device requirements, EPA considers that difference to be not significant enough to warrant the substantial dislocations noted above. With respect to newly constructed control devices, there would be obviously, no such dislocations, and EPA therefore, does not believe there is any reason to forego the full protection provided by the 95% total organic control device efficiency requirements.

NESHAP, and the desire for consistency among the various standards controlling organic constituents.

With respect to enclosures used in lieu of a discreet tank cover, the issue is the same as that which EPA is addressing for all tank systems (see Section G of this Preamble.)

F. Waste Determination Procedures

Under the subpart CC RCRA air rules, air emission controls are not required for a hazardous waste management unit when the unit manages hazardous waste having an average VO concentration less than the action level (i.e., 500 ppmw at the point of waste origination). As part of the procedure for determining the VO concentration of the hazardous waste, the EPA allowed that an owner or operator could use either: (1) Direct measurement using Method 25D for preparation and analysis of samples of the waste collected in accordance with the procedures specified in the rule; or (2) the owner's or operator's knowledge of the VO concentration in the waste based on information, as specified in the rule.

In response to comments received concerning Method 25D relating to aggressiveness, expense, and repeatability of the method, the EPA decided to add other appropriate test methods that an owner or operator can choose to use for direct measurement of the VO concentration of a hazardous waste (see discussion below). In addition, the EPA is making certain other changes to facilitate the use of organic concentration data obtained using other test methods not specifically listed in the rule. The EPA believes that the changes being incorporated into the waste determination requirements in conjunction with changes to the applicability and action level for the subpart CC RCRA air rules for tanks, surface impoundments, and containers provide a range of options for determining the VO concentration of a hazardous waste such that every owner and operator of a facility subject to the final rule has available practical and inexpensive waste determination alternatives.

The EPA developed Method 25D to provide a relative measure of the potential for specific volatile organic compounds to be emitted from waste materials. When using Method 25D, the waste is analyzed to determine the total concentration, by weight, of all organics purged from the waste sample. However, some commenters stated that measuring all organics resulted in an overly aggressive method. Commenters suggested that there is some universe of organic compounds which usually do

not volatilize, but which some test methods would measure. In a practical sense, the EPA does not consider it equitable to require air emission controls for wastes that do not contain organic compounds which are likely to volatilize. In response to these comments, the EPA is amending the waste determination procedures to allow the owner or operator to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant of less than 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius. The Henry's law constant of a compound is one indication that is commonly used to predict the potential of a compound to volatilize.

If the waste contains compounds with Henry's law constants below the cutoff level, the VO concentration for the waste can be adjusted to exclude the VO concentration of these compounds from the total VO concentration for the waste stream. The contribution to the measured total VO concentration for the waste that is made by a specific compound can be determined by multiplying the actual concentration of the compound in the waste times the appropriate compound-specific adjustment " f_m factor" to obtain the Method 25D VO concentration. The VO concentration for the compound, with a Henry's law constant of less than 0.1 Y/X, can then be subtracted from the total VO concentration measured for the waste. In order to identify those compounds with a Henry's law constant below the cutoff level, the EPA has published a table listing the known compounds as part of today's amendments. The Henry's law constant value used as the cutoff in determining the VO concentration of a waste has been used in other EPA regulations (e.g., the Off-Site Waste and Recovery Operations NESHAP and the HON) and was selected based on modeling studies to identify and classify compounds with a significant potential for air emissions when present in a waste/wastewater system. With this amendment to the waste determination procedures, the EPA considers Method 25D to be an appropriate method for determining the VO concentration of hazardous wastes subject to the subpart CC RCRA air rules. Therefore, Method 25D continues to be an approved test method for determining the VO concentration of a waste, although other methods are allowed as direct measurement under

today's amendment. This is discussed in greater detail below.

Other test methods have been developed by the EPA for use in rulemakings under the Clean Water Act that measure the concentration of organic pollutants in municipal and industrial wastewaters (see appendix A to 40 CFR part 136). Commenters suggested that certain of these test methods are applicable to EPA air rulemakings affecting hazardous waste and wastewater management units. After extensive review, the EPA decided that as alternatives to using Method 25D for direct measurement of VO concentration in a hazardous waste for the subpart CC RCRA air rules it is appropriate to add Methods 624, 625, 1624, and 1625 (all contained in 40 CFR part 136, appendix A) and Methods 8260(B) and 8270(C) (both in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" in EPA Publication SW-846) when these methods are used under certain specified conditions. It is important to note that for each of these methods there is a published list of chemical compounds which the EPA considers the method appropriate to measure. The owner or operator may only use these methods to measure compounds that are contained on the list associated with that method, unless specified validation procedures are also performed. Further, for the purpose of a waste determination, the owner or operator must evaluate the mass of all VO compounds in a waste that have a Henry's law value above the 0.1 Y/X cutoff. Therefore, the owner or operator is responsible for determining that the analytical method being used for a waste determination is sufficient to evaluate all of the applicable organic compounds that are contained in the waste. If an owner or operator chooses to use a method other than Method 25D to analyze a waste that contains unknown compounds or many different compounds, it may be necessary to perform screening analyses to verify that the alternate analytical method chosen is, in fact, appropriate to evaluate all the necessary compounds.

Because these methods measure the total concentration of various constituents, owners and operators may choose to "correct" these measured values to equate to the values that would be measured using Method 25D. This is accomplished by multiplying the total concentration measured values times the appropriate compound-specific adjustment " f_m factor" to obtain the Method 25D VO concentration. The EPA has published lists of the compound-specific adjustment factors

in other rulemakings; see Table 1 in the Off-Site Waste and Recovery Operations NESHAP (40 CFR part 63, subpart DD) and Table 34 in the HON (40 CFR part 63, subpart G). Compound specific adjustment factors (f_m factors) for additional compounds can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

Sufficient recovery study results are available for Methods 1624 and 1625 to correct for possible bias, and therefore, these methods are considered adequate by the EPA to characterize the concentration of a hazardous waste sample. In addition, Methods 624 and 625 are appropriate provided the initial calibration of the analytical system is performed with the target compounds to be measured. Methods 8260(B) and 8270(C) are also considered appropriate provided that formal quality assurance procedures are established, followed, and records are maintained to cover those elements of the methods considered relevant to measuring the actual concentration of organic compounds. The quality assurance program must address procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps as well as addressing the overall accuracy and precision of the specific method used.

Sample collection procedures and sample recovery conditions are established by Method 25D (40 CFR part 60, Appendix A). For the hazardous wastes typically managed in the operations subject to the RCRA air rules, the EPA has concluded that using Method 25D sample collection procedures and sample recovery conditions for other analysis methods is reasonable for the purpose of this rulemaking. However, none of the other methods discussed above specifies a sample collection and handling procedure that the EPA considers adequate to minimize the volatilization of organics from the sample prior to analysis. Therefore, to ensure that an adequately representative sample of a hazardous waste is analyzed by the method, an owner or operator that chooses to use either Method 624, 625, 1624, 1625, 8260(B) or 8270(C) for the subpart CC RCRA air rules is required to develop and follow a written sampling plan. Similarly, such a plan is required for alternative methods validated by EPA Method 301 in appendix A of 40 CFR part 63, or the "Alternative Validation Procedure for EPA Waste and Wastewater Methods"

in appendix D of 40 CFR part 63. This plan must describe a step-by-step procedure for collecting representative samples of the hazardous waste such that material integrity is maintained and minimal loss of organics from the sample occurs throughout the collection and analysis process. An example of an acceptable sampling plan is one that incorporates sample collection and sample handling procedures similar to those specified in Method 25D. The sampling plan is to be maintained on-site in the facility records.

It should be noted that as long as one of the allowable test methods is being used for direct measurement of the VO concentration of a hazardous waste, the EPA would only enforce against the facility on that basis (i.e., using the same test method), unless the method used is not appropriate for the hazardous waste managed in the unit. For example, if the method is not suitable for use on semi-volatile organic compounds and the waste is known to contain organic compounds that are classified as semi-volatile, then the method is not appropriate.

In the published rule, the EPA allows use of knowledge-of-the-waste as the basis for a waste determination (§ 265.1084(a)(2)). Among the waste determination techniques that would have been considered knowledge, was analysis by methods other than 25D, if the alternate method had been validated using Test Method 301, from appendix A of part 63. Certain commenters indicated that it was not clear in the 1994 final rule that data from non-validated methods could be used to make a waste determination, with those results being again, considered knowledge-of-the-waste (as opposed to direct measurement). Today EPA is clarifying that, and, also in response to comments, the EPA has decided to allow organic concentration test data that are validated in accordance specifically with Sections 5.1 and 5.3 and the corresponding calculations in Section 6.1 or 6.3 of Method 301 to be used as direct measurement data. This makes validation of the alternative test method a self-check of the method being validated. Also, if appropriate, owners and operators may choose to "correct" values measured by the alternative test method to equate to the values that would be measured using Method 25D by multiplying the measured values times the appropriate compound-specific adjustment " f_m factor."

In addition, as discussed in Section II.G of the preamble to the final Off-Site Waste and Recovery Operations NESHAP (61 FR 34140, July 1, 1996), the EPA promulgated a less rigorous

validation procedure, "Alternative Validation Procedure for EPA Waste and Wastewater Methods," in Appendix D to 40 CFR part 63 as an alternative to Method 301 for the validation of a test method established by the EPA Office of Water (OW) or the EPA Office of Solid Waste (OSW) when this EPA test method is used for air emission standards. The EPA decided it is appropriate to allow organic concentration test data that are validated in accordance with this method to be used as direct measurement data because it is considered to produce equally reliable validation results. Other test methods not previously mentioned that are used to measure organic concentrations in the waste shall be validated according to section 5.1 or 5.3, and the corresponding calculations in section 6.1 or 6.3, or Method 301 of Appendix A of 40 CFR part 63.

The main point that must be reemphasized regarding direct measurement of VO concentration is that, although the EPA is amending the rule to allow various test methods other than Method 25D to be used in a waste determination, the owner or operator must use a test method(s) that is appropriate for the compounds contained in the waste. The method(s) used for the waste determination must be suitable for and must reflect or account for all compounds in the waste with a Henry's Law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius.

In a further clarification, today's action is revising the waste determination procedures such that for both point of waste origination and point of waste treatment, no distinction is made for batch or continuous processes or for whether the owner or operator is the generator or receives the waste from off-site. The owner or operator chooses an averaging period appropriate for the hazardous waste stream of not more than 1 year. As has been noted previously, a site sampling plan is required that describes the procedure for collecting representative samples of the hazardous waste stream such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained.

As was originally promulgated in the 1994 final rule, in the event that the Regional Administrator and the owner or operator disagree on a determination of the average VO concentration of a hazardous waste stream at the point of waste origination using knowledge, then direct measurement shall be used to establish compliance. As noted above,

because of the expansion of analysis methods in today's amendments, direct measurement to establish compliance is not limited to Method 25D, but can be performed using any of the methods specified in the rule or any test method validated as specified in the rule, as appropriate for the waste managed in the unit. Because of the expansion of analysis methods, the rule has been revised such that, if the Regional Administrator determines that the method used by the owner or operator for a waste determination using direct measurement was not appropriate for the waste managed in the unit, then the Regional Administrator may choose an appropriate method to verify the waste determination.

G. Standards: Tanks

The subpart CC tank standards have been revised to address comments on the proposed technical amendments, to be consistent with tank standards established for related Clean Air Act NESHAP, and to reduce the inspection, monitoring, recordkeeping, and reporting requirements. In general, the amendments published today establish two levels of air emission control (referred to as Level 1 and Level 2 controls) for tanks managing hazardous waste having a maximum organic vapor pressure less than 76.6 kilopascals (kPa). The control level applicable to a tank required to use controls is determined by the tank design capacity and the maximum organic-vapor pressure of the material in the tank. Ranges of capacity and vapor pressure limits or criteria have been established for tanks. However, tanks used for waste stabilization processes are required to use specific air emission controls.

For a tank to meet Level 1 controls, the revised final rule specifies that the hazardous waste be managed in a tank using a fixed-roof. For the Level 2 controls, the revised final rule requires that hazardous waste be managed in one of the following: (1) A fixed-roof tank equipped with an internal floating roof; (2) a tank equipped with an external floating roof; (3) a tank vented through a closed-vent system to a control device; (4) a pressure tank; or (5) a tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device.

A tank is allowed to use the Level 1 controls if it meets the conditions that were in the 1994 final subpart CC rule to qualify for control by only a fixed roof, with several revisions to the conditions. In response to comments, the condition that the waste is neither mixed, stirred, agitated, nor circulated within the tank is being dropped; the

condition on heating the waste is being revised to require that the hazardous waste in the tank not be heated to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the waste was determined; and the condition that the hazardous waste not be treated by a process that produces an exothermic reaction is being dropped. The EPA agrees with commenters that these conditions are redundant given the criteria based on determination of a maximum organic vapor pressure. The conditions that are being dropped from the rule thus are adequately accounted for in the maximum organic vapor pressure criteria.

The owner or operator of a tank that qualifies for the Level 1 controls may choose to use Level 2 controls. A tank that does not qualify for the Level 1 controls is subject to the Level 2 controls.

Tank Level 1 control requirements consist of a fixed roof meeting the design, operation, inspection, and recordkeeping requirements specified in the rule. Because of commenters' concerns with the safety of workers during tank cleaning, the operating requirements are being clarified to explicitly include the removal of accumulated sludge or other residues from the bottom of the tank as a time when the opening of closure devices or removal of the fixed roof is allowed. In response to commenters' concerns that the subpart 1994 CC rules (inadvertently) required that a conservation vent must discharge through a closed-vent system to a control device, the revised rule states that a pressure relief device, such as a conservation vent which vents to the atmosphere, is allowed for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. Normal operating conditions that might require a pressure relief device to open include internal pressure buildup as a result of loading operations or diurnal ambient temperature fluctuations.

To reduce the inspection, monitoring, and recordkeeping burden of the rule, a number of rule revisions are being made in response to comments. The semiannual inspection requirement for the fixed roof and closure devices is being changed to an annual inspection requirement. The EPA considers this change to greatly reduce the requirements placed on the tank operators, while not affecting the protectiveness of the rules. The regulations still require tanks to be operated with covers that do not have visible openings or gaps; therefore, any

openings or gaps will still need to be immediately repaired. The instrument monitoring requirements are being dropped. EPA's rationale being that the fixed roofs are allowed to operate with a conservation vent, and thus, leaks detectable only by an instrument are relatively insignificant. The time during which repair of a defect must be completed is being extended from 15 to 45 calendar days. The delay of repair provisions are being clarified to indicate that repair of a defect on a fixed roof or closure device may be delayed beyond 45 calendar days if repair would require the tank to be emptied or removed from service and no alternative capacity is available at the facility to accept the hazardous waste normally managed in the tank. The recordkeeping requirements are being clarified to explicitly define the information required for the annual inspection.

The revised Tank Level 2 air emission control requirements include options that were available in the 1994 final subpart CC rule, i.e., a tank equipped with a fixed roof and internal floating roof, a tank equipped with an external floating roof, a fixed roof vented through a closed-vent system to a control device, and a pressure tank. In addition, an option is being provided allowing the use of an enclosure vented through a closed-vent system to an enclosed combustion device or a control device designed and operated to reduce the total organic content of the inlet vapor stream by at least 95 percent by weight.

For a tank equipped with a fixed roof and internal floating roof, an operating requirement is being revised, such that, when the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be accomplished as soon as practical rather than as rapidly as possible. The rationale for this is explained in the preamble of the February 9, 1996 technical amendments (see 61 FR 4910).

Internal floating roof and external floating roof design, operating, inspection, and monitoring requirements are revised to reflect current technology and to be consistent with requirements of Clean Air Act standards for the same equipment (e.g. the off-site waste and recovery operations NESHAP, promulgated July 1, 1996). Again, this is part of the EPA's effort to promote consistency between requirements for similar types of units. Overall performance and emission reductions are effectively unchanged.

For a tank with a fixed roof that is vented through a closed-vent system to a control device, the operating, monitoring, and inspection requirements are being revised

consistent with the Tank Level 1 control requirements described previously. In summary, the times when opening of closure devices or removal of the fixed roof are allowed are being clarified, the rule is being clarified to allow the opening of a safety device, the semiannual inspection required for the fixed-roof and closure devices is changed to an annual inspection requirement, monitoring requirements are dropped, the time during which repair of a defect must be completed is extended from 15 to 45 calendar days, the delay of repair provisions are being clarified to indicate that repair of a defect on a fixed roof or closure device may be delayed beyond 45 calendar days, and the recordkeeping requirements are being clarified to explicitly define the information required for the annual inspection.

In response to the numerous comments regarding establishment of criteria to identify or define a pressure tank, the pressure tank requirements are being clarified to state that the tank shall be designed to operate with no detectable organic emissions during filling to the tank design capacity and the subsequent compression of the vapor headspace in the tank.

For the control option being added as a part of these amendments that allows the use of an enclosure vented through a closed-vent system to an enclosed combustion device or alternative control device, the enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in 40 CFR 52.741, Appendix B, Procedure T-Criteria for Verification of a Permanent or Temporary Total Enclosure. The EPA is adding this control option in response to comments from, among others, members of the hazardous waste stabilization industry and the incineration industry, who maintain that certain waste handling or treatment operations (e.g. incinerator bulk feed systems and stabilization) can not feasibly be conducted in covered tanks.

The EPA has made a number of revisions to the regulations that address this concern. As noted earlier, the increased VO concentration action level (from 100 ppmw to 500 ppmw) plus the inapplicability of the rule to hazardous wastes that meet the LDR standard for organic hazardous constituents should sharply reduce the number of situations where a metal-bearing waste undergoing stabilization would also be subject to the subpart CC standards.

In addition, the EPA reexamined the data in the record for those wastes that may undergo stabilization and still be subject to the Subpart CC requirements;

this includes data supplied by waste management companies after promulgation of the 1994 final CC rule, in response to EPA's solicitation (see 59 FR 62912, December 8, 1994). However, the data currently available to the EPA do not support the commenters' assertions that no controls at all are needed for these wastes undergoing stabilization. All currently available data indicate that a significant fraction, by mass, of organics in waste are volatilized during stabilization processes.⁵

The EPA recognizes that certain stabilization and waste handling operations can only be feasibly conducted in open tanks (and containers). For such operations, where a cover is impractical, the most practical alternative is a permanent total enclosure that achieves high capture efficiency of the organic compounds emitted from the open tank (or container) and routes them through a closed-vent system to an organic control device. The EPA defines a permanent total enclosure as a "permanently installed enclosure that completely surrounds a source of emissions such that all (VOC) emissions are captured and contained for discharge through a control device." The EPA has developed a set of criteria (in 40 CFR 52.741, appendix B) to ensure high capture efficiencies through proper design and operation of an enclosure and to eliminate the need for expensive and disruptive capture efficiency performance tests. The EPA method states that if a facility meets the criteria for a permanent total enclosure and all emissions are directed to a control device, the capture efficiency may be assumed to be 100 percent and measurement requirements are waived. The EPA has concluded that these enclosure criteria are appropriate for

⁵ Recent data supplied to EPA (including information contained in docket F-04-CE3A-FFFFF, and information submitted by subpart CC rule commenters to the EPA's Office of Solid Waste and Emergency Response) do not lead the Agency to conclude otherwise. Rather, the data submitted indicate that numerical quantification methods, or test methods, used to measure the mass of organics emitted during stabilization do not yield consistent or precise results when waste streams below 500 ppmw VO concentration are evaluated. These data, among other factors, prompted the Agency to raise the action level to 500 ppmw. However, the data submitted did not support any revision to the Agency's policy of requiring stabilization of organics to be performed in units with air emission controls. The Agency maintains that stabilization, and other operations that raise the temperature of the waste or agitate the waste, increase the rate of volatilization of organics in the waste. Therefore, it follows that a regulation that considers it appropriate to control the organic emissions from storage of hazardous waste would consider it at least as important to control the organic emissions during treatment of hazardous waste.

application to waste stabilization operations, bulk feed tank operations, and other waste handling situations where an owner or operator may deem a covered tank impractical; the design and operational criteria allow for necessary worker access to perform necessary operations, while assuring a high capture efficiency. Therefore, in this limited situation, use of an enclosure and control device that meets the criteria specified in the rule, for both the enclosure and the control device, is considered to provide the same level of emission reduction performance as does the other control options provided in the rule for tanks and thus achieves the same level of protection.

One commenter argued that the permanent enclosure criteria are inappropriate because they were originally developed for use in another industry (the paint and coating industry). However, the EPA considers these criteria appropriate for ensuring adequate design and operation of any enclosure used to capture organic emissions. The criteria are not prescriptive, that is, they do not specify detailed design and operation conditions. Rather, the criteria are just that: Parameters that must be evaluated, and minimum or maximum values that must be met for each parameter. These criteria are the only description known to the Agency that ensure an enclosure is effective in: (1) Preventing significant volumes of organics from escaping to the atmosphere, (2) capturing the organics from within the enclosure, and (3) routing the organics from within the enclosure to a control device.

The permanent total enclosure criteria specifies: (1) Maximum total area for natural draft openings, or NDO (which are holes in the enclosure that allow passage of organics through to the atmosphere), (2) minimum distance from emission points to NDO, (3) minimum face velocity to ensure sufficient negative pressure, (4) closure of any access that were not open for the purpose of performing the criteria calculations; and (5) routing of all emissions to a control device. All of these are parameters that would require consideration in the evaluation of any enclosure's effectiveness. Further, the minimum and maximum values specified in the permanent total enclosure criteria were chosen by EPA specifically for the purposes of ensuring adequate capture of organic emissions from industrial operations, such as paint and coating operations. The paint and coating industry operations are similar enough to other industrial operations, including waste treatment, that it is appropriate to use the permanent total

enclosure criteria for specifying enclosure integrity elsewhere.

One commenter remarked that the costs to retrofit two particular existing enclosures to the permanent total enclosure criteria would be prohibitive. The EPA does not agree with that remark. After reviewing that data, the EPA estimates that it would be less costly for that facility to upgrade those enclosures than it would be for any facility to retrofit an existing tank with an air-tight cover, which is the requirement for other tanks subject to the subpart CC standards.⁶

Safety devices, as defined in the rule, may be installed on the enclosure, as needed. The closed-vent system and enclosed combustion device or alternative control device must be designed and operated in accordance with standards in subpart CC. The enclosure is required to be inspected initially and annually thereafter. When defects are detected, the owner or operator must make first attempts at repair no later than 5 calendar days after detection and complete repair within 45 days.

Finally, in response to commenters' concerns with the feasibility of transferring solids and sludges between containers and tanks in a "closed system" as required by the final rules, the closed system transfer requirements for hazardous wastes transferred to or from a tank and another waste management unit subject to subpart CC

⁶ The EPA further notes that one of the two enclosures described in this commenter's submission would require only the sealing of a natural draft opening which is too close to an emission point. The other enclosure would require an increase in the face velocity, which could possibly be achieved by closing some of the natural draft openings in the enclosure. The cost to close a natural draft opening is not at all prohibitive; in many instances it can be accomplished with a patch and some air-tight caulk or foam. However, it is conceivable that the facility may need to increase the capacity of the control device for this second enclosure, in order to be able to effectively handle the resulting increased air flow. However, the EPA considers it highly relevant to note that the commenter states that his permitting authority has confirmed the tank inside this enclosure is not subject to the subpart CC standards; therefore, the enclosure would not be required to meet the permanent total enclosure criteria referenced by the subpart CC standards. It should be noted that costs associated with achieving a level of protectiveness required under RCRA 3004(n) are not a consideration in the selection of standards.

The EPA considers it also noteworthy to mention that a hazardous waste treatment industry group polled its members that operate incinerator bulk feed tanks, and was informed that all the member companies polled either: (1) Currently perform the bulk feed operations using covered tanks, (2) currently perform the bulk feed operations inside enclosures which already meet all of the permanent total enclosure criteria, or (3) would consider it reasonable to (and are willing to) upgrade or modify their existing enclosures to meet the permanent total enclosure criteria.

control requirements are being revised such that transfer of hazardous waste between a tank and container is not required to be done in a closed system.

H. Standards: Surface Impoundments

Revisions are being made to the subpart CC surface impoundment standards so that, where relevant and appropriate, the inspection, monitoring, recordkeeping, and reporting requirements for surface impoundments are consistent with the requirements established for tanks in subpart CC and for surface impoundments under the Clean Air Act NESHAP. A discussion of these revisions is presented below.

More design and installation information is being included for rigid covers. A provision is being added that clarifies the intent of the 1994 final subpart CC rule, that venting to a control device is not required and that opening of closure devices or removal of the cover is allowed to remove accumulated sludge or other residues from the bottom of the surface impoundment. A provision is being added that explicitly allows opening of a safety device installed on the cover, closed-vent system, or control device at any time conditions require it to do so to avoid an unsafe condition. Also under the technical amendments published today, visual inspection of the rigid cover and closure devices is required initially and annually thereafter, rather than semiannually; leak detection monitoring is only required initially; and there are no requirements for periodic monitoring (as discussed above, the EPA does not consider it warranted to survey for non-visible leaks, while allowing conservation vents to route emissions to the atmosphere). The repair period for a defect also is being extended from 15 to 45 days to be consistent with other CAA regulations (e.g. the HON).

The floating membrane cover design and installation requirements are being clarified, e.g., language is being added to clarify that the "floating membrane cover shall be designed to float during normal operations on the surface of the liquid contained in the surface impoundment." A provision is being added that allows the floating membrane cover to be equipped with emergency cover drains for removal of storm water. Opening of a safety device installed on the cover is allowed at any time conditions require it to do so to avoid an unsafe condition. Visual inspection of the floating membrane cover and closure devices is required initially and annually, rather than semiannually. The leak detection monitoring requirements for floating

membrane covers are being dropped. The repair period for a defect is being extended from 15 to 45 days.

The closed system transfer requirements for hazardous wastes transferred to or from a surface impoundment and another waste management unit subject to subpart CC control requirements are being revised such that transfer of hazardous waste between a surface impoundment and container is not required to be done in a closed system. This change is being made to provide consistency within the subpart CC rules; containers are not subject to transfer requirements among other containers; therefore, the EPA does not consider it necessary to require closed transfer between containers and surface impoundments.

I. Standards: Containers

The subpart CC container standards are being significantly revised under today's amendments to address comments on the proposed changes to the container requirements, to make this rule compatible with the existing U.S. Department of Transportation (DOT) regulations for transporting hazardous materials, and to reduce any unnecessary inspection, monitoring, recordkeeping, and reporting requirements.

1. Control Requirements

Commenters stated that promulgated air emission control requirements for containers are impractical to implement or require equipment that is commercially unavailable. Also, commenters stated that the requirements should be consistent with the container air emission control requirements under the Clean Air Act rules.

Since promulgation in December 1994, the EPA has obtained more information on the practices and equipment currently used to manage hazardous waste in containers. Based on consideration of this information, the EPA decided to revise the air emission control requirements for containers to better reflect the container organic emission potential, the various container types, and the common container management practices used for hazardous waste operations. The EPA believes that these revised requirements are technically feasible and practical to implement on all types of containers that the Agency expects to be subject to the rule. These revisions are described in detail later in this section of today's notice.

The EPA is addressing consistency between the air emission control requirements for containers (as well as

the other affected waste management units) in the RCRA rules and those contained in Clean Air Act NESHAP or NSPS by amending the RCRA rules to include an exemption for those affected units using organic emission controls in accordance with the requirements of any applicable NESHAP or NSPS. Because the Clean Air Act controls for containers are essentially the same as those required under the RCRA air rules, they are considered to provide the same level of protection. In addition, allowing the use of DOT containers is also consistent with the EPA's general objective of avoiding duplication and promoting consistency. The EPA has thoroughly evaluated the control requirements for DOT containers and has worked with DOT in developing these revisions. The EPA concluded that containers that meet applicable DOT requirements under 49 CFR parts 173, 178, 179, and 180 are equivalent in their overall emission reduction performance and therefore provide the same level of protection as do the initial requirements of the final subpart CC rules.

The revised container standards for the subpart CC RCRA air rules establish three levels of air emission control. The control level applicable to a container is determined by the container design capacity, the total organic content of the hazardous waste material in the container, and use of the container. For example, containers with a design capacity less than or equal to 0.1 m³ (approximately 26 gallons) are not subject to any requirements under the rule, as was the case in the 1994 promulgated CC rule.

Under today's revised subpart CC rule, Level 1 controls are allowed for the following container categories (except when the container remains uncovered for waste stabilization or certain other treatment processes): (1) Containers having a design capacity greater than 0.1 m³ and less than or equal to 0.46 m³ (approximately 119 gallons); and (2) containers with a design capacity greater than 0.46 m³ and used to manage hazardous wastes that do not meet the definition of "in light material service" (i.e., used to manage a hazardous waste where the vapor pressure of one or more of the components in the material is greater than 0.3 kPa at 20 °C, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight). Level 2 controls are required for containers with a design capacity greater than 0.46 m³ and used "in light material service," except when the container remains uncovered for waste stabilization or certain other treatment

processes. Level 3 controls are required for containers having a design capacity greater than 0.1 m³ that must remain uncovered for waste stabilization processes.

For the containers allowed to use Level 1 controls, the amended rule requires that the hazardous waste be managed either: (1) in a container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a covered container that meets the requirements specified in the 1994 final CC rule (40 CFR parts 264 and 265). No additional requirements are specified by today's revised final rule for containers complying with the applicable DOT regulations. In the case when an owner or operator elects to comply with the covered container requirements (i.e., non-DOT containers), the container must be equipped with a tight-fitting cover that has no visible gaps, spaces, holes, or other openings. The rule does require a visual inspection when the cover is applied and annually thereafter, if the container remains in on-site storage for a period longer than 1 year. No testing for detectable organic emissions using Method 21 is required. No recordkeeping and reporting are required under the revised final rule for containers using Level 1 controls. The EPA has agreed with commenters' suggestions that any increases in enforceability of the subpart CC standards does not justify the expense and time required by an owner or operator to make and maintain records for the subpart CC regulations for hazardous waste in containers. The vast majority of containers subject to the subpart CC standards are not at a given site for more than 90 days; therefore, the burden associated with maintaining additional records (that is, in addition to existing records required under other applicable regulations; such as the RCRA subpart I, or DOT container requirements) for all containers used to store hazardous waste was deemed to be considerably greater than the recordkeeping requirements for tanks or surface impoundments (particularly when compared with the relatively low volume of hazardous waste, nationwide, that is managed in containers versus tanks and surface impoundments).

For the containers required to use Level 2 controls, today's revised final rule requires that the hazardous waste be managed in one of the following: (1) A container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a container that operates with "no

detectable organic emissions"; or (3) a container that has been demonstrated within the preceding 12 months to be vapor-tight by using Method 27. Specific design, operating, inspection and monitoring, repair, recordkeeping, and reporting requirements for containers tested using either Method 21 or 27 are specified in the rule.

No additional requirements are specified in the final rule for containers complying with the applicable DOT regulations. However, for compliance with the subpart CC rules, no exceptions under the 40 CFR parts 178 or 179 regulations are allowed for DOT containers except for lab packs meeting the exceptions for combination packaging specified in 40 CFR 173.12(b). In addition, the EPA based its decision to allow use of DOT containers for compliance with the subpart CC rules on the specifications, testing, maintenance, and other requirements for containers that can be reused or refilled under DOT regulations (the typical practice at hazardous waste TSDF). For the purpose of complying with the subpart CC rules, the EPA does not consider it appropriate that a container which is a "non-reusable container (NRC)" or "single-trip container (STC)" according to DOT requirements, be repeatedly used while at the facility site (i.e., emptied and refilled) for the handling of hazardous waste subject to subpart CC rules. Before a DOT container can be reused, even within the boundaries of a facility site, it must comply with the DOT reconditioning and reuse provisions of the hazardous materials regulations in 49 CFR 173.28.

For the containers required to use Level 3 controls, the revised final rule requires that an open container be placed in an enclosure vented through a closed-vent system to a control device or a covered container be vented directly to a control device. If an enclosure is used, the enclosure is to be designed in accordance with the criteria for a permanent total enclosure as specified in 40 CFR 52.741, Appendix B, Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure. The use of a permanent total enclosure and the design and operating criteria for these enclosures are discussed further in Section G of this preamble.

2. Loading Operations

Requirements for loading hazardous waste into a container are also being revised by today's action in response to the numerous comments received by EPA on this topic. Under the revised final rule there are no requirements for

loading hazardous waste into containers using Level 1 controls. The rationale for this is explained in the preamble to the February 9, 1996 technical amendments (see 61 FR 4999). For containers using Level 2 controls, the loading requirements have been revised to allow the owner or operator the flexibility to use any appropriate loading method that will minimize exposure of the hazardous waste to the atmosphere and thereby reduce organic air emissions, to the extent practical considering the physical properties of the hazardous waste and good engineering and safety practices. Examples of container loading procedures that the EPA considers to meet these requirements include, but are not limited to, using a submerged-fill pipe or other submerged-fill method to load liquids into the container; or using a vapor-balancing or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations.

3. Inspection, Monitoring, Recordkeeping, and Reporting

After consideration of the comments regarding the burden associated with certain aspects of the inspection, monitoring, recordkeeping, and reporting requirements for containers, and review of the effect of these requirements on the emission reduction achieved by these standards, the EPA has determined that it is appropriate to simplify these requirements in today's amendments. Owners and operators of containers using either Container Level 1 or Container Level 2 controls in accordance with the provisions of the rule are required to visually inspect the container and its cover and closure devices to check for defects at the time the owner or operator first manages a hazardous waste in the container or accepts possession of the container at the facility with the exception of those containers emptied within 24 hours of being received. Also, in the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the container and its cover and closure devices are to be visually inspected to check for defects at least once every 12 months.

Under the revisions published here, there are no requirements for periodic Method 21 leak monitoring of containers. The EPA considers this revision appropriate, in light of the relatively low volume of hazardous waste managed in containers (as compared to that volume managed in tanks and surface impoundments) and the transitory nature of containers (i.e. the vast majority of containers,

nationwide, do not remain on a given site longer than 90 days). The time and expense required by operators to perform periodic Method 21 monitoring on containers does not seem to be warranted by any anticipated increase in emission reductions or enforceability of the subpart CC standards.

There is only one recordkeeping requirement and no reporting requirements under this rulemaking for containers using either Container Level 1 or Container Level 2 controls. The recordkeeping requirement is to maintain in the facility record a copy of the procedure used to determine that containers with capacities equal to or greater than 0.46 m³ and do not meet the applicable DOT regulations are not managing hazardous waste in "light material service."

Information is also being added to the rule concerning the duration of time that the cover or closure devices can be open for the purpose of adding hazardous waste to or removing hazardous waste from the container or performing other routine activities, such as sampling the hazardous waste in the container. Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure-relief device that vents to the atmosphere is allowed to maintain container internal pressure within design specifications during normal operating conditions, e.g., to release pressure resulting from loading operations or diurnal temperature changes. Opening of a safety device, as defined in the rule, is allowed at any time conditions require it to do so to avoid an unsafe condition.

J. Standards: Closed-Vent Systems and Control Devices

As previously discussed in this preamble under the revisions to the subpart AA provisions for control devices and closed-vent systems, the subpart CC control device and closed-vent system standards are being revised by today's technical amendments to incorporate changes so that these requirements are consistent and up-to-date with the general decisions the EPA has made regarding the inspection, monitoring, maintenance, repair, malfunctions, recordkeeping, and reporting requirements for organic emission control devices and which have been published in other related standards.

In the subpart CC standards for control devices and closed-vent systems, provisions are being added to allow up to 240 hours per year for periods of planned routine maintenance of a control device during which time the

control device is not required to meet the performance requirements for emission reductions specified in the rule and to exempt control devices from the substantive requirements of this section during a control device system malfunction. Recordkeeping requirements for these provisions are also being added. This change is being made in response to commenters' statements that good engineering and air pollution control practices include maintenance of air pollution control equipment, and that it is reasonable to assume that all such equipment will require either maintenance or repair at some time during the life of the equipment. The EPA is adding this allowance in an attempt to encourage good maintenance of such equipment, and in recognition that if maintenance periods are not allowed, repair periods will be unavoidable; it seems more reasonable to encourage the former, while accepting that both are realities. The value of 240 hours has been selected to be consistent with other air regulations developed under the CAA, such as the HON.

K. Inspection and Monitoring Requirements

The EPA is making revisions to the inspection and monitoring requirements for the final subpart CC RCRA air rules to reflect the revisions to the rule applicability and technical requirements and reduce the burden of these requirements on owners and operators. These revisions are explained in more detail throughout the preamble, above.

L. Recordkeeping and Reporting Requirements

The EPA is changing the recordkeeping and reporting requirements for the final subpart CC RCRA air rules to reflect the revisions to the rule applicability and technical requirements and reduce the burden of these requirements on owners and operators. These revisions are explained in more detail throughout the preamble, above.

V. Administrative Requirements

A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F-91-CESF-FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F-92-CESA-FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation;

(3) RCRA docket number F-94-CESF-FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F-94-CE2A-FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F-95-CE3A-FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F-96-CE4A-FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or by calling (202) 260-2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to the OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The RCRA Subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and a regulatory impact analysis (RIA) was prepared. The amendments published today clarify the rule, provide more compliance alternatives, make certain regulatory provisions more lenient, and correct structural problems with the drafting of some sections. The OMB has evaluated this action, and determined it to be non-significant; thus it did not require their review.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Pub. L. 104-121, 110 Stat. 847, the EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required. For the reasons discussed in the December 6, 1994 Federal Register (59 FR 62923), this rule does not have a significant impact on a substantial number of small entities. The changes to the rule do not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, the amendments are also not considered significant.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA

submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) given that it amends the rule published in 1994 to reduce the extent of regulation.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VI. Legal Authority

These regulations are amended under the authority of sections 2002, 3001-3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921-6927, 6930, and 6974).

List of Subjects

40 CFR Part 261

Environmental protection, Air pollution control.

40 CFR Part 262

Air pollution control, Packaging and containers, Tank.

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Inspection, Monitoring, Packaging and containers, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSD, Waste determination.

40 CFR Part 270

Administrative practice and procedure, Air pollution, Confidential business information, Hazardous waste, Permit modification, Reporting and recordkeeping requirements.

Dated: October 4, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 261, 262, 264, 265, 270, and 271 of the Code of Federal Regulations are amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1a. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

1b. Section 261.6 is amended by revising paragraph (c)(1) to read as follows:

§ 261.6 Requirements for recyclable materials.

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1c. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6925, 6937 and 6938, unless otherwise noted.

2. Section 262.34 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(i) In containers and the generator complies with subpart I of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart I—Use and Management of Containers

4. Section 264.179 is revised to read as follows:

§ 264.179 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart J—Tank Systems

5. Section 264.200 is revised to read as follows:

§ 264.200 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart K—Surface Impoundments

6. Section 264.232 is revised to read as follows:

§ 264.232 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of subparts BB and CC of this part.

Subpart AA—Air Emission Standards for Process Vents

7. Section 264.1030 is amended by revising paragraph (b); and removing the reference "262.34" from the note at the end of the section to read as follows:

§ 264.1030 Applicability.

(b) Except for § 264.1034, paragraphs (d) and (e), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a 90-day tank or container).

8. Section 264.1033 is amended by revising paragraph (f)(2)(vi)(B); redesignating paragraphs (l) and (m) as paragraphs (m) and (n) and revising the newly designated paragraph (n); by revising paragraph (k); and by adding paragraphs (l) and (o) to read as follows:

§ 264.1033 Standards: Closed-vent systems and control devices

(f) * * *

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ± 1 percent of the temperature being monitored in degrees Celsius ($^{\circ}\text{C}$) or ± 0.5 $^{\circ}\text{C}$, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in § 264.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The owner or operator shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (k)(1) of

this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in § 264.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (l)(1)(i) of this section, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 264.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (l)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Regional Administrator, except as provided for in paragraph (o) of this section, using the procedures specified in § 264.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 264.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (k)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or

operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 264.1035 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in paragraph (l)(3)(iii) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 264.1035 of this subpart.

(m) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under 40 CFR part 270 which implements the requirements of subpart X of this part; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of subparts AA and CC of either this part or of 40 CFR part 265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of subpart O of this part; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(o) Any components of a closed-vent system that are designated, as described in § 264.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (l)(1)(ii)(B) of this section if:

(1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (l)(1)(ii)(B) of this section; and

(2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (l)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

9. Section 264.1034 is amended by revising paragraph (b), introductory text, to read as follows:

§ 264.1034 Test methods and procedures.

(b) When a closed-vent system is tested for compliance with no detectable

emissions, as required in § 264.1033(l) of this subpart, the test shall comply with the following requirements:

10. Section 264.1035 is amended by adding paragraphs (c)(9) and (c)(10) and revising paragraph (d) to read as follows:

§ 264.1035 Recordkeeping requirements.

(c) ***

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to § 264.1033(o) of this subpart shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of § 264.1033(o) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in § 264.1033(l) of this subpart, the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement,

maintenance, corrective action, or record.

Subpart BB—Air Emission Standards for Equipment Leaks

11. Section 264.1050 is amended by revising paragraph (b), adding paragraph (f), and by removing the reference "262.34" from the note at the end of the section to read as follows:

§ 264.1050 Applicability.

(b) Except as provided in § 264.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container).

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per calendar year is excluded from the requirements of §§ 264.1052 through 264.1060 of this subpart if it is identified as required in § 264.1064(g)(6) of this subpart.

12. Section 264.1055 is revised to read as follows:

§ 264.1055 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of § 264.1064 through § 264.1066 of this subpart or a control device that complies with the requirements of § 264.1060 of this subpart.

(c) *In-situ* sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

13. Section 264.1058 is amended by adding paragraph (e) to read as follows:

§ 264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of § 264.1064 of this subpart.

14. Section 264.1064 is amended by adding paragraph (g)(6) to read as follows:

§ 264.1064 Recordkeeping requirements.

(g) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per year.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

15. Section 264.1080 is amended by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 264.1080 Applicability.

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of

§ 264.1084(i), except as provided in § 264.1082(c)(5).

(8) A tank that has a process vent as defined in 40 CFR 264.1031.

16. Section 264.1082 is revised to read as follows:

§ 264.1082 Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart.

(b) The owner or operator shall control air pollutant emissions from each waste management unit in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit, except as provided for in paragraph (c) of this section.

(c) A tank, surface impoundment, or container is exempt from standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in § 264.1083(a) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_e) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste

treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(B) The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(B) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The EPA considers a drain

system that meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems to be a closed system.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in § 264.1083(a) of this subpart. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(vi) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in § 264.1083(b) and § 264.1083(a) of this subpart, respectively.

(vii) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of subpart O of this part; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O.

(viii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H, or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(ix) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of paragraphs (c)(2)(i) through (c)(2)(vi) of this section, the owner or operator shall account for VO concentrations

determined to be below the limit of detection of the analytical method by using the following VO concentration:

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method.

(B) If any other analytical method is used, one-half the limit of detection established for the method.

(3) A tank used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste" in 40 CFR 268.40; or

(ii) Has been treated by the treatment technology established by EPA for the waste in 40 CFR 268.42(a), or treated by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996 and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

(d) The Regional Administrator may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of § 264.1083(a) of this subpart. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of § 264.1083(b) of this subpart.

(2) In performing a waste determination pursuant to paragraph (d)(1) of this section, the sample preparation and analysis shall be conducted as follows:

(i) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in paragraph (d)(2)(ii) of this section.

(ii) If the Regional Administrator determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Regional Administrator may choose an appropriate method.

(3) In a case when the owner or operator is requested to perform the waste determination, the Regional Administrator may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) In a case when the results of the waste determination performed or requested by the Regional Administrator do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (d)(1) of this section shall be used to establish compliance with the requirements of this subpart.

(5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Regional Administrator may elect to establish compliance with this subpart by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples

collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of § 264.1083(a) of this subpart.

(ii) Results of the waste determination performed or requested by the Regional Administrator showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with this subpart except in a case as provided for in paragraph (d)(5)(iii) of this section.

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of § 264.1083(a) and § 264.1089 of this subpart shall be considered by the Regional Administrator together with the results of the waste determination performed or requested by the Regional Administrator in establishing compliance with this subpart.

17. Section 264.1083 is revised to read as follows:

§ 264.1083 Waste determination procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of § 264.1082(c)(1) of this subpart from using air emission controls in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(2) The average VO concentration of a hazardous waste at the point of waste origination may be determined in accordance with the procedures

specified in 40 CFR 265.1084 (a)(2) through (a)(4).

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of § 264.1082(c)(2) of this subpart from using air emission controls in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(2) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in 40 CFR 265.1084 (b)(2) through (b)(9), as applicable to the treated hazardous waste.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in § 264.1084(c) of this subpart.

(2) The maximum organic vapor pressure of the hazardous waste may be determined in accordance with the procedures specified in 40 CFR 265.1084 (c)(2) through (c)(4).

(d) The procedure for determining no detectable organic emissions for the purpose of complying with this subpart shall be conducted in accordance with the procedures specified in 40 CFR 265.1084(d).

18. Section 264.1084 is revised to read as follows:

§ 264.1084 Standards: Tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which § 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m³, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m³ but less than 151 m³, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m³, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in 40 CFR 265.1081.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section. Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (c)(4) of this section:

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank.

The maximum organic vapor pressure shall be determined using the procedures specified in § 264.1083(c) of this subpart. Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the

maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and it shall be operating whenever hazardous waste is managed in the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such

activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes

subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in paragraph (i) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in 40 CFR 265.1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the

hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (e)(3)(iii) of this section, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator

at least 7 calendar days before refilling the tank.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(vi) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in 40 CFR 265.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover

the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this section.

(D) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(1) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(2) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(3) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(4) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for

the seal type as specified in paragraph (f)(1)(ii) of this section.

(E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(i) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (i) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this subpart, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be

prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least 7 calendar days before refilling the tank.

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control devices shall be designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 264.1087 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (i) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(b) of this subpart.

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements:

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 264.1083(d) of this subpart.

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except in the event that a safety device, as defined in 40 CFR 265.1081, is required to open to avoid an unsafe condition.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow

into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 264.1087 of this subpart.

(3) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (i)(2) of this section.

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in § 264.1087 of this subpart.

(j) The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (j)(2) of this section, to the tank from another tank subject to this section or from a surface impoundment subject to § 264.1085 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 264.1082(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 264.1082(c)(2) of this subpart.

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after

detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

19. Section 264.1085 is revised to read as follows:

§ 264.1085 Standards: Surface impoundments.

(a) The provisions of this section apply to the control of air pollutant emissions from surface impoundments for which § 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the

surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in paragraph (c) of this section; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in paragraph (d) of this section.

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(i) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(B) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in paragraph (c)(1)(ii)(A) of this section and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in paragraph (c)(1)(v) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the

atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment.

Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(i) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or

operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(c) of this subpart.

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(ii) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in § 264.1083(d) of this subpart.

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface

impoundment on which the cover is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment.

Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 264.1087 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once

every year except for the special conditions provided for in paragraph (g) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 264.1089(c) of this subpart.

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (e)(2) of this section, to the surface impoundment from another surface impoundment subject to this section or from a tank subject to § 264.1084 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (e)(1) of this section do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 264.1082(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 264.1082(c)(2) of this subpart.

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(3) or (d)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (f)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept

the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the surface impoundment stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of this subpart as frequently as practicable during those times when a worker can safely access the cover.

20. Section 264.1086 is revised to read as follows:

§ 264.1086 Standards: Containers.

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which § 264.1082(b) of this subpart references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (b)(2) of this section apply to the container.

(i) For a container having a design capacity greater than 0.1 m³ and less than or equal to 0.46 m³, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m³ that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1

standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m³ that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) When a container having a design capacity greater than 0.1 m³ is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability, the effects of contact with the hazardous waste or its vapor

managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading

operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container.

Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an

empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container is accepted at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m³ or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in 40 CFR 265.1081 and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40

CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of

removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste.

Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 265.1061, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container arrives at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible, but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(4) Container Level 3 standards.

(i) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1067 of this subpart.

(3) Safety devices, as defined in 40 CFR 265.1061, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in § 264.1067 of this subpart.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in § 264.1069(d) of this subpart.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT)

regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packaging or 49 CFR part 179—Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 167, subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packages; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) The owner or operator shall use the procedure specified in § 264.1063(d) of this subpart for determining a container operates with no detectable organic emissions for the purpose of complying with paragraph (d)(1)(ii) of this section.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

21. Section 264.1067 is amended by revising paragraph (b)(3), adding paragraph (b)(4), revising paragraphs (c)(2), (c)(3)(ii), and (c)(5)(i) (D)—(E), and adding paragraph (c)(7) to read as follows:

§ 264.1067. Standards: Closed-vent systems and control devices.

(b) * * *

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to: a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the

bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in § 264.1033(l).

(c) * * *

(2) The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The owner or operator shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in § 264.1069(e)(1)(v) of this subpart.

(v) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The owner or operator shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) * * *

(i) * * *

(ii) All carbon removed from the control device shall be managed in accordance with the requirements of 40 CFR 264.1033(n).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section are managed at the facility in tanks and containers. This description shall include:

(i) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section in the tanks and containers as described in paragraph (i)(2) of this section would create an undue safety hazard if the air emission controls, as required under §§ 264.1084 through 264.1087 of this subpart, are installed and operated on these waste management units. This explanation shall include the following information:

(i) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue

safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

24. Section 264.1090 is amended by revising paragraphs (a) and (b) to read as follows:

§ 264.1090 Reporting requirements.

(a) Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of § 264.1082(c) of this subpart shall report to the Regional Administrator each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in § 264.1082 (c)(1) or (c)(2) of this subpart, as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 500 ppmw at the point of waste origination; or placing in the waste management unit a treated hazardous waste of which the organic content has been reduced by an organic destruction or removal process that fails to achieve the applicable conditions specified in § 264.1082 (c)(2)(i) through (c)(2)(vi) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(b) Each owner or operator using air emission controls on a tank in accordance with the requirements § 264.1084(c) of this subpart shall report to the Regional Administrator each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in § 264.1084(b) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description

of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

§ 264.1091 [Removed and reserved]

25. Part 264 is amended by removing and reserving § 264.1091.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

26. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart I—Use and Management of Containers

27. Section 265.178 is revised to read as follows:

§ 265.178 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart J—Tank Systems

28. Section 265.202 is revised to read as follows:

§ 265.202 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

Subpart K—Surface Impoundments

29. Section 265.231 is revised to read as follows:

§ 265.231 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of subparts BB and CC of this part.

Subpart AA—Air Emission Standards for Process Vents

30. Section 265.1030 is amended by revising paragraph (b); and by removing the reference "262.34" from the note at the end of the section to read as follows:

§ 265.1030 Applicability.

(b) Except for §§ 265.1034, paragraphs (d) and (e), this subpart applies to

process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a 90-day tank or container).

31. Section 265.1033 is amended by revising paragraph (f)(2)(vi)(B); redesignating paragraphs (k) and (l) as paragraphs (j) and (m) and revising the newly designated paragraph (m); by revising paragraph (j); and by adding paragraphs (k) and (n) to read as follows:

§ 265.1033 Standards: Closed-vent systems and control devices.

(f) * * *

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ± 1 percent of the temperature being monitored in degrees Celsius (°C) or ± 0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(j) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in § 265.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that

negative pressure is being maintained in the closed-vent system when the control device is operating.

(k) The owner or operator shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (j)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in § 265.1034(b) of this subpart to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (k)(1)(i) of this section, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 265.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (k)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Regional Administrator, except as provided for in paragraph (n) of this section, using the procedures specified in § 265.1034(b) of this subpart to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (k)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 265.1035 of this subpart.

(2) Each closed-vent system that is used to comply with paragraph (j)(2) of this section shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k)(3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 265.1035 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in paragraph (k)(3)(iii) of this section.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown; or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 265.1035 of this subpart.

(l) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(m) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 264 subpart X; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of subparts AA and CC of either this part or of 40 CFR part 264; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 264, subpart O; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of subpart O of this part.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(n) Any components of a closed-vent system that are designated, as described in § 265.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (k)(1)(ii)(B) of this section if:

(1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (k)(1)(ii)(B) of this section; and

(2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the

closed-vent system components using the procedure specified in paragraph (k)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

32. Section 265.1034 is amended by revising paragraph (b) introductory text to read as follows:

§ 265.1034 Test methods and procedures.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 265.1033(k) of this subpart, the test shall comply with the following requirements:

33. Section 265.1035 is amended by revising paragraph (c)(3), adding paragraphs (c)(9) and (c)(10) and revising paragraph (d) to read as follows:

§ 265.1035 Recordkeeping requirements.

(c) * * *

(3) Monitoring, operating and inspection information required by paragraphs (f) through (k) of § 265.1033 of this subpart.

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to § 265.1033(n) of this subpart shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of § 265.1033(n) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in § 265.1033(k) of this subpart, the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonreparable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(10) of this section shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

Subpart BB—Air Emission Standards for Equipment Leaks

34. Section 265.1050 is amended by revising paragraph (b), adding paragraph (e) and removing the reference "262.34" from the note at the end of the section to read as follows:

§ 265.1050 Applicability.

(b) Except as provided in § 265.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of 40 CFR part 270, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a 90-day tank or container).

(c) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per calendar year is excluded from the requirements of § 265.1052 through § 265.1060 of this subpart if it is identified as required in § 265.1064(g)(6) of this subpart.

35. Section 265.1055 is revised to read as follows:

§ 265.1055 Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of § 265.1085 through § 265.1087 of this subpart or a control device that complies with the requirements of § 265.1080 of this subpart.

(c) *In-situ* sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

36. Section 265.1058 is amended by adding paragraph (e) to read as follows:

§ 265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of § 265.1064 of this subpart.

37. Section 265.1064 is amended by adding paragraph (g)(6) to read as follows:

§ 265.1064 Recordkeeping requirements.

(g) * * *

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for a period of less than 300 hours per year.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

38. Section 265.1060 is amended by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 265.1060 Applicability.

(b) * * *

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. For the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of § 265.1085(i), except as provided in § 265.1083(c)(5).

(8) A tank that has a process vent as defined in 40 CFR 264.1031.

39. Section 265.1061 is amended by revising the definitions of cover, external floating roof, fixed roof, floating roof, internal floating roof, maximum organic vapor pressure, point of waste treatment, vapor-mounted seal and volatile organic concentration and by adding definitions in alphabetical order to read as follows:

§ 265.1061 Definitions.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Cover means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece

of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

External floating roof means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

In light material service means the container is used to manage a material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

Internal floating roof means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Maximum organic vapor pressure means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the

maximum vapor pressure-causing conditions (i.e., temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of this subpart, maximum organic vapor pressure is determined using the procedures specified in § 265.1084(c) of this subpart.

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 265.1084(d) of this subpart.

Point of waste treatment means the point where a hazardous waste to be treated in accordance with § 265.1083(c)(2) of this subpart exits the treatment process. Any waste determination shall be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering

codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Single-seal system means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

Vapor-mounted seal means a continuous seal that is mounted such that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.

Volatile organic concentration or VO concentration means the fraction by weight of the volatile organic compounds contained in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the waste in accordance with the requirements of § 265.1084 of this subpart. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.5×10^{-5} atmospheres/gram-mole/m³) at 25 degrees Celsius must be included. Appendix VI of this subpart presents a list of compounds known to have a Henry's law constant value less than the cutoff level.

40. Section 265.1083 is revised to read as follows:

§ 265.1083 Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart.

(b) The owner or operator shall control air pollutant emissions from each waste management unit in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit, except as provided for in paragraph (c) of this section.

(c) A tank, surface impoundment, or container is exempt from standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined

using the procedures specified in § 265.1084(a) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the

procedures specified in § 265.1084(b) of this subpart.

(B) The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(B) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems to be a closed system.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in § 265.1084(a) of this subpart. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(vi) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic

reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in § 265.1084(b) and § 265.1084(a) of this subpart, respectively.

(vii) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 264, subpart O; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of subpart O of this part.

(viii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 266, subpart H; or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(ix) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of paragraphs (c)(2)(i) through (c)(2)(vi) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method.

(B) If any other analytical method is used, one-half the limit of detection established for the method.

(3) A tank used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste" in 40 CFR 268.40; or

(ii) Has been treated by the treatment technology established by EPA for the waste in 40 CFR 268.42(a), or treated by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator

and all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

(d) The Regional Administrator may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of § 265.1084(a) of this subpart. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of § 265.1084(b) of this subpart.

(2) In performing a waste determination pursuant to paragraph (d)(1) of this section, the sample preparation and analysis shall be conducted as follows:

(i) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in paragraph (d)(2)(ii) of this section.

(ii) If the Regional Administrator determines that the method used by the owner or operator was not appropriate

for the hazardous waste managed in the tank, surface impoundment, or container, then the Regional Administrator may choose an appropriate method.

(3) In a case when the owner or operator is requested to perform the waste determination, the Regional Administrator may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) In a case when the results of the waste determination performed or requested by the Regional Administrator do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (d)(1) of this section shall be used to establish compliance with the requirements of this subpart.

(5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Regional Administrator may elect to establish compliance with this subpart by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of § 265.1084(a) of this subpart.

(ii) Results of the waste determination performed or requested by the Regional Administrator showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with this subpart except in a case as provided for in paragraph (d)(5)(iii) of this section.

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements,

calculations, and other documentation) and reported in the facility records in accordance with the requirements of § 265.1084(a) and § 265.1090 of this subpart shall be considered by the Regional Administrator together with the results of the waste determination performed or requested by the Regional Administrator in establishing compliance with this subpart.

41. Section 265.1084 is revised to read as follows:

§ 265.1084 Waste determination procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083(c)(1) of this subpart from using air emission controls in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(2) The average VO concentration of a hazardous waste at the point of waste origination shall be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) Direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.

(i) Identification. The owner or operator shall identify and record the point of waste origination for the hazardous waste.

(ii) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste origination in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected for the hazardous waste stream to represent the complete range of

compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter), or in Method 25D in 40 CFR part 60, appendix A.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(F) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 624, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260(B) or 8270(C) in "Test Methods for Evaluating Solid Waste, Physical/

Chemical Methods", EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner's or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (a)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. (A) Method 25D in 40 CFR part 60, appendix A. (B) Method 624 in 40 CFR part 136, appendix A. (C) Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in Table 7 of the method. (D) Method 1624 in 40 CFR part 136, appendix A. (E) Method 1625 in 40 CFR part 136, appendix A. (F) Method 8260(B) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260(B). The quality assurance program shall include the following elements: (1) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps. (2) Measurement of the overall accuracy and precision of the specific procedures. (G) Method 8270(C) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270(C). The quality assurance program shall include the following elements: (1) Documentation of site-specific procedures to minimize the loss of

Chemical Methods", EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner's or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (a)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. (A) Method 25D in 40 CFR part 60, appendix A. (B) Method 624 in 40 CFR part 136, appendix A. (C) Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in Table 7 of the method. (D) Method 1624 in 40 CFR part 136, appendix A. (E) Method 1625 in 40 CFR part 136, appendix A. (F) Method 8260(B) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260(B). The quality assurance program shall include the following elements: (1) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps. (2) Measurement of the overall accuracy and precision of the specific procedures. (G) Method 8270(C) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270(C). The quality assurance program shall include the following elements: (1) Documentation of site-specific procedures to minimize the loss of

compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps. (2) Measurement of the overall accuracy and precision of the specific procedures. (H) Any other EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods", 40 CFR part 63, appendix D. As an alternative, other EPA standard methods may be validated by the procedure specified in paragraph (a)(3)(iii)(I) of this section.

(I) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations. The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (a)(3)(iii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

Where:

\bar{C} = Average VO concentration of the hazardous waste at the point of waste origination on a mass-weighted basis, ppmw.
 i = Individual sample "i" of the hazardous waste.
 n = Total number of samples of the hazardous waste collected (at least 4) for the averaging period (not to exceed 1 year).
 Q_i = Mass quantity of hazardous waste stream represented by C_i , kg/hr.
 Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.
 C_i = Measured VO concentration of sample "i" as determined in accordance with the requirements of § 265.1084(a)(3)(iii) of this subpart, ppmw.

(4) Use of owner or operator knowledge to determine average VO concentration of a hazardous waste at the point of waste origination.

(i) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's

knowledge of the hazardous waste stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous waste stream; constituent-specific chemical test data for the hazardous waste stream from previous testing that are still applicable to the current waste stream; previous test data for other locations managing the same type of waste stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

(ii) If test data are used as the basis for knowledge, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use organic concentration test data for the hazardous waste stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the waste.

(iii) An owner or operator using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous waste may adjust the test data to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(iv) In the event that the Regional Administrator and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in paragraph (a)(3) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Regional Administrator may perform or request that the owner or operator perform this determination using direct measurement.

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083(c)(2) of this

subpart from using air emission controls in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(2) The owner or operator shall designate and record the specific provision in § 265.1083(c)(2) of this subpart under which the waste determination is being performed. The waste determination for the treated hazardous waste shall be performed using the applicable procedures specified in paragraphs (b)(3) through (b)(9) of this section.

(3) Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.

(i) Identification. The owner or operator shall identify and record the point of waste treatment for the hazardous waste.

(ii) Sampling. Samples of the hazardous waste stream shall be collected at the point of waste treatment in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected for the hazardous waste stream to represent the complete range of compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan

includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 (incorporated by reference—refer to § 260.11(a) of this chapter), or in Method 25D in 40 CFR part 60, appendix A.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260(B) or 8270(C) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner's or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{adj}) as specified in paragraph (a)(4)(iii) of this section. Constituent-specific adjustment factors (f_{adj}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air

Quality Planning and Standards, Research Triangle Park, NC 27711.

(A) Method 25D in 40 CFR part 60, appendix A.

(B) Method 624 in 40 CFR part 136, appendix A.

(C) Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in Table 7 of the method.

(D) Method 1624 in 40 CFR part 136, appendix A.

(E) Method 1625 in 40 CFR part 136, appendix A.

(F) Method 8260(B) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260(B). The quality assurance program shall include the following elements:

(1) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

(2) Measurement of the overall accuracy and precision of the specific procedures.

(G) Method 8270(C) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270(C). The quality assurance program shall include the following elements:

(1) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

(2) Measurement of the overall accuracy and precision of the specific procedures.

(H) Any other EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D. As an alternative, other EPA standard methods may be validated by the procedure specified in paragraph (b)(3)(iii)(I) of this section.

(I) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding

calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations. The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (b)(3)(iii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

Where:

\bar{C} = Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, ppmw.

i = Individual sample "i" of the hazardous waste.

n = Total number of samples of the hazardous waste collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous waste stream represented by C_i , kg/hr.

Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i = Measured VO concentration of sample "i" as determined in accordance with the requirements of § 265.1084(b)(3)(iii) of this subpart, ppmw.

(4) Procedure to determine the exit concentration limit (C_e) for a treated hazardous waste.

(i) The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

(ii) If a single hazardous waste stream is identified in paragraph (b)(4)(i) of this section, then the exit concentration limit (C_e) shall be 500 ppmw.

(iii) If more than one hazardous waste stream is identified in paragraph (b)(4)(i) of this section, then the average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of paragraph (a) of this section. The exit concentration limit (C_e) shall be calculated by using the results determined for each individual hazardous waste stream and the following equation:

$$C_e = \frac{\sum_{i=1}^m (Q_i \times \bar{C}_i) + \sum_{j=1}^n (Q_j \times 500 \text{ ppmw})}{\sum_{i=1}^m Q_i + \sum_{j=1}^n Q_j}$$

Where:

C_e = Exit concentration limit for treated hazardous waste, ppmw.

x = Individual hazardous waste stream "x" that has an average VO concentration less than 500 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart.

y = Individual hazardous waste stream "y" that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(e) of this subpart.

m = Total number of "x" hazardous waste streams treated by process.

n = Total number of "y" hazardous waste streams treated by process.

Q_x = Annual mass quantity of hazardous waste stream "x," kg/yr.

Q_y = Annual mass quantity of hazardous waste stream "y," kg/yr.

\bar{C}_x = Average VO concentration of hazardous waste stream "x" at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart, ppmw.

(5) Procedure to determine the organic reduction efficiency (R) for a treated hazardous waste.

(i) The organic reduction efficiency (R) for a treatment process shall be determined based on results for a minimum of three consecutive runs.

(ii) All hazardous waste streams entering the treatment process and all hazardous waste streams exiting the treatment process shall be identified. The owner or operator shall prepare a sampling plan for measuring these streams that accurately reflects the retention time of the hazardous waste in the process.

(iii) For each run, information shall be determined for each hazardous waste stream identified in paragraph (b)(5)(ii) of this section using the following procedures:

(A) The mass quantity of each hazardous waste stream entering the process (Q_e) and the mass quantity of each hazardous waste stream exiting the process (Q_x) shall be determined.

(B) The average VO concentration at the point of waste origination of each hazardous waste stream entering the process (C_e) during the run shall be determined in accordance with the

requirements of paragraph (a)(3) of this section. The average VO concentration at the point of waste treatment of each waste stream exiting the process (C_x) during the run shall be determined in accordance with the requirements of paragraph (b)(3) of this section.

(iv) The waste volatile organic mass flow entering the process (E_e) and the waste volatile organic mass flow exiting the process (E_x) shall be calculated by using the results determined in accordance with paragraph (b)(5)(iii) of this section and the following equations:

$$E_e = \frac{1}{10^6} \sum_{j=1}^n (Q_{ej} \times \bar{C}_{ej})$$

$$E_x = \frac{1}{10^6} \sum_{j=1}^n (Q_{xj} \times \bar{C}_{xj})$$

Where:

E_e = Waste volatile organic mass flow entering process, kg/hr.

E_x = Waste volatile organic mass flow exiting process, kg/hr.

m = Total number of runs (at least 3)

j = Individual run "j"

Q_e = Mass quantity of hazardous waste entering process during run "j," kg/hr.

Q_x = Average mass quantity of hazardous waste exiting process during run "j," kg/hr.

\bar{C}_e = Average VO concentration of hazardous waste entering process during run "j" as determined in accordance with the requirements of § 265.1084(b)(3) of this subpart, ppmw.

\bar{C}_x = Average VO concentration of hazardous waste exiting process during run "j" as determined in accordance with the requirements of § 265.1084(a)(3) of this subpart, ppmw.

(v) The organic reduction efficiency of the process shall be calculated by using the results determined in accordance with paragraph (b)(5)(iv) of this section and the following equation:

$$R = \frac{E_e - E_x}{E_e} \times 100\%$$

Where:

R = Organic reduction efficiency, percent.

E_e = Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

E_x = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

(6) Procedure to determine the organic biodegradation efficiency (R_{bio}) for a treated hazardous waste.

(i) The fraction of organics biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this chapter.

(ii) The R_{bio} shall be calculated by using the following equation:

$$R_{bio} = F_{bio} \times 100\%$$

Where:

R_{bio} = Organic biodegradation efficiency, percent.

Where:

RMR = Required organic mass removal rate, kg/hr.

y = Individual hazardous waste stream "y" that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart.

n = Total number of "y" hazardous waste streams treated by process.

V_y = Average volumetric flow rate of hazardous waste stream "y" at the point of waste origination, m³/hr.

k_y = Density of hazardous waste stream "y," kg/m³.

C_y = Average VO concentration of hazardous waste stream "y" at the point of waste origination as determined in accordance with the requirements of § 265.1084(a) of this subpart, ppmw.

(8) Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

(i) The MR shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_e) shall be determined in accordance with the requirements of paragraph (b)(5)(iv) of this section.

(iii) The MR shall be calculated by using the mass flow rate determined in accordance with the requirements of paragraph (b)(8)(ii) of this section and the following equation:

Where:

$MR = E_b - E_e$

MR = Actual organic mass removal rate, kg/hr.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the requirements of paragraph (b)(6)(i) of this section.

(7) Procedure to determine the required organic mass removal rate (RMR) for a treated hazardous waste.

(i) All of the hazardous waste streams entering the treatment process shall be identified.

(ii) The average VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of paragraph (a) of this section.

$$RMR = \sum_{y=1}^n \left[V_y \times k_y \times \frac{(C_y - 500 \text{ ppmw})}{10^6} \right]$$

E_b = Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

E_e = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

(9) Procedure to determine the actual organic mass biodegradation rate (MR_{bio}) for a treated hazardous waste.

(i) The MR_{bio} shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste organic mass flow entering the process (E_b) shall be determined in accordance with the requirements of paragraph (b)(5)(iv) of this section.

(iii) The fraction of organic biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this chapter.

(iv) The MR_{bio} shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of paragraphs (b)(9)(ii) and (b)(9)(iii), respectively, of this section and the following equation:

Where:

$MR_{bio} = E_b \times F_{bio}$

MR_{bio} = Actual organic mass biodegradation rate, kg/hr.

E_b = Waste organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the

(iii) For each individual hazardous waste stream that has an average VO concentration equal to or greater than 500 ppmw at the point of waste origination, the average volumetric flow rate and the density of the hazardous waste stream at the point of waste origination shall be determined.

(iv) The RMR shall be calculated by using the average VO concentration, average volumetric flow rate, and density determined for each individual hazardous waste stream, and the following equation:

requirements of paragraph (b)(9)(iii) of this section.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with the standards specified in § 265.1085(c) of this subpart.

(2) An owner or operator shall use either direct measurement as specified in paragraph (c)(3) of this section or knowledge of the waste as specified by paragraph (c)(4) of this section to determine the maximum organic vapor pressure which is representative of the hazardous waste composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous waste.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test

Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated by reference—refer to § 260.11(a) of this chapter), or in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous waste:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (incorporated by reference—refer to § 260.11 of this chapter);

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92 (incorporated by reference—refer to § 260.11 of this chapter); and

(E) Any other method approved by the Regional Administrator.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous waste. Documentation shall be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum organic vapor pressure of the hazardous waste is less than the maximum vapor pressure limit listed in § 265.1085(b)(1)(i) of this subpart for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous waste

having an organic concentration representative of the range of concentrations for the hazardous waste expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous waste placed in the waste management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air), and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in paragraph (d)(9) of this section. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference

between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

42. Section 265.1085 is revised to read as follows:

§ 265.1085 Standards Tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which § 265.1083(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements, as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m³, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m³ but less than 151 m³, the maximum organic vapor pressure limit for the tank is 27.8 kPa.

(C) For a tank design capacity less than 75 m³, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in § 265.1081 of this subpart.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of

paragraph (d) of this section. Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (c)(4) of this section:

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in § 265.1084(c) of this subpart. Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The

control device shall remove or destroy organics in the vent stream, and it shall be operating whenever hazardous waste is managed in the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive,

reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in paragraph (i) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the

requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed-roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in § 265.1081 of this subpart; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be

continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (e)(3)(iii) of this section, the owner or operator shall notify the Regional Administrator in

advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least 7 calendar days before refilling the tank.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(vi) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in § 265.1081 of this subpart. The total area of the gaps between the

tank wall and the primary seal shall not exceed 212 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) of this section.

(D) The owner or operator shall determine the total surface area of gaps

in the primary seal and in the secondary seal individually using the following procedure:

(1) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(2) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(3) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(4) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

(E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (i) of this section.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this section, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Regional Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Regional Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Regional Administrator at least 7 calendar days before refilling the tank.

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1068 of this subpart.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in § 265.1061 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 265.1068 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (i) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements:

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 265.1084(d) of this subpart.

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except in the event that a safety device, as defined in § 265.1081 of this subpart, is required to open to avoid an unsafe condition.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 265.1088 of this subpart.

(3) Safety devices, as defined in § 265.1081 of this subpart, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (i)(2) of this section.

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in § 265.1088 of this subpart.

(i) The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (j)(2) of this section, to the tank from another

tank subject to this section or from a surface impoundment subject to § 265.1088 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 265.1083(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 265.1083(c)(2) of this subpart.

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraphs (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover"

and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

43. Section 265.1086 is revised to read as follows:

§ 265.1086 Standards: surface impoundments.

(a) The provisions of this section apply to the control of air pollutant emissions from surface impoundments for which § 265.1083(b) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in paragraph (c) of this section; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in paragraph (d) of this section.

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(i) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(B) A material or a composite of different materials determined to have

both organic permeability properties that are equivalent to those of the material listed in paragraph (c)(1)(ii)(A) of this section and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in paragraph (c)(1)(v) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment.

Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(i) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(c) of this subpart.

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(ii) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than

atmospheric pressure when the control device is operating, the closure device shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in § 265.1084(d) of this subpart.

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment.

Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 265.1083 of this subpart.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in paragraph (g) of this section.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (f) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(c) of this subpart.

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to this section in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in paragraph (e)(2) of this section, to the surface impoundment from another surface impoundment subject to this section or from a tank subject to § 265.1085 of this subpart shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart

RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (e)(1) of this section do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in § 265.1083(c)(1) of this subpart at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in § 265.1083(c)(2) of this subpart.

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(3) or (d)(3) of this section as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (f)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of this subpart as frequently as practicable

during those times when a worker can safely access the cover.

44. Section 265.1087 is revised to read as follows:

§ 265.1087 Standards: Containers.

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which § 265.1083(b) of this subpart references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (b)(2) of this section apply to the container.

(i) For a container having a design capacity greater than 0.1 m³ and less than or equal to 0.46 m³, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m³ that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m³ that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) When a container having a design capacity greater than 0.1 m³ is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a

continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability, the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the

container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container.

Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the design specifications of the container. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such

that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require those devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1

controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container is accepted at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first

efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m³ or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.
(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in § 265.1081 of this subpart and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall

install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in 40 CFR 261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in 40 CFR 261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure

the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in § 265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container arrives at the facility, the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is

detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified

in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(3) Safety devices, as defined in § 265.1081 of this subpart, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in § 265.1088 of this subpart.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in § 265.1090(d) of this subpart.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S.

Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packaging or 49 CFR part 179—Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packages; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) The owner or operator shall use the procedure specified in § 265.1084(d)

of this subpart for determining a container operates with no detectable organic emissions for the purpose of complying with paragraph (d)(1)(ii) of this section.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

45. Section 265.1088 is amended by revising paragraph (b)(3), adding paragraph (b)(4), revising paragraphs (c)(2), (c)(3)(ii), and (c)(5)(i) (D)–(E), and adding paragraph (c)(7) to read as follows:

§ 265.1088 Standards: Closed-vent systems and control devices.

(b) * * *

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or

locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in 40 CFR 265.1033(k).

(2) The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The owner or operator shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of

this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, as applicable, shall not exceed 240 hours per year) by recording the information specified in § 265.1090(e)(1)(v) of this subpart.

(v) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The owner or operator shall operate the closed-vent system such that gases, vapors, and/or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) * * *

(i) * * *

(ii) All carbon removed from the control device shall be managed in accordance with the requirements of 40 CFR 265.1033(m).

(3) * * *

(D) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under 40 CFR part 270 and has designed and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H; or

(E) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of 40 CFR part 266, subpart H.

(2) The control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 40 CFR 265.1033(f)(2) and 40 CFR 265.1033(k). The readings from each monitoring device required by 40 CFR 265.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

Section 265.1089 is revised to read as follows:

§ 265.1089 Inspection and monitoring requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with this subpart in accordance with the applicable requirements specified in § 265.1085 through § 265.1088 of this subpart.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 265.15.

47. Section 265.1090 is revised to read as follows:

§ 265.1090 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements in this subpart shall record and maintain the information specified in paragraphs (b) through (i) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraph (i) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service.

Information required by paragraph (i) of this section shall be maintained in the operating record for as long as the tank or container is not using air emission controls specified in §§ 264.1004 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1084(d) of this subpart.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of § 265.1085 of this subpart shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of § 265.1085 of this subpart, the owner or operator shall record:

(i) A tank identification number (or other unique identification description as selected by the owner or operator).

(ii) A record for each inspection required by § 265.1085 of this subpart that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection, the following information: the location of the defect, a description of the defect, the date of

detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 265.1085 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by paragraph (b)(1) of this section, the owner or operator shall record the following information, as applicable to the tank:

(i) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in § 265.1085(c) of this subpart shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of § 265.1085(c) of this subpart. The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in § 265.1085(e) of this subpart shall prepare and maintain documentation describing the floating roof design.

(iii) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in § 265.1085(f) of this subpart shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by § 265.1085(f)(3) of this subpart describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 265.1085(f)(1) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in § 265.1085(i) of this subpart shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the

criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of § 265.1086 of this subpart shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number (or other unique identification description as selected by the owner or operator).

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in § 265.1086(c) of this subpart.

(3) A record for each inspection required by § 265.1086 of this subpart that includes the following information:

(i) Date inspection was conducted.

(ii) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 265.1086(f) of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator shall prepare and maintain the records specified in paragraph (e) of this section.

(d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of § 265.1087 of this subpart shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or

Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(e) The owner or operator using a closed-vent system and control device in accordance with the requirements of § 265.1088 of this subpart shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (e)(1)(ii) of this section or by performance tests as specified in paragraph (e)(1)(iii) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in 40 CFR 265.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with 40 CFR 265.1035(b)(4)(iii) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in 40 CFR 265.1035(b)(3) and all test results.

(iv) Information as required by 40 CFR 265.1035(c)(1) and 40 CFR 265.1035(c)(2), as applicable.

(v) An owner or operator shall record, on a semiannual basis, the information specified in paragraphs (e)(1)(v)(A) and (e)(1)(v)(B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of § 265.1088 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months

that the control device did not meet the requirements of § 265.1088 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable, due to planned routine maintenance.

(vi) An owner or operator shall record the information specified in paragraphs (e)(1)(vi)(A) through (e)(1)(vi)(C) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of § 265.1088 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this subpart, as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with § 265.1088(c)(3)(ii) of this subpart.

(f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of § 265.1083(c) of this subpart shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in § 265.1083 (c)(1) or (c)(2) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 265.1084 of this subpart.

(2) For tanks, surface impoundments, or containers exempted under the provisions of § 265.1083(c)(2)(vii) or § 265.1083(c)(2)(viii) of this subpart, the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to § 265.1085(l) or § 265.1086(g) of this subpart shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The owner or operator of a facility that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

(i) For each tank or container not using air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the conditions specified in § 265.1080(d) of this subpart, the owner or operator shall record and maintain the following information:

(1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in § 265.1080(d)(1).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section are managed at the facility in tanks and containers. This description shall include the following information:

(i) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers,

in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in paragraph (i)(1) of this section in the tanks and containers as described in paragraph (i)(2) of this section would create an undue safety hazard if the air emission controls, as required under §§ 265.1085 through 265.1088 of this subpart, are installed and operated on these waste management units. This explanation shall include the following information:

(i) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under this subpart, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

§ 265.1091 [Removed and reserved]

48. Part 265 is amended by removing and reserving § 265.1091.

49. Part 265 is amended by adding Appendix VI to read as follows:

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X
[At 25 degree Celsius]

Compound name	CAS No.
TRICHLORO(1,1,2)TRIFLUORO	
FORMALDEHYDE	50-00-0
HYDROCYANIC ACID	74-90-6
FORMAMIDE	
QUINONE	
DIMETHYL HYDRAZINE(1,1)	57-14-7
METHYL ACRYLATE	96-33-3
ACETAMIDE	60-35-5
METHYL HYDRAZINE	60-34-4
DIETHYLHYDRAZINE N,N	
FORMIC ACID	64-18-6
DIMETHYL DISULFIDE	624-82-0
PHORATE	298-02-2
HYDRAZINE	302-01-2
LEAD SUBACETATE	1335-32-
LEAD ACETATE	301-04-2
NAPHTHOL,beta	135-19-3
DIETHYLENE GLYCOL MONOMETHYL ETHER	
NITROSODIMETHYLAMINE N	62-75-0
DIETHYLENE GLYCOL MONOBUTYL ETHER	
ACETYL-2-THIOUREA, 1-	591-08-2
ACRYLIC ACID	79-10-7
ETHYLENE GLYCOL MONOPHENYL ETHER	
ETHYLENE GLYCOL MONOMETHYL ETHER	
DIMETHYL FORMAMIDE	58-12-2
DIETHYLENE GLYCOL DIMETHYL ETHER	
PROPIOLACTONE b	57-57-8
ETHYLENE GLYCOL MONOPROPYL ETHER	
METHYL SULFURIC ACID	
METHYL THIOPHENOL 4	106-45-6
ETHYLENE GLYCOL MONOETHYL ETHER Cellulol	
DIMETHYL CARBAMOYL CHLORIDE	
ETHYLENE GLYCOL MONOETHYL ETHER ACETATE	
BUTYL CELLOSOLVE	111-76-2
TOLUENE DIAMINE(2,4)	95-80-7
DIMETHYLSULFOXIDE	
ANILINE	62-53-8
DIETHYLENE GLYCOL	111-48-6
ETHYLPHENOL 3-	620-17-7
GLYCIDOL	555-52-5
BUTYRIC ACID	107-82-6
NITROSO-N-METHYLUREA N	584-83-6
MONOMETHYL FORMANIDE	
ETHYL CARBAMATE	
ETHYL MORPHOLINE, ethyl diethylene oxime	
ETHANOLAMINE(mono-)	141-43-5
ETHYLENE THIOUREA	
PHENOL	108-95-2
ETHYLENE GLYCOL MONOBUTYL ETHER	
CRESOL	1319-77-
PROPYLENE GLYCOL	57-65-6
TRIETHYLENE GLYCOL DIMETHYL ETHER	
CRESOL(o)	95-48-7
TOLUIDINE (m)	
CHLOROPHENOL-4	106-48-9
BENZYL ALCOHOL	100-51-6
ACETALDOL	
CHLOROACETIC ACID	79-11-8
GLYPHOSATE	
ETHYLENE GLYCOL	107-21-1
ADENINE	73-24-6
HEXAMETHYLPHOSPHORAMIDE	
DIETHYLENE GLYCOL MONOETHYL ETHER ACETAT	
DICHLOROPHENOL 2,5	
CRESOL(p)	106-44-5
NITROSOMORPHOLINE	
QUINOLINE	91-22-6
DIMETHYLSULFONE	
CRESOL(m)	106-30-4
TOLUENE DISOCYANATE(2,4)	584-84-9
HYDROXY-(2)-PROPIONITRILE	109-78-4

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X—Continued
(At 25 degrees Celsius)

Compound name	CAS No.
HEXANOIC ACID	142-82-1
FUMARIC ACID	110-17-6
METHANE SULFONIC ACID	75-75-2
MESTYL OXIDE	141-79-7
CHLORO-2,5-DIKETOPYRROLIDINE 3	
PYRIDINIUM BROMIDE	
METHYLIMINOACETIC ACID	
DIMETHOATE	
GUANIDINE, NITROSO	80-51-5
PHENYLACETIC ACID	674-81-7
BENZENE SULFONIC ACID	103-82-2
ACETYL-5-HYDROXYPIPERIDINE 3	
LEUCINE	
alpha-PICOLINE	61-90-5
METHYL-2-METHOXYAZIRIDINE 1	1333-41-
BROMOCHLOROMETHYL ACETATE	
DICHLOROTETRAHYDROFURAN 3,4	
ACETYLPIPERIDINE 3	3511-19-
CHLORO-1,2-ETHANE DIOL	518-42-8
CYANIDE	
NIACINAMIDE	57-12-5
METHOXYPHENOL P	88-82-0
METHYLFURFURAL 5	150-76-5
GLYCINAMIDE	820-02-0
SUCCINIMIDE	598-41-4
SULFANILIC ACID	123-56-8
MALEIC ACID	121-47-1
AMETRYN	110-16-7
DIMETHYLPHENOL(3,4)	
ANISIDINE, o	
TETRAETHYLENE PENTAMINE	90-04-0
DIETHYLENE GLYCOL MONOETHYL ETHER	
CHLORACETOPHENONE 2-	
DIPROPYLENE GLYCOL	93-78-5
HEXAMETHYLENE 1,8 DIISOCYANATE	
NEOPENTYL GLYCOL	
BHC, gamma	126-30-7
PHENYLENE DIAMINE(m)	58-89-9
CHLOROHYDRIN, a 3 CHLORO 1,2 PROPANEDIOL	108-45-2
XYLENOL(3,4)	
DINITRO-o-CRESOL(4,6)	95-66-8
PROPORUR (Baygon)	534-52-1
DIBROMO-4-HYDROXYBENZONITRILE (3,5)	
CATECHOL	
CHLOROANILINE, p	120-80-9
DICHLOROVOS	108-47-8
ACRYLAMIDE	
THIOSEMICARBAZIDE	79-06-1
TRIETHANOLAMINE	79-19-6
PENTAERYTHRITOL	102-71-6
PHENYLENE DIAMINE(o)	115-77-5
CAPROLACTAM	95-54-5
BENZOIC ACID	
TOLUENEDIAMINE(3,4)	65-85-0
TRIPROPYLENE GLYCOL	498-72-0
PHENYLENE DIAMINE(p)	
TEREPHTHALIC ACID	106-50-3
NITROGLYCERIN	
CHLORO(p)CRESOL(m)	55-83-0
DICHLOROANILINE 2,3	59-50-7
NITROANILINE(o)	
DIETHYL (N,N) ANILINE	88-74-4
NAPHTHOL, alpha	91-66-7
AMINOPYRIDINE, 4	90-15-3
ADIPONITRILE	504-24-5
BROMOXNYL	
PHTHALIC ANHYDRIDE	
MALEIC ANHYDRIDE	85-44-9
NITROPHENOL 2	108-31-6
ACETYLAMINOFLUORENE, 2	88-75-6
PROPANE SULTONE, 1,3	53-06-3
	1120-71-

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X—Continued
(At 25 degrees Celsius)

Compound name	CAS No.
CITRIC ACID	77-82-9
EPINEPHRINE	51-43-4
CHLOROPHENOL POLYMERS	
CREOSOTE	8001-68-
FLUOROACETIC ACID, SODIUM SALT	82-74-8
SODIUM ACETATE	
SUCCINIC ACID	110-15-6
SODIUM FORMATE	141-53-7
PHENACETIN	52-44-2
HYDROQUINONE	123-31-9
DIMETHYLAMINOAZOBENZENE, 4-	60-11-7
METHYLENE DIPHENYL DIISOCYANATE	
OXALIC ACID	144-82-7
BENZO(A)PYRENE	50-32-8
DICHLOROBENZONITRILE 2,6	1194-85-6
AMINOBIIPHENYL, 4-	82-67-1
NAPHTHYLAMINE, alpha	134-32-7
DIETHANOLAMINE	
METHYLENEDIANILINE 4,4	
NAPHTHYLAMINE, beta	91-59-8
METHYLENE DIPHENYLAMINE (MDA)	
GLUTARIC ACID	110-94-1
RESORCINOL	108-46-3
TOLUIC ACID (para)	99-94-6
GUTHION	
DIMETHYL PHTHALATE	131-11-3
GLYCERIN (GLYCEROL)	56-81-6
THIOFANOX	38186-18
DIBUTYLPHTHALATE	84-74-2
ALDICARB	116-06-3
NITROPHENOL, 4-	100-02-7
METHYLENE-BIS (2-CHLOROANILINE), 4,4'	101-14-4
DIPHENYLHYDRAZINE(1,2)	122-86-7
METHOMYL	16752-77
MALATHION	121-75-5
PARATHION	56-38-2
ADIPIC ACID	124-04-9
ALACHLOR	15972-80
STRYCHNIDIN-10-ONE, 2,3-DIMETHOXY-	357-57-3
TOLUENEDIAMINE(2,6)	823-40-5
CUMYLPHENOL-4	27576-86
DIAZINON	
BENZENE ARSONIC ACID	98-05-6
WARFARIN	81-81-2
METHYL PARATHION	298-00-0
DIETHYLTHIOPHOSPHATEBENZO M ETHYL PETHER	
PHENYL MERCURIC ACETATE	62-38-4
DIETHYL PROPIONAMIDE, 2n	15299-99
CHLOROBENZOPHENONE (PARA)	134-35-0
THIOUREA, 1-(o-CHLOROPHENYL)-	5344-82-
DIMETHYLBENZIDINE 3,3	
DICHLORO(2,6)-NITROANILINE(4)	99-30-6
CELLULOSE	9000-11-
CELL WALL	
BENZIDINE	92-87-5
TETRAETHYLDITHIOPYROPHOSPHATE	3689-24-
NABAM	
ATRAZINE	1912-24-
ENDRIN	72-20-8
BIS(2-ETHYLHEXYL) PHTHALATE	117-81-7
BENZO(A)ANTHRACENE	56-55-3
CYANOMETHYL BENZOATE 4	
ANTHRAQUINONE	
STRYCHNINE	84-85-1
SIMAZINE	57-24-9
PYRENE	122-34-9
CHLOROBENZYLATE	129-00-0
DIMETHYLBENZ(A) ANTHRACENE(7,12)	510-15-6
INDENO(1,2,3-cd)-PYRENE	57-97-6
CHRYSENE	193-39-5
BENZO(ghi)PERYLENE	216-01-9
	191-24-2

APPENDIX VI TO PART 265.—COMPOUNDS WITH HENRY'S LAW CONSTANT LESS THAN 0.1 Y/X—Continued
(At 25 degrees Celsius)

Compound name	CAS No.
BENZO(k) FLUORANTHENE	207-08-9
DIBENZO(a,h)ANTHRACENE	53-70-3
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PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE MANAGEMENT PROGRAM

50. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

51. Section 270.14 is amended by revising paragraph (b)(5) to read as follows:

§ 270.14 Contents of Part B: General requirements.

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 245.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088.

52. Section 270.27 is revised to read as follows:

§ 270.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.

(a) Except as otherwise provided in 40 CFR 264.1, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of 40 CFR part 264, subpart CC shall provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or 40 CFR 264.1084(d)(2) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in 40 CFR 264.1084(e)(1) or 40 CFR 264.1084(f)(1).

(2) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and certification by the owner or operator that the requirements of this subpart are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of 40 CFR 264.1084(d)(5) or 40 CFR 264.1086(e)(1)(ii) that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of 40 CFR 264.1085(c) that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in 40 CFR 264.1085(c)(1).

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of 40 CFR 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d) of this part.

(6) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to 40 CFR part 265, subpart CC cannot comply with 40 CFR part 264, subpart CC by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

53. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

54. Section 271.1(j) is amended by revising the effective date of the following entry in Table 1 to read as follows:

§ 271.1 Purpose and scope.

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS WASTE AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
December 6, 1994	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	59 FR 62896-62953	December 6, 1996.

§ 271.1 [Amended]

54. Section 271.1(j) is amended by revising the effective date of the following entry in Table 2 to read as follows:

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS WASTE AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
December 6, 1996	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	3004(n)	December 6, 1994, 59 FR 62896-62953.

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Monday
November 25, 1996

Part III

Environmental Protection Agency

**Alaska: Partial Program Adequacy
Tentative Determination of State
Municipal Solid Waste Landfill Permit
Program; Notice**

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5554-8]

Alaska: Partial Program Adequacy Tentative Determination of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on the Alaska Department of Environmental Conservation Application for a Partial Program Adequacy Determination, Public Hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. On January 26, 1996, EPA published in the *Federal Register* at 61 FR 2584 a proposed State/Tribal Implementation Rule (STIR) that provides procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The EPA has approved and will continue to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to the final promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the proposed STIR as an aid in interpreting these requirements. The EPA believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the

federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Alaska Department of Environmental Conservation (ADEC), Division of Environmental Health (DEH) applied on February 12, 1996 for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Alaska's application and made a tentative determination of adequacy for those portions of ADEC's MSWLF permit program that are adequate to assure compliance with the federal MSWLF Criteria. The portions of the Alaska program in today's tentative approval are described later in this notice. ADEC plans to revise the remainder of its permit program all at one time. This will be done once EPA has finalized its proposed rule on financial assurance mechanisms for local government landfills, to assure complete compliance with the revised federal MSWLF Criteria and gain full program approval. Alaska's application for partial program adequacy determination is available for public review and comment.

All municipal solid waste in Alaska must be disposed in a landfill which meets these criteria. This includes ash from municipal solid waste incinerators that is determined to be non-hazardous.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, EPA Region 10 is offering the opportunity for a public hearing on this determination on the date given below in the DATES section.

DATES: All comments on Alaska's application for a partial determination of adequacy must be received by EPA Region 10 by the close of business on January 23, 1997. If, and only if, sufficient interest in having a public hearing is requested by Tuesday, December 31, 1996, a public hearing to receive oral and written testimony on EPA's tentative determination will be held on Thursday, January 23, 1997 from 7:00 p.m. until 9:00 p.m. The hearing, if held, will be at the Federal Building, 222 West 7th Avenue, Anchorage, Alaska, 99513, in Room 143. Members of ADEC will attend EPA's public hearing.

Requests for a public hearing must be in writing and must be received by the EPA contact listed below before the close of business on Tuesday, December 31, 1996, and should include a statement on the writer's reason for wanting a public hearing. EPA will determine on Monday, January 6, 1997, if a public hearing is warranted. After

that date, anyone may contact the EPA person listed in the CONTACTS section to find out whether a public hearing will be held.

ADDRESSES: Copies of Alaska's application for partial adequacy determination are available during normal working days at the following addresses for inspection and copying: three offices of the Alaska Department of Environmental Conservation from 8:00 a.m. to 4:30 p.m. at 410 Willoughby Avenue, Juneau, AK 99801, Attn: Ms. Susan Super, (907)-485-5350; at 555 Cordova Street, Anchorage, AK 99501, Attn: Ms. Laura Ogar (907)-269-7500; and at 610 University Avenue, Fairbanks, AK 99709, Attn: Ms. Kris McCumby, (907)-451-2380; and at the office of the Environmental Protection Agency from 9 a.m. to 4 p.m. at U.S. EPA, Region 10 Library, 1200 Sixth Avenue, Seattle, WA 98101; library telephone 206-553-1259. All written comments on this tentative determination must be sent to U.S. EPA Region 10, 1200 Sixth Avenue, mail code (WCM-128), Seattle, WA 98101, Attn: Mr. Steven B. Sharp.

FOR FURTHER INFORMATION AND TO REQUEST A PUBLIC HEARING, CONTACT: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101, Attn: Mr. Steven B. Sharp, mail code (WCM-128), fax (206)-553-8509; telephone (206)-553-6517.

SUPPLEMENTARY INFORMATION:**A. Background**

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has proposed in the *Federal Register* on January 26, 1996, the State/Tribal Implementation Rule (STIR). The rule specifies the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA proposed in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; (2) changes to a limited part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not

included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of Part 258. Those requirements, as in the proposed STIR, will address the potential problems posed by the dual State/Tribal and Federal regulatory controls following the October 9, 1993 effective date of the Federal regulations. On that date, Federal rules covering any portion of a State/Tribe's program that had not received EPA approval became enforceable through the citizen suit provisions of RCRA 7002. Owners and operators of MSWLFs subject to such dual programs must understand the applicable requirements and comply with them. In addition, those portions of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLFs. Partial approval would allow the EPA to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991 municipal landfill rule, EPA's Subtitle D standards took effect nationwide in October 1993. Extensions to certain portions were subsequently postponed, with most all of the EPA standards becoming effective during or before 1997. Consequently, any portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993, or applicable later dates, would apply directly to the owner/operator without any approved State/Tribal flexibility. On April 7, 1995, EPA issued a *Federal Register* Notice extending the effective date of the 40 CFR Part 258 Subpart G requirements relating to Financial Assurance until April 9, 1997.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of the final STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior

approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA cites in the proposed STIR rule that submission of a schedule is mandatory.

B. State of Alaska

Over the past several years and earlier, Alaska has developed an extensive and practicable approach to management of many types of non-hazardous solid waste including municipal waste—and to increased protection of human health and the environment. During 1993 through 1995 the state broadly revised its regulations. Concurrently, ADEC reorganized in a manner that is already showing results in terms of greater communication with small landfills. The Division of Environmental Health of ADEC has the lead role in solid waste management and oversees the entire program. It also receives assistance from the statewide Public Service Office of ADEC for improving waste management in small and remote communities. An element of the regulatory upgrades was extensive revision of the criteria for municipal solid waste disposal facilities and also addition of requirements that apply to conditionally exempt small quantity generator (CESQG) hazardous waste disposal. Alaska went public with its proposed regulations in September 1993 and, after the public comment period, issued a revised proposal in September 1994 with a second comment period. ADEC's new rule became effective on January 28, 1996. Today's tentative approval is an endorsement by EPA of the proficiency of Alaska's program.

On February 12, 1996, Region X received Alaska's application for a partial program adequacy determination. EPA responded within the required 30 days that Alaska's

application for approval of its municipal solid waste landfill permit program was administratively complete. EPA subsequently began its in-depth review and has tentatively determined that most portions, as noted in the discussions which follow, of the State's municipal solid waste landfill (MSWLF) program will ensure compliance with the revised Federal Criteria. The MSWLF program is a component of the Solid Waste Management Program of ADEC that covers a wide range of non-hazardous solid wastes. Portions of the Alaska MSWLF program that do not currently meet the Federal requirements and can only be revised through their regulation revision process, which may require action by the State legislature, are not being requested for EPA approval at this time.

Alaska's Department of Environmental Conservation (ADEC) informed EPA in the cover letter of its application that its solid waste regulations presently do not include the financial assurance provisions of 40 CFR Part 258, Subpart G, for municipal solid waste landfills (MSWLFs) because EPA has not yet finalized its proposed financial assurance alternatives that will allow local government financial tests. Therefore, Alaska has requested partial approval (instead of full approval) of its solid waste program at this time so that it may benefit from the flexibility in the federal criteria that Part 258 allows only to approved States/Tribes.

In addition, during the review process, EPA and ADEC have concluded that a small number of portions of the ADEC program requirements do not mirror the federal solid waste program criteria of 40 CFR 258 or the STIR manual and rule. These portions are discussed in following paragraphs of this notice. The state's practices or policies on these portions meet the goals and standards of the STIR guidance and Part 258 on a performance basis. Therefore, they are not being excluded from today's tentative approval.

Federal law requires that all municipal solid waste (MSW), including non-hazardous MSW incinerator ash, must be disposed in a landfill which meets the 40 CFR Part 258 criteria. The portions of the Alaska Program in today's tentative approval are described later in this notice. Alaska's application for partial program adequacy determination is available for public review and comment.

Alaska's schedule is to achieve final full approval of its solid waste program within two years of EPA's promulgation of a final partial approval. In the covering letter of its application, ADEC cites that it will revise its regulations

and apply for full approval soon after EPA has promulgated the final version of its Local Government Financial Assurance rule. EPA expects to finalize this rule by the end of 1996, which Alaska believes would allow time for ADEC to change its 18 AAC 60 criteria to include financial assurance mechanisms as a requirement for MSW landfills—and meet this schedule. In addition, the planned minor regulatory changes that are discussed in this notice should also have been completed by ADEC before the state applies for full approval. EPA believes that the state's schedule is reasonable.

Sewage and Biosolids

In today's tentative partial approval of Alaska's Solid Waste Program, EPA is not proposing approval under the Clean Water Act, with respect to the treatment, storage, landspreading, or disposal of sewer solids, biosolids, sludge, and other wastes that are addressed in EPA's regulations under Part 503 and related parts, if any, of Title 40 of the Code of Regulations. The STIR process for State approval focuses on the municipal solid waste program of Alaska that are subject to Subtitle D of the Resource Conservation and Recovery Act (RCRA) without expressing any opinion on the other programs that are addressed in Alaska's waste management rule (18 AAC 60) that went into effect on January 28, 1996. With respect to sewage and biosolids wastes, the only criteria in Alaska's rule that are being approved today are those that correspond to EPA's 40 CFR Part 258 municipal landfill criteria.

Indian Country

In preparing and reviewing the Alaska application, ADEC and Region 10 have taken into consideration the needs and status of recognized Indian Tribes and Alaska Native Villages. Today's tentative partial approval of the State of Alaska's solid waste program does not extend to "Indian Country" located in Alaska, as defined in 18 U.S.C. 1151. Because the extent of Indian Country is currently unknown and in litigation, the exact boundaries of Indian Country have not been established. At present, the lands acknowledged to be Indian Country are the Annette Island Reserve, and trust lands identified as Indian Country by the United States in Klawock, Kake, and Angoon. By tentatively approving Alaska's solid waste program, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Alaska, nor does it intend to limit the existing rights of the State of Alaska.

Small Landfills

Alaska defines Class II municipal landfills as those that receive twenty tons per day or less on an annual average and meet specifications that include the federal § 258.1(f)(1) arid or remote small-landfill qualifying criteria. Alaska defines its Class III landfills as those that receive five tons per day or less and meet the specifications in Alaska's 18 AAC 60.300(c)(3), which does not include all of the § 258.1(f)(1) qualifying criteria for small landfills. In addition, Alaska's 18 AAC 60 contains flexibility for Class III landfills that includes less stringent requirements than the Part 258 allows for small MSWLFs.

Over the recent past, two methods of addressing small landfills in Alaska have been developed. The first was a compromise between Region 10 and ADEC in 1993 and 1994, that agreed upon regulatory language in 18 AAC 60 that now says: "After October 9, 2010, all MSWLFs must meet the standards applicable to either a Class I or Class II MSWLF or close in accordance with this chapter." The delay to 2010 for Class III landfills, versus the effective date in 40 CFR Part 258, was based on the practicable capabilities of the small communities affected and on conditions that are unique in Alaska versus the rest of the nation.

The second method was established when Congress passed a new statute after Alaska had finalized its solid waste rule and had submitted its application for program approval to EPA Region 10. Several elements of the new act address small landfills in Alaska. This statute, Public Law 104-119, entitled the "Land Disposal Program Flexibility Act of 1996" (LDP Flexibility Act), became effective on March 26, 1996, as an amendment to the Solid Waste Disposal Act.

Note: This act is different than the "Regulatory Flexibility Act of 1996" that addresses economic impacts of a wide range of federal programs, and which is referred to near the end of this notice.

Subsection (5) of Section 3(a) of the LDP Flexibility Act reads, verbatim, as follows: "ALASKA NATIVE VILLAGES—Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the

unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily on an annual average."

Note: The reference to "paragraph (1)" in the above text is to paragraph (1) of section 4010(c) of SWDA.

Therefore, Class II and Class III landfills that receive an exemption by the Governor from some or all of the Part 258 criteria will not be subject to the citizens suit provision of Section 7002 of RCRA as to the Governor's exemptions.

Under this new Act, certain small landfills can be exempted from the need to upgrade to the federal Part 258 standards until an indefinite time in the future. ADEC cites in the narrative summary of its application for program approval, and has further clarified in subsequent conferences with Region 10, that the State's intention is to remove the 2010 deadline from its existing regulation if Alaska's Governor exempts Class III landfills from requirements that distinguish Class II facilities from Class III facilities. EPA expects that at the time when all Class III landfills have either upgraded to Class II standards, or have been exempted by Alaska's Governor from the elements of 40 CFR Part 258 that are more stringent for Class III landfills than the Alaska's 18 AAC 60, the 2010 deadline in Alaska's rule would become redundant and could be removed unilaterally by ADEC without affecting today's approval. The State of Alaska and EPA intend to continue to work cooperatively toward successive improvements at Class III landfills and to bringing them into compliance with the Part 258 criteria to the extent such compliance is economically and practicably achievable.

The exemption authority in subsection (5) of the LDP Flexibility Act is granted to the Governor of Alaska only. ADEC has initiated development of an approach for addressing small landfills with respect to exemptions under this new Act. This approach includes identification of important needs and goals, mapping landfills, consulting with Village Safe Water personnel and Public Service staff, providing technical assistance and educational materials, and establishing procedures to grant exemptions on a category basis. Furthermore the State is considering a broad short-term exemption to provide a bridge until a final plan is developed for ensuring environmental protection that is consistent with community resources and capabilities. EPA supports the

State's approach to use the exemption authority strategically to achieve continued improvement at landfills that require more time. Standard factors such as climate, hydrogeological conditions, and risk are important considerations in determining where and for how long exemptions are appropriate.

In addition, subsection (6) of the LDP Flexibility Act mandates that the EPA shall, within two years, promulgate revisions to Part 258 to provide additional flexibility to approved States with respect to qualifying landfills that receive an average of 20 tons per day or less. The areas of increased flexibility are limited to alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. This subsection includes a provision that such alternative requirements must take into account climatic and hydrogeologic conditions and be protective of human health and the environment. The Act intends that the additional flexibility mandated by this subsection (6) will become available in all approved States/Tribes.

On a nationwide basis, another section of the Flexibility Act reinstates the exemption on ground-water monitoring for all facilities that receive an average of 20 tons per day or less and meet the qualifying criteria in the LDP Flexibility Act for small dry or remote municipal solid waste landfills. The act does not modify the existing Part 258 exemption on liner requirements for qualifying small or remote MSWLFs. The liner exemption, promulgated in October 1991, is still in effect.

Unique Landfills and Special Criteria

Two special categories of landfills are included in ADEC's regulations: Ash monofills that accept MSW and permafrost MSW landfills. EPA finds that Alaska's regulatory flexibility with respect to methane monitoring and daily cover at MSWLF ash monofills is in keeping with either present Part 258 flexibility or the future flexibility that the LDP Flexibility Act requires EPA to develop. Alaska's MSW ash monofills are handled under 18 AAC 60 Article 3 that sets ADEC's standards for landfill disposal of municipal solid wastes. EPA believes that Alaska's program meets EPA standards for monofills that receive only MSW-ash provided that the ash is "non-toxic" based on RCRA requirements.

The Alaska solid waste regulations also include flexibility provisions for permafrost landfills that include flexibility that is different and less

stringent than the federal Part 258 requirements. Almost all permafrost landfills in Alaska are small and receive less than an average of 20 tons per day of municipal solid waste. EPA believes use of flexibility that is specific to permafrost landfills exclusively is in keeping with practicable capability considerations of RCRA. EPA invites comments on the permafrost provisions in Alaska's municipal solid waste rule with respect to adequacy and tentative partial approval of Alaska's program.

With respect to the disposal of hazardous wastes from conditionally exempt small quantity generators (CESQG), EPA promulgated its final rule on disposal criteria for this category of solid waste after Alaska had submitted its application in February to EPA Region 10 for approval of its solid waste program. The final CESQG rule was published in the Federal Register on July 1, 1996. The rule modifies 40 CFR 261 of the hazardous waste regulations to establish an additional category of landfills under 40 CFR Sections 257.5 through 257.30 that allows certain nonmunicipal, nonhazardous waste landfills to receive CESQG wastes. In addition Section 261.5 is amended, per the same Federal Register of July 1996, such that CESQG wastes may be disposed of in a facility that is:

"permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258" of Title 40. (Text within the quotation marks is verbatim copy of the Federal Register text.) In anticipation of EPA's final CESQG rule, Alaska's 18 AAC 60 already requires that all CESQG wastes must go to Class I or Class II municipal landfills exclusively. Alaska's 18 AAC 60 requires, with respect to CESQG wastes, that: a conditionally exempt hazardous waste from a small quantity hazardous waste generator may be disposed of only at a facility that meets the requirements for a Class I or Class II MSWLF set out in 18 AAC 60.300 through 60.397 of Alaska's municipal landfill rule. Since both classes meet or exceed the Part 258 municipal landfill criteria, Alaska is already meeting EPA's new CESQG disposal standards. Therefore, EPA is including Alaska's 18 AAC 60 criteria for disposal of CESQG solid wastes in today's tentative approval of Alaska's program.

A corollary of the requirements of this amendment to 40 CFR 261, is that landfills which the State Governor has exempted from some or all of the Part 258 criteria would not be eligible to accept CESQG wastes—based on Region 10's interpretation that the meaning of the text in the July 1996 Federal

Register is that the landfill must be subject to the entire Part 258.

In the wetlands section of Alaska's landfill rule, Alaska has a stability requirement that applies only for "undisturbed" native wetland soils and deposits used to support the MSW landfill. Part 258 applies this stability requirement to all types, not only undisturbed, wetlands support. ADEC has assured EPA Region 10 that it will remove the word "undisturbed" from its section 18 AAC 60.315(3) during its next revision of the rule, even though this may not be finalized before a final-partial approval is promulgated by EPA. During the interim, ADEC expects to achieve equivalent stringency via its permitting activities and authority.

Administrative Elements and Criteria

Part 258 requires notification of the State Director under numerous specified circumstances, including under § 258.1(f)(3) with respect to small landfills. This subsection requires that if the owner/operator of a small, arid or remote, landfill has knowledge of ground-water contamination resulting from the unit, the owner/operator must notify the State Director. Alaska's regulation does not include the exact wording of this sub-section, but ADEC believes that it is meeting the requirement in practice. ADEC and EPA believe that via ADEC's existing permitting and compliance-monitoring practices, and via the activities of other support agencies, ADEC will become aware of any ground-water contamination from a Class II landfill as rapidly as ADEC would by relying on the owner/operator to fulfill the notification requirement. In addition, Alaska's regulation requires that Class II landfills must perform groundwater monitoring unless a landfill demonstrates to the State Director that there is no practical potential for migration to an aquifer of resource value.

Note: Alaska's rule, like Part 258, requires compliance with Part 258's Subpart E ground-water monitoring and corrective action if contamination from the landfill becomes known.

With respect to public participation, Alaska cites in the narrative summary of its application that it has been and is ADEC's policy to provide additional public participation opportunities after a permit is issued, including for permit renewals and major modifications or variances, particularly if public interest was expressed at the time of the original permit or if there is any controversy surrounding the permit. The summary states that Alaska's current version of its

18 AAC 15.100(d) regulation does not require public notice or a public hearing on applications for renewal of a permit or amendment. As a means of formalizing ADEC's existing and ongoing practices in this area, the Commissioner of ADEC issued a policy paper on October 9, 1996, entitled "Policy Regarding Public Notice Requirements for Solid Waste Renewals and Modifications". A copy has been placed in Alaska's application, and this policy is included in today's tentative approval.

Alaska, in its application to Region 10 for approval, has adequately described its staffing and implementation capabilities. ADEC was reorganized during 1995 to further improve the administration of its solid waste program. A memorandum of agreement (MOA) establishes the relationship and duties of the two key divisions of ADEC that will implement and enforce the solid waste program. The MOA for solid waste services is between the Division of Environmental Health and the Division of Public Service; both are divisions of ADEC. It outlines the types of services that will be provided to DEH. A copy of the MOA that was signed by the Directors in late February is included in Alaska's application.

With respect to effective dates, a gap of one-quarter year exists between the dates contained in the regulations of Alaska versus EPA with respect to closure of those existing landfills that do not meet the location restrictions regarding airports, floodplains, and unstable areas. The Alaska MSWLF criteria require that the landfill must close within one year after January 28, 1996, if it does not meet these location restrictions. This results in Alaska's rule having effective dates that are one-quarter year later than Part 258. Likewise, the Alaska criteria allow the State Director to extend the deadline for up to two years if the landfill owner/operator makes the required demonstration, which represents an extension to January 28, 1999. The EPA criteria specify that such landfills must close by October 9, 1996, and that extensions of the deadline shall require closure on or before October 9, 1998. A factor related to these deadlines is that in late 1995 EPA extended the effective date for which small and remote qualifying landfills must meet Part 258 to October 9, 1997. EPA believes that to partial out the two quarter-year gaps, from today's partial approval, is not practicable in comparison to the relatively short time delay that each of these gaps represent. EPA will request that the State eliminate this gap either by adopting a guidance that achieves

closure in all cases by October 9, 1998, or by changing the Alaska rule itself. An optional avenue for an owner/operator of a qualifying small landfill who has concerns about operating during this gap, is to request via the Governor of Alaska, under the provisions of the LDP Flexibility Act, for a quarter-year "bridge" exemption for the three-month time period. EPA invites comments on this issue as to whether the three-month effective-date gap will result in a significant difference on protection of human health and the environment.

C. Decision

The portions of Alaska's municipal solid landfill program, including its provisions for permafrost landfills and municipal-ash monofills, that are being tentatively approved today are the following Subparts of 40 CFR part 258. These portions are also being tentatively approved under 40 CFR 261.5, as amended per the Federal Register of July 1, 1996, for disposal of hazardous wastes from Conditionally Exempt Small Quantity Generators that is disposed of in landfills that are subject to 40 CFR Part 258. The portions of 40 CFR Part 258 that are included in today's tentative approval are:

- Subpart A—General, including, but not limited to, Section 60.300(c) with respect to the October 9, 2010 date.
- Subpart B—Location Restrictions;
- Subpart C—Operating Criteria;
- Subpart D—Design Criteria;
- Subpart E—Ground-Water Monitoring and Corrective Action; and
- Subpart F—Closure and Post-Closure Care.

The flexibility elements in Part 258 are an important factor that becomes available to a State/Tribe upon approval by EPA of its solid waste program. Not all existing State and Tribal permit programs ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State or a Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR Part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant period of time. This delay in determining the adequacy of the State/Tribal permit program, while the State/Tribe revises its statutes or regulations, could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with approved permit programs.

As State/Tribal regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially

approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review, and an adequacy determination will be made using the same criteria used for the initial application. This adequacy determination will be published in the Federal Register which will summarize the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected. It will also provide for a minimum 30 day public comment period. This future adequacy determination will become effective 60 days following publication if no significant adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the current Federal Criteria and to obtain full approval of its municipal solid waste landfill permit program, the Alaska Department of Environmental Conservation must:

1. Add financial assurance requirements which meet one or more of the criteria in Subpart G of Part 258 that will cover all of the types of municipal landfills that are permitted by the State.

Comments are solicited on this tentative determination until the date shown in the DATES section of this notice. Copies of Alaska's application are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

EPA Region 10 will hold a public hearing if, and only if, requested (see DATES section of this notice) on this tentative decision, on the date and in the location shown in the DATES section of this notice. Comments can be submitted at the hearing, if held, as transcribed from oral comments presented, or in writing at the time of the hearing.

EPA will consider all written public comments on its tentative determination received during the public comment period, as well as those presented at the public hearing. Issues raised by those comments may be the basis for EPA's reconsideration of this tentative determination of adequacy for Alaska's program. EPA will make a final decision on whether or not to approve Alaska's program and will provide notice in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to

enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant adverse economic impact on a substantial number of small entities. By approving State/Tribal municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR Parts 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant

adverse economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR Part 258 requirements. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that

may significantly or uniquely affect small governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Agency does not believe that approval of the State's program would result in estimated costs of \$100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can exercise (which will reduce, not increase, compliance costs). Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the State program will not significantly or uniquely affect small governments other than the applicant, the State of Alaska. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: November 14, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96-29928 Filed 11-22-96; 8:45 am]

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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

⁵ No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

⁶ No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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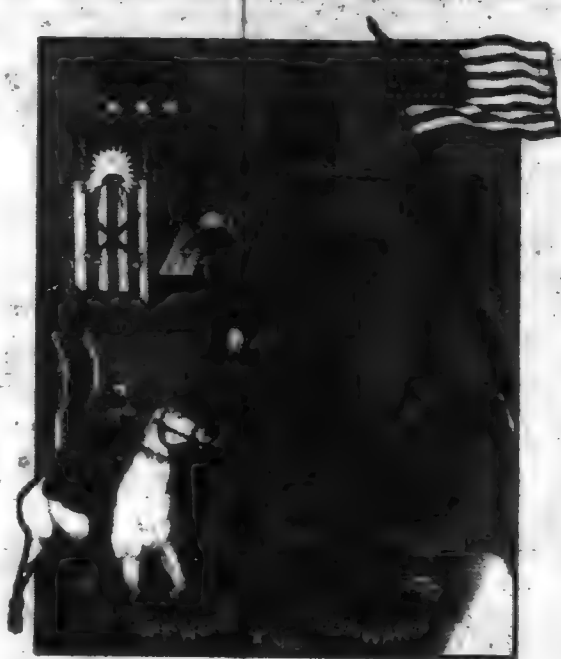
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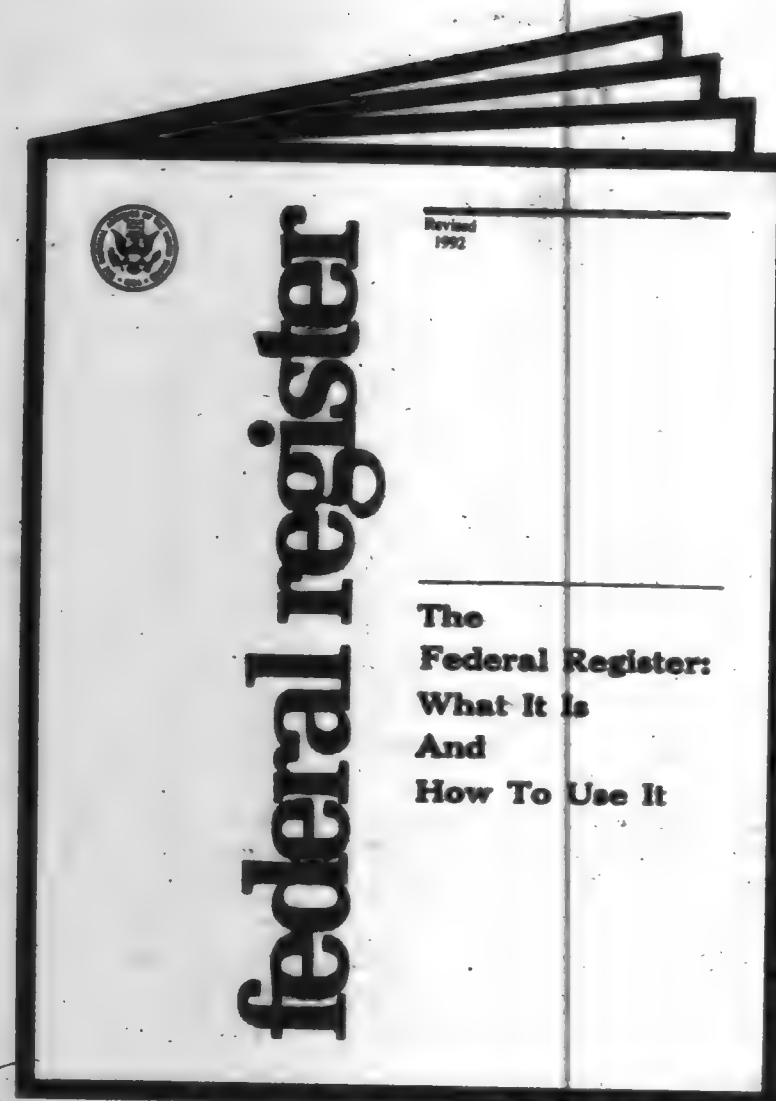
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Tuesday, November 26, 1996

Presidential Documents

Title 3—

The President

Proclamation 6958 of November 22, 1996

Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members or Officials of the Sudanese Government or Armed Forces

By the President of the United States of America

A Proclamation

In light of the refusal of the Government of Sudan to comply with United Nations Security Council Resolution 1044 of January 31, 1996, and in furtherance of United Nations Security Council Resolution 1054 of April 26, 1996, I have determined that it is in the foreign policy interests of the United States to restrict the entry into the United States of aliens described in paragraph 3 of United Nations Security Council Resolution 1054 and in section 1 of this proclamation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the power vested in me as President by the Constitution and laws of the United States of America, including sections 212(f) and 215 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f) and 1185), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in section 2 of this proclamation, be detrimental to the interests of the United States. I therefore, do proclaim that:

Section 1. The entry into the United States as immigrants and nonimmigrants of members of the Government of Sudan, officials of that Government, and members of the Sudanese armed forces, is hereby suspended.

Sec. 2. Section 1 shall not apply with respect to any person otherwise covered by section 1 where the entry of such person would not be contrary to the interests of the United States.

Sec. 3. Persons covered by section 1 and 2 shall be identified by the Secretary of State.

Sec. 4. Nothing in this proclamation shall be construed to restrict the entry of Sudanese officials coming to the United States on official business of the United Nations other than in a manner consistent with the obligations of the United States to the United Nations.

Sec. 5. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

Sec. 6. The Secretary of State is hereby authorized to implement this proclamation pursuant to such procedures as he may establish.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William Clinton

[FR Doc. 96-30392
Filed 11-25-96; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register

Vol. 61, No. 229

Tuesday, November 26, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272, 282, 284, and 285

[Amdt. No. 371]

RIN: 0584-AC14

Food Stamp Program, Regulatory Review; Alaska, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and Demonstration Projects

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends Food Stamp Program rules affecting Alaska, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and demonstration projects. This action is a result of a comprehensive, page-by-page review, of all existing Food Stamp Program regulations which was conducted in response to the President's efforts to reform the Federal regulatory system. This rule eliminates prescriptive detailed processes and empowers States to set their own procedures for case management and customer service; eliminates outdated and redundant regulatory requirements; and emphasizes recipient responsibility for applying and reporting their circumstances properly.

DATES: This final rule is effective December 26, 1996, and must be implemented May 27, 1997.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305-2520.

SUPPLEMENTARY INFORMATION:

Executive Order 12865

This rule has been determined to be not significant for the purposes of Executive Order 12865 and therefore was not reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). William E. Ludwig, Administrator, Food and Consumer Service, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

Sections 272.7(b) and (l) of this rulemaking require submission to FCS of amendments to the Alaska State Plan of Operation. The information collection burden associated with amendments to a State agency's Plan of Operation is currently approved by the Office of Management and Budget (OMB) under OMB Number 0584-00630. This rulemaking does not alter the burden estimates as currently approved. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FCS solicited comments through an April 1, 1996 publication in the Federal Register (61 FR 14287, 14288) of a notice on the current information collection requirements related to the State Plan of Operation. The comment period ended on May 31, 1996. There were no comments received on that portion of the notice which describes the burden associated with the State Plan of Operation. The proposed collection will be submitted to OMB for review and at that time the Department will publish a notice which will provide an additional opportunity to comment.

The reporting burden in § 285.3 related to the Puerto Rico State Plan of Operation affects only the Puerto Rico State agency. Under the Paperwork Reduction Act, burden is not required to be assessed and submitted to OMB for review if the number of respondents is less than nine.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

This rule is the first revision of the regulations governing the Food Stamp Program issued in response to the President's Regulatory Reform Initiative. For a detailed description of the analysis of the initiative and its application by this Department, readers are referred to the proposed rule published on January 24, 1996 at 61 FR 1849.

In this rule, we are amending food stamp regulations affecting Alaska, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and demonstration projects. The amendments streamline administration of the program in these areas, offer greater flexibility to State agencies in enacting policy, and improve customer service.

We received a comment letter from the Alaska Department of Health and Social Services (the State agency), addressing technical changes to three of the provisions regarding the administration of the program in the State of Alaska. With the exception of minor changes, to the proposed regulations suggested by this comment, which are discussed in the following paragraphs, the provisions of the proposed rule are being adopted without change. For a detailed description of these provisions readers are referred to the proposed rule.

Section 272.7, of the proposed rule described special procedures for administration of the Food Stamp Program in Alaska. Section 272.7(a), the introductory paragraph to § 272.7, specified that FCS had developed additional regulations to accommodate the unique demographic and climatic characteristics of certain areas in rural Alaska. The paragraph further specified that, with the exception of paragraph (f) which contains provisions regarding the treatment of resources, the special procedures described in § 272.7 would be limited to the designated rural areas of Alaska.

Section 272.7(c) of the proposed rule defined "fee agent" and described the duties of such agents. In its comment letter, the State agency requested that we amend § 273.7(a) so that fee agents may be used in urban areas. Under section 11(m) of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2020(m)) the Secretary is directed to provide for the use of fee agents in rural Alaska. In view of the explicit statutory language limiting the use of fee agents to only rural areas of Alaska, the Department does not have the authority to expand the use of fee agents to urban areas. We would, however, consider granting waivers allowing for the use of fee agents in urban areas of Alaska on a limited basis.

Under the proposed rule at § 272.7(b)(4), the State agency may, in consultation with FCS, change the designation of any Alaska subdivision to reflect changes in demographics or the cost of food within the subdivision. The State agency requested clarification of how it may initiate changes in the designation of areas as rural or urban. Since the designation of which areas are urban or rural is included in the State Plan of Operation, described at 7 CFR 272.2, changes in the Plan would be made pursuant to the procedures at 7 CFR 272.2(f).

In response to the State agency's request, we are also changing the title of proposed § 272.7(f) from "Resources" to "Vehicles" since that section refers only

to the treatment of vehicles as a resource.

Implementation

The provisions of this rulemaking are effective no later than 30 days after publication of the final rule. State agencies shall implement the provisions no later than 180 days after that date.

List of Subjects

7 CFR Part 271

Administrative practice and procedure; Food stamps; Grant programs—social programs.

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 282

Food stamps, Governmental contracts, Grant programs—social programs, Research.

7 CFR Part 284

Administrative practice and procedure, Food assistance programs, Grant programs—social programs, Health, Nutrition.

7 CFR Part 285

Accounting, Food assistance programs, Grant programs—agricultural, Grant programs—social programs, Intergovernmental relations, Puerto Rico, Technical assistance, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 271, 272, 282, 284, and 285 are amended as follows:

1. The authority citation for 7 CFR parts 271, 272, 282, 284, and 285 continue to read as follows:

Authority: 7 U.S.C. 2011–2034.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, the definition of "State" is amended by removing the words "the Northern Mariana Islands."

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, paragraph (g)(152) is added to read as follows:

§ 272.1 General terms and conditions.

(g) Implementation * * * (152) Amendment No. 361 The provisions of Amendment No. 361 are effective December 26, 1996, and must be implemented May 27, 1997. Any

variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later.

If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a) of this chapter.

§ 272.4 [Amended]

4. In § 272.4, the third sentence of paragraph (a)(2) is amended by adding the words ", § 272.7(d) for households residing in rural Alaska," before the words "and part 280 for disaster victims."

5. Section 272.7 is revised to read as follows:

§ 272.7 Procedures for program administration in Alaska.

(a) Purpose. To achieve the efficient and effective administration of the Food Stamp Program in rural areas of Alaska, FCS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. The regulations established in this section, except for paragraph (f) of this section, shall apply only in those areas of Alaska designated as "rural" in paragraph (b) of this section. All regulations not specifically modified by this section shall remain in effect.

(b) Area Designations. (1) Rural I. Alaska TFP refers to a Thrifty Food Plan (TFP) that is the higher of the TFP that was in effect in each area on October 1, 1985, or 28.52 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: In all places in Kodiak Island Borough with the exception of Kodiak; in all places in the Kenai Peninsula Borough that are west of Cook

Inlet (including Tyonek, Kustatan, Kalgin Island, Iliamna, Chenik, and Augustine Island) and Chugach Island, English Bay, Port Graham, Portlock, Pt. Gore, Pys Island, and Seldovia. In the Yukon-Koyukuk Census Area, the city of Nenana; and Skwentna in the Matanuska-Susitna Borough. In the Valdez-Cordova Census Area, all places except Dayville and Valdez; and in the Southeast Fairbanks Census Area all places except Big Delta, Delta Junction, and Fort Greely. In the Skagway-Yakutat-Angoon Census Area, all places except Skagway; in Sitka Borough all places except Sitka; in the Wrangell-Petersburg Census Area, all places except Wrangell and Petersburg; in the Ketchikan Gateway Borough, all places except Ketchikan, Saxman, and Ward Cove; in the Prince of Wales-Outer Ketchikan Census Area, all places except Craig, Hyder, and Metlakatla.

(2) Rural II Alaska TFP refers to a TFP that is 56.42 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: North Slope Borough; Kobuk Census Area; Nome Census Area; Yukon-Koyukuk Census Area except for the city of Nenana; Wade Hampton Census Area; Bethel Census Area; Denali in the Matanuska-Susitna Borough; Dillingham-Bristol Bay Borough; and in all places in the Aleutian Islands except for Gold Bay and Adak.

(3) Urban Alaska TFP refers to a TFP that is the higher of the TFP that was in effect in each area on October 1, 1985, or .79 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: Cold Bay and Adak in the Aleutian Islands; Kodiak in Kodiak Island Borough; Valdez and Dayville in the Valdez-Cordova Census Area; all places in the Kenai Peninsula Borough that are on the Kenai Peninsula except for those specifically designated as Rural I; the entire Anchorage Borough; the entire Matanuska-Susitna Borough except for Denali and Skwentna; the entire Fairbanks-North Star Borough; the entire Juneau Borough; the entire Haines Borough; Sitka in the Sitka Borough; Skagway in the Skagway-Yakutat-Angoon Census Area; Wrangell and Petersburg in the Wrangell-Petersburg Census Area; Ketchikan, Saxman, and Ward Cove in the Ketchikan Gateway Borough; Craig, Hyder, and Metlakatla in the Prince of Wales-Outer Ketchikan Census Area; and Big Delta, Delta Junction, and Fort Greely in the Southeast-Fairbanks Census Area.

(4) The State agency may, in consultation with FCS, change the designation of any Alaska subdivision contained in the Plan of Operation to reflect changes in demographics or the cost of food within the subdivision.

(c) Fee agents. "Fee agent" means a paid agent who, on behalf of the State, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(d) Application processing. The State agency may modify the application processing requirements in § 273.2 of this chapter as necessary to insure prompt delivery of services to eligible households. The following restrictions apply:

(1) Fee agent processing. If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. The fee agent shall give the household the maximum amount of time to provide needed verification as long as the five-day processing period is met.

(2) Application filing date. An application is considered filed for purposes of timely processing when it is received by an office of the State agency.

(3) Application processing timeframes. Eligible households must be provided an opportunity to participate as soon as possible but no later than 30 days after the application is received by an office of the State agency.

(4) Expedited service. (i) If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. If the household is eligible for expedited service, the State agency will mail the coupons no later than the close of business of the second working day following the date the application was received by the State agency.

(ii) If the signed application is submitted directly to the State agency in person by a rural resident or its authorized representative or by mail, the State agency shall process the application and issue coupons to households eligible for expedited service in accordance with the time standards contained in § 273.2(i)(3) of this chapter.

(iii) If an incomplete application is submitted directly to the State agency by mail, the State agency shall conduct

the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radio-phone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State agency shall complete the application and process the case. Because of the mailing time in rural areas, the State agency shall not return the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed.

(5) SSI Joint Processing. SSA workers shall mail all jointly processed applications to the appropriate State agency office within 5 days of receipt of the application. A jointly processed application shall be considered filed for purposes of timely processing when it is received by an office of the State agency. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed application was received by the SSA worker.

(6) Interviews. The State agency shall interview applicant households in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence. In instances in which an interview cannot be conducted, the State agency may postpone the interview until after the household is certified.

(e) Determining household eligibility and benefit level. If a household submits its application to a fee agent, it shall, if eligible, receive benefits retroactive to the date the application is received by the fee agent. If a household submits its application directly to a State agency office, it shall, if determined eligible, receive benefits retroactive to the date the application is received by the State agency.

(f) Vehicles. In areas of the State where there are no licensing requirements, snowmobiles and boats used by the household for basic transportation shall be evaluated in accordance with § 273.8(h) of this chapter even though they are unlicensed. Vehicles necessary for subsistence hunting and fishing shall not be counted as a household resource.

(g) Reporting changes. The State agency shall allow the household to choose to report changes either directly to the State agency or to the fee agent. If the household reports the change to the fee agent, the fee agent will mail the change report to the State agency office within two working days of the date of

receipt. The household's obligation to report the change will have been met if it submits the change to the fee agent within 10 days of the date the change becomes known to the household. However, for purposes of State agency action for increasing or decreasing benefits, the change will be considered to have been reported when it is received by a State agency office.

(h) *Fair hearings, fraud hearings, and agency conferences.* The State agency shall conduct fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in § 273.15 and § 273.16 of this chapter.

(i) *Issuance services.* With the approval of FCS, coupons may be mailed on a quarterly or semiannual basis to certain rural areas of Alaska when provisions are not available on a monthly basis. The decision to allow the distribution of coupons in this manner will be made on an annual basis. These areas shall be listed in the State's Plan of Operation. The State agency shall advise households that live in rural areas where quarterly or semiannual allotments are authorized. If, as the result of the issuance of quarterly or semiannual allotments, food coupons are overissued or underissued, the State agency shall process claim determinations and restore lost benefits.

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

8. Section 282.1 is revised to read as follows:

§ 282.1 Legislative authority and notice requirements.

(a) *Legislative authority.* Section 17 of the Act authorizes the Secretary to conduct demonstration, research, and evaluation projects. In conducting such projects, the Secretary may waive all or part of the requirements of the Act and implementing regulations necessary to conduct such projects, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households or a project conducted to test improved consistency or coordination between the food stamp employment and training program and the Job Opportunities and Basic Skills program under Title IV of the Social Security Act, may be undertaken which would lower or

further restrict the established income and resource standards or benefit levels.

(b) *Notice.* At least 30 days prior to the initiation of a demonstration project, FCS shall publish a General Notice in the Federal Register if the demonstration project will likely have a significant impact on the public. The notice shall set forth the specific operational procedures and shall explain the basis and purpose of the demonstration project. If significant comments are received in response to this General Notice, the Department will take such action as may be appropriate prior to implementing the project. If the operational procedures contained in the General Notice described above are significantly changed because of comments, an amended General Notice will be published in the Federal Register at least 30 days prior to the initiation of the demonstration project, except where good cause exists supporting a shorter effective date. The explanation for the determination of good cause will be published with the amended General Notice. The amended General Notice will also explain the basis and purpose of the change.

§§ 282.2 through 282.19 (Removed)

7. Sections 282.2 through 282.19 are removed.

8. A new § 282.2 is added to read as follows:

§ 282.2 Funding.

Federal financial participation may be made available to demonstration, research, and evaluation projects awarded by FCS through grants and contracts. Funds may not be transferred from one project to another. FCS will pay all costs incurred during the project, up to the level established in the grant, or in the terms and conditions of the contract. FCS may grant time extensions of the project upon approval. Funding for additional costs is subject to existing Federal grant and contract procedures.

PART 284—PROVISION OF A NUTRITION ASSISTANCE PROGRAM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI) (REMOVED AND RESERVED)

9. Part 284 is removed and reserved.

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

§ 285.2 (Amended)

10. In § 285.2, the first sentence of paragraph (b) is amended by removing the citations "§§ 285.4 and 285.7 in this

part" and adding "§§ 285.3 and 285.5" in their place.

11. In § 285.3:

a. The second sentence of paragraph (a) is removed.

b. The third sentence of paragraph (a) is amended by removing the word "subsequent".

c. Paragraph (b)(3)(iii) is removed.

d. New paragraphs (d), (e), (f), (g), and (h) are added.

The additions read as follows:

§ 285.3 Plan of operation.

(d) FCS shall approve or disapprove any plan of operation no later than August 1 of the year of its submission. FCS approval of the plan of operation shall be based on an assessment that the nutrition assistance program, as defined in the plan of operation, is:

(1) Sufficient to permit analysis and review;

(2) Reasonably targeted to the most needy persons as defined in the plan of operation;

(3) Supported by an assessment of the food and nutrition needs of needy persons;

(4) Reasonable in terms of the funds requested;

(5) Structured to include safeguards to prevent fraud, waste, and abuse in the use of grant funds; and

(6) Consistent with all applicable Federal laws.

(e) FCS shall approve or disapprove any amendments to those provisions of the plan of operation specified in paragraph (b) of this section. If FCS fails either to approve or deny the amendment, or to request additional information within 30 days, the amendment to the plan of operation is approved. If additional information is requested, the Commonwealth of Puerto Rico shall provide this as soon as possible, and FCS shall approve or deny the amendment to the plan of operation. Payment schedules and other program operations may not be altered until an amendment to the plan of operation is approved. The Commonwealth of Puerto Rico shall, for informational purposes, submit to FCS any amendments to those provisions of the plan of operation not specified in paragraph (b) of this section. Such submittal shall be made at least 30 days prior to the effective date of the amendment. If circumstances warrant a waiver of the 30-day requirement, the Commonwealth of Puerto Rico shall submit a waiver request to FCS for consideration. Should FCS determine that such an amendment relates to the provisions of paragraph (b) of this section, FCS approval as established above will be necessary for the amendment to be implemented.

(f) FCS may approve part of any plan of operation or amendment submitted by the Commonwealth of Puerto Rico contingent on appropriate action by the Commonwealth of Puerto Rico with respect to the problem areas in the plan of operation.

(g) If all or part of the plan of operation is disapproved, FCS shall notify the appropriate agency in the Commonwealth of Puerto Rico of the problem area(s) in the plan of operation and the actions necessary to secure approval.

(h) In accordance with the provisions of § 285.5, funds may be withheld or denied when all or part of a plan of operation is disapproved.

§§ 285.4 and 285.5 (Removed)

12. Sections 285.4 and 285.5 are removed.

§ 285.6 (Redesignated as § 285.4)

13. Section 285.6 is redesignated § 285.4.

§ 285.7 (Redesignated as § 285.5 and amended)

14. In § 285.7:

a. The section is redesignated § 285.5.

b. The first sentence of paragraph (a) is amended by removing the citation "§ 285.6" and adding "§ 285.4" in its place.

c. The first sentence of paragraph (b) is amended by removing the citation "§ 285.6" and adding "§ 285.4" in its place.

§§ 285.8 through 285.10 (Removed)

15. Sections 285.8 through 285.10 are removed.

Dated: October 4, 1996.

William E. Ludwig,
Administrator, Food and Consumer Service.
[FR Doc. 96-30133 Filed 11-25-96; 8:45 am]
BILLING CODE 3410-09-P

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R-0946]

Rules Regarding Availability of Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) hereby amends its Rules Regarding Availability of Information to reflect changes in the direct costs to the Board to conduct searches, review documents, and copy documents in response to requests made under the Freedom of Information Act (FOIA) by amending its Appendix A to § 261.10—Freedom of Information Fee Schedule.

DATES: The interim rule is effective on January 1, 1997. Comments must be received on or before December 26, 1996.

ADDRESSES: Comments, which should refer to Docket No. R-0946, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP-500 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, (202/452-2418), Legal Division; or

Susanne K. Mitchell, Manager, Freedom of Information Office (202/452-2407). For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD)(202/452-3544), Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: FOIA requires each federal agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests..." under FOIA, 5 U.S.C. 552(a)(4)(A)(i). The Board's current fee schedule was last amended in January 1991. (55 FR 49872, December 3, 1990) Since that time, the Board's direct costs for search, review, and duplication have increased. Therefore, the Board proposes to increase its fees for those services by amending Appendix A to § 261.10 of its Rules Regarding Availability of Information (Rules). These revised fees reflect changes in the Board's direct costs over the past six years, due primarily to changes in the salaries of the employees who perform services in connection with requests filed under FOIA. The fee schedule is also expanded to include fees for the various forms of computer output that may be provided in response to requests. This amendment makes no change in the definition of services or direct and actual costs, or in the treatment of various categories of requesters.

A comparison of the current fee schedule and the fee schedule established by the interim rule is set forth below (certain fees were not included in the old schedule, these are indicated by N/A):

Service	Old fee	New fee
Duplication:		
Photocopy, per standard page	\$.10	\$.10
Paper copies of microfiche, per frame	.10	.10
Duplicate microfiche, per microfiche	.30	.35
Search and review:		
Clerical/technical (FR 31-36/FR 21-22)	17.00	20.00
Professional/Supervisory (FR 23-26)	32.00	38.00
Manager/Senior Professional (FR 27-29)	53.00	65.00
Computer search and production:		
Computer Operator Search time	25.00	32.00
Tapes (cassette)	5.00	6.00
Tapes (cartridge)	5.00	9.00
Tapes (real)	N/A	18.00
Diskettes (3 1/2")	N/A	4.00
Diskettes (5 1/4")	N/A	5.00
Computer Output (PC), per minute	.10	.10
Computer Output (mainframe)	(¹)	(¹)

¹ Actual cost.

The Board is issuing this rule as an interim rule, with provision for subsequent public comment and revision as appropriate, so that the revised fee schedules may take effect on January 1, 1997, which is the beginning of the Board's fiscal year.

Publication of a proposed rule, and deferral of the effective date of the final rule until 30 days following issuance of a final rule following completion of the comment period, would make it difficult and costly for the Board to implement a change in fees prior to January 1, 1998. The Board must make any changes in FOIA fees effective on January 1, 1997, to avoid the considerable expense associated with extraordinary midyear programming and administrative changes outside the context of the Board's calendar year budget cycle. Postponing the effective date until January 1, 1998, would prevent the Board from recovering its direct costs during the interim period. Such a postponement should not be necessary, in the Board's view, since the changes are based on a recently completed staff study of direct costs, and seem clearly warranted under the standards of FOIA, and since the Board believes it must proceed to recover costs that may lawfully be recovered in the interest of sound fiscal management.

FOIA makes clear that fee schedules may be changed to reflect changes in direct costs and that, subject to standards and exceptions not modified by this interim rule, requesters must bear the actual costs of document search, review, and duplication. Thus, as the cost to the Board of performing

these functions increases, requesters would expect their fees to increase correspondingly. All information necessary to issue the interim rule is in the possession of the Board, and no outside factual input is required to assist the Board in determining its actual direct costs. Accordingly, the Board has concluded that publication of a proposed rule for comment would be impractical, unnecessary, and contrary to the public interest. Therefore, the Board finds that under 5 U.S.C. 553(b)(B) it has good cause to dispense with the general requirement that notice of proposed rules be given. The Board notes that the interim rule will be effective January 1, 1997, following the close of the comment period, rather than immediately. The Board further notes that a review of the substantive provisions of the Rules will be made in 1997 as a result of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231), at which time these fees can be reviewed should that be deemed necessary.

Consistent with the spirit of 5 U.S.C. 553(d), this interim rule will become effective on January 1, 1997. Public comments may be submitted until December 26, 1996. Those comments will be given due consideration, and changes in the interim rule will be made if appropriate based on those comments.

Initial Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605), the Board certifies that this rule will not have a significant economic impact on a substantial number of small

entities. The amendment is a change in agency fees applicable to FOIA requests that would not have a substantial effect on particular small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. CH. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim rule.

List of Subjects in 12 CFR Part 261

Confidential business information, Federal Reserve System, Freedom of information.

For the reasons set forth in this document, and pursuant to the Board's authority under the Freedom of Information Act (5 U.S.C. 552(a)(4)(A)(i)), the Board amends 12 CFR Part 261 as follows:

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

1. The authority citation for Part 261 continues to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 248(k), 321, and 1914.

2. Appendix A to § 261.10 is amended by revising the FREEDOM OF INFORMATION FEE SCHEDULE at the beginning of the appendix preceding the heading "Special Services" to read as follows:

APPENDIX A TO § 261.10—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:	
Photocopy, per standard page	\$.10
Paper copies of microfiche, per frame	.10
Duplicate microfiche, per microfiche	.35
Search and review:	
Clerical/Technical, hourly rate	20.00
Professional/Supervisory, hourly rate	38.00
Manager/Senior Professional, hourly rate	65.00
Computer search and production:	
Computer operator search, hourly rate	32.00
Tapes (cassette) per tape	6.00
Tapes (cartridge), per tape	9.00
Tapes (reel), per tape	18.00
Diskettes (3 1/2"), per diskette	4.00
Diskettes (5 1/4"), per diskette	5.00
Computer Output (PC), per minute	.10
Computer Output (mainframe)	(1)

¹ Actual cost.

By order of the Board of Governors of the Federal Reserve System, November 20, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96-30122 Filed 11-25-96; 8:45 am]
BILLING CODE 6110-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-CE-49-AD; Amendment 39-9833; AD 96-24-08]

RIN 2120-AA64

Airworthiness Directives; Air Tractor, Inc. Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 airplanes that are equipped with a Gerdes part number (P/N) A-850-5 or Cleveland P/N 60-9 parking brake valve. This action requires replacing the parking brake valve with a Scott P/N 4500A-2 parking brake valve. This AD results from several reports of the parking brake valve inadvertently slipping to the "PARK" position during flight, which causes constant pressure on the brakes. When the pilot applies the brake upon landing, this pressure causes the airplane to overturn. The actions specified by this AD are intended to prevent the airplane from overturning because of extreme pressure applied to the brake if the parking brake valve inadvertently slips to the "PARK" position during flight.

DATES: Effective December 23, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96-CE-49-AD,

Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Air Tractor Inc., P. O. Box 465, Olney, Texas 76374; telephone (817) 564-5616; facsimile (817) 564-2348. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96-CE-49-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Mr. Werner Koch, Aerospace Engineer, FAA, Aircraft Certification Office, 2801 Meacham Boulevard, Fort Worth, Texas 76193-0190; telephone (817) 222-5133; facsimile (817) 222-5980.

SUPPLEMENTARY INFORMATION:

Events Leading to This AD

The FAA has received several reports of the parking brake valve inadvertently slipping to the "PARK" position during flight on Air Tractor Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 airplanes. When the parking brake is in the "PARK" position, a constant pressure is applied to the brakes, which cannot be relieved or reduced when the pilot removes pressure from the brake pedals. This pressure builds to the point that when the pilot applies the brake upon landing to slow the airplane, the airplane overturns.

The airplanes in the incidents described above were equipped with Gerdes part number (P/N) A-850-5 or Cleveland P/N 60-9 parking brake valves. The FAA has determined that these Gerdes or Cleveland parking brake valves should be replaced with Scott parking brake valves, P/N 4500A-2, on certain Air Tractor Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 airplanes.

Applicable Service Information

Air Tractor has issued Snow Engineering Co. Service Letter #76, dated December 12, 1988, which specifies replacing Gerdes part number A-850-5 and Cleveland P/N 60-9 parking brake valves with Scott parking brake valves, P/N 4500A-2. Air Tractor Service Letter #76 Instructions specify procedures for accomplishing this parking brake valve replacement.

The FAA's Determination

After examining the circumstances and reviewing all available information

related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent the airplane from overturning because of extreme pressure applied to the brake if the parking brake valve inadvertently slips to the "PARK" position during flight.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Air Tractor Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 airplanes of the same type design that are equipped with a Gerdes (P/N) A-850-5 or Cleveland P/N 60-9 parking brake valve, the FAA is implementing AD action. This AD requires replacing these Gerdes or Cleveland parking brake valves with a Scott P/N 4500A-2 parking brake valve. Accomplishment of this replacement is in accordance with Air Tractor Service Letter #76 Instructions, as referenced in Snow Engineering Co. Service Letter #76, dated December 12, 1988.

Since a situation exists (possibility of the airplane overturning during landing) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-CE-49-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96-24-08 Air Tractor, Inc.: Amendment 39-0833; Docket No. 96-CE-49-AD.

Applicability: The following airplane models and serial numbers, certificated in any category, that are equipped with a Gerdes part number (P/N) A-850-5 or Cleveland P/N 60-9 parking brake valve:

Model	Serial Numbers
AT-250	250-0491.
AT-300	300-0001 through 300-0708.
AT-301	301-0001 through 301-0708.
AT-302	302-0001 through 302-0708.
AT-400	400-0001 through 400-0708.
AT-400A	400A-0001 through 400A-0708.
AT-401	401-0001 through 401-0708.
AT-402	402-0001 through 402-0708.
AT-501	501-0001 through 501-0036.
AT-502	502-0001 through 502-0036.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 75 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the airplane from overturning because of extreme pressure applied to the brake if the parking brake valve inadvertently slips to the "PARK" position during flight, accomplish the following:

(a) Replace the Gerdes P/N A-850-5 or Cleveland P/N 60-9 parking brake valve with a Scott P/N 4500A-2 parking brake valve. Accomplish this replacement in accordance with Air Tractor Service Letter #76 Instructions, as referenced in Snow Engineering Co. Service Letter #76, dated December 12, 1988.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) The replacement required by this AD shall be done in accordance with Air Tractor Service Letter #76 Instructions, as referenced in Snow Engineering Co. Service Letter #76, dated December 12, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Tractor Inc., P. O. Box 485, Olney, Texas 76374. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 801 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-0833) becomes effective on December 23, 1996.

Issued in Kansas City, Missouri, on November 15, 1996.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

(FR Doc. 96-29883 Filed 11-25-96; 8:45 am)
BILLING CODE 4910-49-U

14 CFR Part 39

[Docket No. 96-CE-55-AD; Amendment 39-0837; AD 96-24-13]

FW 2130-AA64

Airworthiness Directives: The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA-31, PA-31P, and PA-31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.
ACTION: Final rule.

SUMMARY: This document supersedes AD 75-26-18, which currently requires modifying the landing gear selector cable forward attachment pin assembly by installing a safety lock wire on certain The New Piper Aircraft Inc., (Piper) PA-31, PA-31P, and PA-31T series airplanes. The action will require the same action as AD 75-26-18. An incorrect designation of Piper Model PA-31 airplanes as Piper Model PA-31-310 airplanes in AD 75-26-18 prompted the proposed AD action. The actions specified by this AD are intended to prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm, which, if not corrected, could cause loss of landing gear retraction or extension.

DATES: Effective January 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2928 Piper Dr., Vero Beach, Florida, 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-55-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362; facsimile (404) 305-7345.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA-31, PA-31P, and PA-31T series airplanes was published in the Federal Register on April 29, 1996 (61 FR 18697). This action would supersede AD 75-26-18 with a new AD that would retain the same requirements as AD 75-26-18 and change the model designation in the Applicability section from Piper Model PA-31-310 airplanes to Piper Model PA-31 airplanes. With this in mind, the proposed action would not provide any additional cost impact upon U.S. operators over that already required by AD 75-26-18.

Related Service Information

Accomplishment of this action will be in accordance with Piper Service Bulletin (SB) No. 488, dated October 24, 1975.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 75-26-18 Amendment 39-2504, and by adding a new AD to read as follows:

96-24-13. The New Piper Aircraft, Inc.: Docket No. 96-CE-55-AD; Amendment No. 39-0837 Supersedes AD 75-26-18, Amendment 39-2504.

Applicability: PA-31, PA-31P, and PA-31T series airplanes with the following Model and serial numbers, certificated in any category.

Models	Serial Nos.
PA-31 and PA-31-325.	31-7300950 through 31-7612017.

Models	Serial Nos.
PA-31-300	31-7305043, 31-7305045, and 31-7305052 through 31-7652032.
PA-31P	31P-7300128 through 31P-7630005.
PA-31T	31T-7400002 through 31T-7620013.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 50 hours time-in-service (TIS) after February 9, 1976 (effective date of AD 75-26-18) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent the landing gear selector cable forward attachment pin assembly from becoming separated from the powerpack control arm, which if not corrected, could cause loss of landing gear retraction or extension, accomplish the following:

(a) Modify the landing gear selector cable forward attachment pin assembly by installing a safety lock wire in accordance with the Instructions section of Piper Service Bulletin No. 488, dated October 24, 1975.

(b) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Alternative methods of compliance approved in accordance with AD 75-26-18 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(e) The modification required by this AD shall be done in accordance with Piper Service Bulletin No. 488, dated October 24, 1975. This incorporation by reference was approved by the Director of the Federal

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2826 Piper Dr., Vero Beach, Florida, 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment supersedes AD 75-26-15, Amendment 36-2504.

(g) This amendment (39-9837) becomes effective on January 17, 1997.

Issued in Kansas City, Missouri, on November 18, 1996.

James E. Jackson,
Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 96-29066 Filed 11-25-96; 8:45 am]
BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-140-AD; Amendment 39-9837; AD 96-24-12]

RIN 2130-AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that requires modification of the pitch uncoupling mechanism of both elevators. This amendment is prompted by reports of fatigue cracking of the pitch uncoupling mechanism and the torque tube of the elevator. Failure of the pitch uncoupling mechanism due to fatigue cracking could result in the uncommanded uncoupling of the elevators. The actions specified by this AD are intended to prevent such fatigue cracking and subsequent uncommanded uncoupling of the elevators, which could result in reduced controllability of the airplane.

DATE: Effective December 31, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes was published in the Federal Register on August 19, 1996 (61 FR 42825). That action proposed to require modification of the elevator uncoupling mechanism.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 51 Aerospatiale Model ATR72 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 55 work hours per airplane to accomplish the required actions, and that the average labor rate is \$80 per work hour. The required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$168,300, or \$3,300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a

"significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-24-12 Aerospatiale: Amendment 39-9836, Docket 96-NM-140-AD.

Applicability: Model ATR72-101, -102, -201, -202, -211, and -212 series airplanes on which Modification 4495 or Aerospatiale Service Bulletin ATR 72-27-1044 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncoupling of the elevators due to failure of the elevator coupling mechanism and resultant reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later: Modify the elevator uncoupling mechanism in accordance with Aerospatiale Service Bulletin ATR72-27-1044, dated March 5, 1996.

(b) As of the effective date of this AD, no person shall install a pitch uncoupling mechanism of the elevator, having the following part numbers, on any airplane:

S2738104100800
S2738104102895
S2738104102200
S2738104102400
S2738104102800
S2738104103200

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR72-27-1044, dated March 5, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 31, 1996.

Issued in Renton, Washington, on November 18, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-29066 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AC03

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) amends the documents incorporated by reference in regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). The organizations that publish the incorporated documents have revised many of their recommended practices and standards and have published new editions. The new editions will continue to ensure that lessees use the best available and safest technologies while operating in the OCS.

DATES: EFFECTIVE DATE: December 28, 1996.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register on December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Hauser, Engineering and Standards Branch, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: MMS uses standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry as a means of establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows MMS to incorporate the requirements of technical documents into the regulations without increasing the volume of the Code of Federal Regulations (CFR). MMS currently incorporates by reference, 68 documents into the offshore operating regulations.

The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the Federal Register. This generally includes standard rulemaking procedures; i.e., the agencies provide notice and opportunity for comment.

Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to

the edition of the document or publication cited in the regulations. This means that newer editions, amendments, or revisions to documents already incorporated by reference in regulations are not part of MMS's regulations.

This rule updates more than 50 out-of-date documents incorporated by reference into MMS regulations. For most documents, the changes between the old and new editions are minor. However, MMS must update these documents because the older editions may not be readily available to the affected parties. For instance, some American Petroleum Institute (API) documents currently referenced by MMS are out of print and no longer available. Other documents have undergone major revisions, and after reviewing these documents, MMS has determined that we must incorporate these documents to ensure the use of the best and safest technologies.

In the future, MMS would like to keep the number of out-of-date documents incorporated by reference to a minimum. To accomplish this, this rule includes language that streamlines the rulemaking process. Under this rule, MMS will review new editions of documents we incorporate by reference as we do now. If MMS determines that the revisions are minor, result in safety improvements or represent new industry standard technology, and do not impose undue costs on the affected parties, MMS will update the documents incorporated by reference section of our regulations with a final rule published in the Federal Register. This means that the new edition of the document(s) becomes effective without the public having prior opportunity to comment. This option is provided to agencies under 5 U.S.C. 553(b) when agencies find that the notice and comment would be impracticable, unnecessary, or contrary to the public interest.

Narrative Response to Comments

MMS received comments on the notice of proposed rulemaking (60FR42819) from oil and natural gas producers and trade organizations representing oil and gas producers, pipeline companies, and drilling contractors. A summary of their comments and MMS's response to each comment follows below:

Comment: Three parties alerted MMS that some of the documents that we had proposed to incorporate by reference have been superseded by newer editions or documents with different titles.

MMS response: MMS reviewed the new documents, and if the changes were

minor, noncontroversial, and did not impose any substantial new costs to industry, we included the new documents in the final rule. Specific documents we chose not to update include the following:

1. API Spec Q1—MMS will update the regulations to incorporate the latest edition of this document in an upcoming rule.

2. API RP 2A—WSD—MMS, industry, and API are working on changes to the 20th edition. When the changes are final, MMS will update the regulations to incorporate the 20th edition of this document.

3. API RP 14C—MMS, industry, and API are working on changes to the fifth edition. When the changes are final, MMS will update the regulations to incorporate the fifth edition of this document.

Comment: Two parties asked MMS to consider including documents that had not previously been incorporated by reference.

MMS response: MMS cannot include these documents until we review them and then go through the notice and comment rulemaking procedure. MMS will consider these and other documents in a future rulemaking.

Comment: One party asked MMS to include the words "previously incorporated" in the introductory paragraph of § 250.1. This addition will make it clear that the streamlined process for updating documents incorporated by reference applies only to previously incorporated documents.

MMS response: MMS accepts this suggestion and has included the words "previously incorporated" in this final rule.

Comment: One party asked that MMS not attach any other changes to our regulations when we use the streamlined process to update documents incorporated by reference.

MMS response: MMS does not intend to attach other changes to the regulations when using the streamlined process to update documents incorporated by reference.

Comment: Two parties criticized our streamlined method of updating our documents incorporated by reference, and they suggested we use the U.S. Coast Guard's (USCG) final rule of September 22, 1995 (60 FR 49222), as a model. Three parties supported our streamlining efforts.

MMS response: MMS believes that the method we proposed to streamline the process of updating previously incorporated documents will work better than the USCG's method suggested by the comments we received. The USCG's method requires two

notices (one initial notice and one notice stating no comments disagreed with the proposal) in the Federal Register, whereas our proposal only requires one. MMS has found that most of the documents we propose for incorporation by reference come from organizations that have as members the parties affected by MMS regulations. By the time they release a new edition of a document, these parties have already commented on the new edition. It is redundant for MMS to issue the document for additional comments and unnecessarily delay the implementation of new ideas in the document. Anyone can send comments to MMS regarding our regulations at any time. If an affected party has concerns with a new edition of any of the documents incorporated by reference, that party should promptly voice those concerns to MMS.

This final rule updates more than 50 documents that were out of date, over two-thirds of our total documents. We should note that we received only one negative comment concerning documents we proposed to update. We did receive negative comments about other documents we have concerns with, and thus declined to update. This rulemaking effort indicates that our streamlined method of updating documents incorporated by reference is sufficient.

To clarify when MMS will and will not use the streamlined procedure, we have added language to the introductory paragraph of § 250.1, detailing the MMS will go through the traditional notice and comment procedure to change the documents incorporated by reference regulations whenever:

1. MMS proposes to include documents not previously incorporated by reference.

2. The new edition of a document already incorporated by reference introduces controversial issues, or imposes substantial new costs on industry.

3. MMS proposes that a document cover parties not previously affected by the document in question.

4. MMS believes it would be in the best interest of the public to receive comments on a new edition.

Comment: One party commented that MMS adopts new standards without regard to the feasibility or cost of implementing them on existing facilities and equipment.

MMS response: MMS makes the determination about enforcing requirements found in newer editions of documents incorporated by reference on a case-by-case basis. We do not intend for parties to make radical changes to

their existing facilities or equipment because of changes to the documents we incorporate. However, if the changes reflected by the updated documents can be easily made, and result in improvements in safety, then we would ask that parties conform to the requirements found in the newer edition.

Comment: One party commented that MMS presumes that the industry standards we cite are the relevant standards for all sectors of the industry.

MMS response: While the documents we incorporate by reference are intended for use by all parties operating in the OCS, parties have the right to petition the Regional Supervisor for waivers to certain requirements found in the documents. The Regional Supervisor makes a decision on a case-by-case basis. If a certain sector of the industry finds a document that is more suitable for their operations than the document MMS incorporates, then they should submit the document to MMS for consideration in future updates to our documents incorporated by reference regulations.

Comment: One party asked MMS to clarify its position on the status of documents referenced within the documents MMS incorporates by reference. MMS refers to these documents as second-tier documents.

MMS response: When MMS incorporates a document by reference, we intend for the users of that document to follow all parts of that document unless otherwise noted. If users ignore the second-tier document, then the document we incorporate loses its impact and its usefulness to MMS and industry. The MMS position on this issue is that second-tier documents apply unless otherwise noted, and parties should follow them when conducting operations in the OCS.

Summary of Final Rule Revisions

Based on our review and analysis of the comments, the final rule revises the regulations as follows:

1. The introductory paragraph in § 250.1 indicates that MMS will, in certain cases, update previously incorporated documents without the public having prior opportunity to comment.

2. The latest editions of the following documents were not included in the proposed rule but are included in the final rule. Organizations either updated these documents between the time MMS drafted the Federal Register published the proposed rule or MMS was not aware that the documents had been updated. After reviewing the documents, MMS has determined that

the changes to these documents are minor, and we have included the latest edition of the document in the final rule. A list of the documents affected follows:

a. American Concrete Institute (ACI) Standard 318-89 was updated to ACI Standard 318-95.

b. American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) B31.8-1989 was updated to ANSI/ASME B31.8-1992.

c. Following are the API documents affected:

—API Spec 6A—This document includes a new section with specifications for surface safety valves and underwater safety valves for offshore service. The specifications are the same as those found in API Spec 14D. So, MMS has included API Spec 6A as an acceptable alternative to API Spec 14D. MMS will continue to include API Spec 14D in the regulations until API withdraws the document.

—API Spec 6AV1—This document contains the same information found in various parts of API Spec 14D. MMS has included this document as an acceptable alternative to parts of API Spec 14D.

—API Standard 2545—This document has been superseded by the Manual of Petroleum Measurement Standards (MPMS), Chapter 3.1A and MPMS, Chapter 3.1B. Standard 2545 will remain in effect for pressurized vessels until new MPMS, Chapter 3 documents are drafted. MMS will incorporate MPMS, Chapter 3.1A and MPMS, Chapter 3.1B into the regulations since we have reviewed these documents and determined that the differences between them and Standard 2545 are minor. MMS will continue to incorporate Standard 2545 as well.

—API Standard 2550—This document has been superseded by MPMS, Chapter 2.2A and MPMS, Chapter 2.2B. MMS will incorporate MPMS, Chapter 2.2A and MPMS, Chapter 2.2B into the regulations since we have reviewed these documents and determined that the differences between them and Standard 2550 are minor. MMS will not continue to reference Standard 2550 since the API indicates that this document will be withdrawn soon.

—MPMS, Chapter 5.1 was updated to the Third Edition, September 1995.

—MPMS, Chapter 5.3 was updated to the Third Edition, September 1995.

—MPMS, Chapter 5.4 was updated to the Third Edition, September 1995.

—MPMS, Chapter 7.2 was updated to the Second Edition, March 1995.

—MPMS, Chapter 8.1 was updated to the Third Edition, November 1995.

—MPMS, Chapter 8.2 was updated to the Second Edition, November 1995.

—MPMS, Chapter 11.2.3 was updated to the Second Edition, November 1995.

In cases where API superseded other documents with new documents, MMS had to make minor adjustments to the language in the regulations to reflect the reference to a new document.

d. Following are the American Society for Testing and Materials (ASTM) documents affected:

—ASTM Standard C33-90 was updated to ASTM Standard C33-93.

—ASTM Standard C94-01a was updated to ASTM Standard C94-95.

—ASTM Standard C150-89 was updated to ASTM Standard C150-95.

—ASTM Standard C595-90 was updated to ASTM Standard C595-95.

e. American Welding Society D1.1-92 was updated to D1.1-96.

f. National Association of Corrosion Engineers (NACE) Standard RP-01-76 was updated to NACE Standard RP-0176-94.

3. API changed its stock numbering system in 1996. MMS changed the stock numbers for API documents in the final rule.

Executive Order (E.O.) 12866

This rule was reviewed under E.O. 12866. The Department of the Interior (DOI) has determined that the rule is not a significant rule under the criteria of E.O. 12866 and, therefore, the rule was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The DOI has determined that this final rule will not have a significant economic effect on a substantial number of small entities. This rule will not have a significant economic effect on any entity, regardless of size. Any minor effects of this rulemaking will primarily affect lessees and operators—entities that are not, by definition, small due to the technical complexities and financial resources necessary to conduct OCS activities. The indirect effects of this rulemaking on small entities that provide support for offshore activities were also determined to be small.

Paperwork Reduction Act

This rule does not contain collections of information that require approval by OMB under 44 U.S.C. 3501 et seq.

Takings Implication Assessment

The DOI certifies that this final rule does not represent a governmental

action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12830, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12968

The DOI has certified to OMB that this rule meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12968.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an Environmental Impact Statement is not required.

Unfunded Mandate Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: September 30, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. In § 250.1, revise the third sentence in the introductory paragraph, add two new sentences following the third sentence and revise paragraphs (a)(1), (b), (c)(1) through (c)(4), (c)(6), (d), (e)(1) through (e)(5), (f)(1), and (g)(2) to read as follows:

§ 250.1 Documents incorporated by reference.

*** MMS will publish a notice of any changes in these documents in the Federal Register. The rule change will become effective without notice and prior opportunity to comment if MMS determines that the revisions to a previously incorporated document are minor, result in safety improvements, or represent new industry standard technology and do not impose undue costs on the affected parties. MMS will go through the notice and comment procedure to change the documents incorporated by reference or into this section when MMS proposes to include documents not previously incorporated by reference; a new edition of a document already incorporated by reference introduces controversial issues, or imposes substantial new costs on industry; MMS proposes that a document cover parties not previously affected by the document in question; or MMS believes it would be in the best interest of the public to solicit comments on a new edition. ***

(a) ***

(1) American Concrete Institute (ACI) Standard 318-95, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R-95), Incorporated by Reference at: § 250.138 (b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), and (e)(2)(i).

(b) American Institute of Steel Construction (AISC) Document. The AISC document listed in this paragraph may be purchased from the American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, Illinois 60680.

(1) AISC Standard Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, June 1, 1989, with Commentary, Incorporated by Reference at: § 250.137 (b)(1)(ii), (c)(4)(ii), and (c)(4)(vii).

(2) [Reserved]

(c) ***

(1) The American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Boiler and Pressure Vessel Code, Section I, Power Boilers including Appendices, 1995 Edition, Incorporated by Reference at: §§ 250.123 (b)(1) and (b)(1)(i) and 250.292 (b)(1) and (b)(1)(i).

(2) The ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers, including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J and the Guide to Manufacturers Data Report Forms, 1995

Edition, Incorporated by Reference at: §§ 250.123 (b)(1) and (b)(1)(i) and 250.292 (b)(1) and (b)(1)(i).

(3) ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1995 Edition, Incorporated by Reference at: §§ 250.123 (b)(1) and (b)(1)(i) and 250.292 (b)(1) and (b)(1)(i).

(4) ANSI/ASME B 31.8-1995, Gas Transmission and Distribution Piping Systems, Incorporated by Reference at: § 250.152(a).

(6) ANSI/ASME B 16.5-1986 (including Errata) and B 16.5a-1992 Addenda, Pipe Flanges and Flanged Fittings, Incorporated by Reference at: § 250.152(b)(2).

(d) American Petroleum Institute (API) Documents. The API documents listed in this paragraph may be purchased from the American Petroleum Institute, 1220 L Street, NW., Washington, D.C. 20005. (Paragraphs (d)(21) through (d)(61) of this section refer to the API Manual of Petroleum Measurement Standards (MPMS)).

(1) API Spec Q1, Specification for Quality Programs, Third Edition, June 1990, API Stock No. 811-00001, Incorporated by Reference at: § 250.126(c)(3).

(2) API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms Working Stress Design, Nineteenth Edition, August 1, 1991, API Stock No. 811-00200, Incorporated by Reference at: §§ 250.130(g) and 250.142(a).

(3) API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Third Edition, June 1, 1995, API Stock No. G02D03, Incorporated by Reference at: §§ 250.20(c) and 250.260(g).

(4) API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Seventeenth Edition, February 1, 1996, API Stock No. G06A17, Incorporated by Reference at: §§ 250.126(c)(3), (e)(2), and (e)(3) and 250.152 (b)(1) and (b)(2).

(5) API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996, API Stock No. G06AV1, Incorporated by Reference at: § 250.126(c)(3).

(6) API Spec 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twenty-first Edition, March 31, 1994, API Stock No. G03200, Incorporated by Reference at: § 250.152(b)(1).

(7) API Spec 14A, Specification for Subsurface Safety Valve Equipment, Ninth Edition, July 1, 1994, API Stock No. G14A09, Incorporated by Reference at: § 250.126 (c)(3), (e)(2), and (e)(3).

(8) API RP 14B, Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Fourth Edition, July 1, 1994, with Errata dated June, 1996, API Stock No. G14B04, Incorporated by Reference at: §§ 250.121(e)(4), 250.124(a)(1)(i), and 250.126(d).

(9) API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811-07180, Incorporated by References at: §§ 250.122 (b) and (e)(2); 250.123 (a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), and (c)(2); 250.124 (g) and (a)(5); 250.152(d); 250.154(b)(9); 250.291 (c) and (d)(2); 250.292 (b)(2) and (b)(4)(v); and 250.293(a).

(10) API Spec 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Ninth Edition, June 1, 1994, with errata dated August 1, 1994, API Stock No. G07183, Incorporated by Reference at: § 250.126 (c)(3), (e)(2), and (e)(3).

(11) API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1, 1991, API Stock No. G07185, Incorporated by Reference at: §§ 250.122(e)(3) and 250.291 (b)(2) and (d)(3).

(12) API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Third Edition, September 1, 1991, API Stock No. G07190, Incorporated by Reference at: §§ 250.53(c), 250.123(b)(9)(v), and 250.292(b)(4)(v).

(13) API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Third Edition, December 1, 1993, API Stock No. G07194, Incorporated by Reference at: §§ 250.123 (b)(8) and (b)(9)(v) and 250.292 (b)(3) and (b)(4)(v).

(14) API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fourth Edition, July 1, 1994, API Stock No. G14HD4, Incorporated by Reference at: §§ 250.122(d) and 250.126(d).

(15) API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. G06005, Incorporated by

Reference at: §§ 250.53(b), 250.122(e)(4)(i), 250.123(b)(9)(i), 250.291 (b)(3) and (d)(4)(i), and 250.292(b)(4)(i).

(16) API Standard 2545, Method of Gauging Petroleum and Petroleum Products, October 1965, reaffirmed October 1992, also available as ANSI/American Society of Testing Materials (ASTM) D 1085-65, API Stock No. H25450, Incorporated by Reference at: § 250.180(f)(2)(ii)(C).

(17) API Standard 2551, Standard Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, reaffirmed October 1992, also available as ANSI/ASTM D 1410-65, reapproved 1984, API Stock No. H25510, Incorporated by Reference at: § 250.180(f)(2)(i)(C).

(18) API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, reaffirmed October 1992, also available as ANSI/ASTM D 1406-65, reapproved 1984, API Stock No. H25520, Incorporated by Reference at: § 250.180(f)(2)(i)(C).

(19) API Standard 2555, Method for Liquid Calibration of Tanks, September 1966, reaffirmed October 1992, also available as ANSI/ASTM D 1406-65, reapproved 1984, API Stock No. H25550, Incorporated by Reference at: § 250.180(f)(2)(i)(C).

(20) API RP 2556, Correcting Gauge Tables for Incrustation, Second Edition, August 1993, API Stock No. H25560, Incorporated by Reference at: § 250.180(f)(2)(i)(C).

(21) Manual of Petroleum Management Standard (MPMS), Chapter 2, Tank Calibration, section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method, First Edition, February 1995, API Stock No. H022A1, Incorporated by Reference at: § 250.180(f)(2)(i)(A).

(22) MPMS, Chapter 2, section 2B, Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method, First Edition, March 1989, also available as ANSI/ASTM D4738-88, API Stock No. H30023, Incorporated by Reference at: § 250.180(f)(2)(i)(B).

(23) MPMS, Chapter 3, Tank Gauging, section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, First Edition, December 1994, API Stock No. H031A1, Incorporated by Reference at: § 250.180(f)(2)(ii)(A).

(24) MPMS, Chapter 3, section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, First Edition, April 1992, API

Stock No. H30060, Incorporated by Reference at: § 250.180(f)(2)(ii)(B).

(25) MPMS, Chapter 4, Proving Systems, section 1, Introduction, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30081, Incorporated by Reference at: § 250.180 (c)(6)(i) and (d)(3)(iv).

(26) MPMS, Chapter 4, section 2, Conventional Pipe Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30082, Incorporated by Reference at: § 250.180 (c)(6)(i) and (d)(3)(iv).

(27) MPMS, Chapter 4, section 3, Small Volume Provers, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30083, Incorporated by Reference at: § 250.180 (c)(6)(i) and (d)(3)(iv).

(28) MPMS, Chapter 4, section 4, Tank Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30084, Incorporated by Reference at: § 250.180 (c)(6)(i) and (d)(3)(iv).

(29) MPMS, Chapter 4, section 5, Master-Meter Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30085, Incorporated by Reference at: § 250.180 (c)(6)(i) and (d)(3)(iv).

(30) MPMS, Chapter 4, section 6, Pulse Interpolation, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30086, Incorporated by Reference at: § 250.180 (c)(6)(i) and (d)(3)(iv).

(31) MPMS, Chapter 4, section 7, Field-Standard Test Measures, First Edition, October 1988, API Stock No. H30087, Incorporated by Reference at: § 250.180 (c)(6)(i) and (d)(3)(iv).

(32) MPMS, Chapter 3, Metering, section 1, General Considerations for Measurement by Meters, Third Edition, September 1995, API Stock No. H05013, Incorporated by Reference at: § 250.180(c)(6)(ii).

(33) MPMS, Chapter 5, section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed October 1992, API Stock No. H30102, Incorporated by Reference at: § 250.180(c)(6)(ii).

(34) MPMS, Chapter 5, section 3, Measurement of Liquid Hydrocarbons by Turbine Meters, Third Edition, September 1995, API Stock No. H05033, Incorporated by Reference at: § 250.180(c)(6)(ii).

(35) MPMS, Chapter 5, section 4, Accessory Equipment for Liquid Meters, Third Edition, September 1995, with Errata, March, 1996, API Stock No. H05043, Incorporated by Reference at: § 250.180(c)(6)(ii).

(36) MPMS, Chapter 5, section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed October 1992, API Stock No. H30109, Incorporated by Reference at: § 250.180(c)(6)(ii).

(37) MPMS, Chapter 6, Metering Assemblies, section 1, Lease Automatic Custody Transfer (LACT) Systems, Second Edition, May 1991, API Stock No. H30121, Incorporated by Reference at: § 250.180(c)(6)(iii)(A).

(38) MPMS, Chapter 6, section 6, Pipeline Metering Systems, Second Edition, May 1991, API Stock No. H30126, Incorporated by Reference at: § 250.180(c)(6)(iii)(B).

(39) MPMS, Chapter 6, section 7, Metering Viscous Hydrocarbons, Second Edition, May 1991, API Stock No. H30127, Incorporated by Reference at: § 250.180(c)(6)(iii)(C).

(40) MPMS, Chapter 7, Temperature Determination, section 2, Dynamic Temperature Determination, Second Edition, March 1995, API Stock No. H07022, Incorporated by Reference at: § 250.180 (c)(6)(iv)(A) and (f)(2)(iii)(A).

(41) MPMS, Chapter 7, section 3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, July 1985, reaffirmed March 1990, API Stock No. H30143, Incorporated by Reference at: § 250.180 (c)(6)(iv)(B) and (f)(2)(iii)(B).

(42) MPMS, Chapter 8, Sampling, section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, Third Edition, October, 1995, also available as ANSI/ASTM D 4057-88, API Stock No. H30161, Incorporated by Reference at: § 250.180 (c)(6)(v) and (f)(2)(iv).

(43) MPMS, Chapter 8, section 2, Standard Practice for Automatic Sampling of Liquid Petroleum and Petroleum Products, Second Edition, October 1995, also available as ANSI/ASTM D 4177, API Stock No. H30162, Incorporated by Reference at: § 250.180 (c)(6)(v) and (f)(2)(iv).

(44) MPMS, Chapter 9, Density Determination, section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed October 1992, also available as ANSI/ASTM D 1298, API Stock No. H30181, Incorporated by Reference at: § 250.180 (c)(6)(vi)(A) and (f)(2)(v)(A).

(45) MPMS, Chapter 9, section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed October 1992, API Stock No. H30182.

Incorporated by Reference at: § 250.180 (c)(6)(vi)(B) and (f)(2)(v)(B).

(46) MPMS, Chapter 10, Sediment and Water, section 1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, reaffirmed December 1993, also available as ANSI/ASTM D 473, API Stock No. H30201, Incorporated by Reference at: § 250.180 (c)(6)(vii)(A) and (f)(2)(vi)(A).

(47) MPMS, Chapter 10, section 2, Determination of Water in Crude Oil by Distillation Method, First Edition, April 1981, reaffirmed December 1993, also available as ANSI/ASTM D 4006, API Stock No. H30202, Incorporated by Reference at: § 250.180 (c)(6)(vii)(B) and (f)(2)(vi)(B).

(48) MPMS, Chapter 10, section 3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, reaffirmed December 1993, also available as ANSI/ASTM D 4007, API Stock No. H30203, Incorporated by Reference at: § 250.180 (c)(6)(vii)(C) and (f)(2)(vi)(C).

(49) MPMS, Chapter 10, section 4, Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), Second Edition, May 1989, also available as ANSI/ASTM D 96, API Stock No. H30204, Incorporated by Reference at: § 250.180 (c)(6)(vii)(D) and (f)(2)(vi)(D).

(50) MPMS, Chapter 11.1, Volume Correction Factors, Volume 1, Table 5A—Generalized Crude Oils and JP-4 Correction of Observed API Gravity to API Gravity at 60 °F, and Table 6A—Generalized Crude Oils and JP-4 Correction of Observed API Gravity to API Gravity at 60 °F, First Edition, August 1980, reaffirmed October 1993, also available as ANSI/ASTM D 1250, API Stock No. H27000, Incorporated by Reference at: § 250.180 (c)(6)(viii)(A), (d)(3)(v)(B), and (f)(2)(vii).

(51) MPMS, Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range, First Edition, August 1984, reaffirmed May, 1996, API Stock No. H27300, Incorporated by Reference at: § 250.180 (c)(6)(viii)(B).

(52) MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60 °F/60 °F) and –50 °F to 140 °F Measuring Temperature, Second Edition, October 1986, reaffirmed October 1992, also available as Gas Processors Association (GPA) 8286–86, API Stock No. H27307, Incorporated by Reference at: § 250.180 (c)(6)(viii)(C).

(53) MPMS, Chapter 11, Physical Properties Data, Addendum to section 2.2, Compressibility Factors for

Hydrocarbons, Correlation of Vapor Pressure for Commercial Natural Gas Liquids, First Edition, December 1994, also available as GPA TP–15, API Stock No. H27308, Incorporated by Reference at: § 250.180 (c)(6)(viii)(D).

(54) MPMS, Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, August 1984, reaffirmed, May 1996, API Stock No. H27310, Incorporated by Reference at: § 250.180 (d)(3)(iv).

(55) MPMS, Chapter 12, Calculation of Petroleum Quantities, section 2, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Including Parts 1 and 2, Second Edition, May 1995, also available as ANSI/API MPMS 12.2–1981, API Stock No. H30302, Incorporated by Reference at: § 250.180 (c)(6)(ix), (d)(3)(v)(A), and (d)(3)(v)(C).

(56) MPMS, Chapter 14, Natural Gas Fluids Measurement, section 3, Concentric Square-Edged Orifice Meters, part 1, General Equations and Uncertainty Guidelines, Third Edition, September 1990, also available as ANSI/API 2530, Part 1, 1991, API Stock No. H30350, Incorporated by Reference at: § 250.181 (c)(1).

(57) MPMS, Chapter 14, section 3, part 2, Specification and Installation Requirements, Third Edition, February 1991, also available as ANSI/API 2530, Part 2, 1991, API Stock No. H30351, Incorporated by Reference at: § 250.181 (c)(1).

(58) MPMS, Chapter 14, section 3, part 3, Natural Gas Applications, Third Edition, August 1992, also available as ANSI/API 2530, Part 3, API Stock No. H30353, Incorporated by Reference at: § 250.181 (c)(1).

(59) MPMS, Chapter 14, section 5, Calculation of Gross Heating Value, Relative Density, and Compressibility Factor for Natural Gas Mixtures From Compositional Analysis, Revised, 1996, also available as ANSI/API MPMS 24.5–1981, order from Gas Processors Association, 6526 East 60th Street, Tulsa, Oklahoma 74145, Incorporated by Reference at: § 250.181 (c)(1).

(60) MPMS, Chapter 14, section 6, Continuous Density Measurement, Second Edition, April 1991, API Stock No. H30346, Incorporated by Reference at: § 250.181 (c)(1).

(61) MPMS, Chapter 14, section 9, Liquefied Petroleum Gas Measurement, First Edition, February 1983, reaffirmed May 1996, API Stock No. H30346, Incorporated by Reference at: § 250.181 (c)(1).

(1) ASTM Standard C33–93, Standard Specification for Concrete Aggregates

Including Nonmandatory Appendix, Incorporated by Reference at § 250.136(b)(4)(i).

(2) ASTM Standard C94–86, Standard Specification for Ready-Mixed Concrete, Incorporated by Reference at § 250.136(e)(2)(i).

(3) ASTM Standard C150–95a, Standard Specification for Portland Cement, Incorporated by Reference at § 250.136(b)(2)(i).

(4) ASTM Standard C330–89, Standard Specification for Lightweight Aggregates for Structural Concrete, Incorporated by Reference at § 250.136(b)(4)(i).

(5) ASTM Standard C595–94, Standard Specification for Blended Hydraulic Cements, Incorporated by Reference at § 250.136(b)(2)(i).

(f) * * * (1) D1.1–86, Structural Welding Code—Steel, 1996, including Commentary, Incorporated by Reference at: § 250.137(b)(1)(i).

(g) * * * (2) NACE Standard RP 0176–94, Standard Recommended Practice, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production, Incorporated by Reference at § 250.137(d).

3. In § 250.53, revise paragraph (b) to read as follows:

§ 250.53 Electrical equipment.

(b) All areas shall be classified in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities.

4. In § 250.122, revise paragraph (e)(4)(i) introductory text to read as follows:

§ 250.122 Design, installation, and operation of surface production safety systems.

(e) * * * (4) * * *

(i) A plan for each platform deck outlining all hazardous areas classified in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outlined shall include the following information:

5. In § 250.123 revise paragraphs (b)(9)(i) to read as follows:

§ 250.123 Additional production system requirements.

(b) * * * (9) * * *

(i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation which is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit (LEL). One approved method of providing adequate ventilation is a change of air volume each 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to all entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500.

6. In § 250.126, revise paragraphs (c)(8), (e)(2), and (e)(3) to read as follows:

§ 250.126 Quality assurance and performance of safety and pollution prevention equipment.

(c) * * *

(3) Be certified by the manufacturer as having been produced under a quality assurance program that meets the requirements of API Spec Q1 and the technical specification API Spec 14A for SSSV's. For SSV's and USV's the manufacturer must meet API Spec 6A and API Spec 6AVI, or API Spec 14D.

(e) * * *

(2) Equipment certified under paragraph (c)(3) of this section, must be reported in accordance with Appendix C of API Spec 14A or Appendix L of API Spec 6A or Appendix C of API Spec 14D, as appropriate.

(3) Equipment certified under both paragraphs (c)(2) and (c)(3) of this section must be reported in accordance with both section OE–2670 of ASME/ANSI SPPE–1–1988 and Appendix C of API Spec 14A or Appendix L of API Spec 6A or Appendix C of API Spec 14D, as appropriate.

7. In § 250.137, revise paragraphs (b)(1)(ii), (c)(4)(ii), and (c)(4)(vii) to read as follows:

§ 250.137 Steel platforms.

(b) * * * (1) * * *

(ii) Fabrication other than welding shall be performed in accordance with American Institute of Steel Construction (AISC) publication, Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, or other appropriate codes. The code to be followed during fabrication and construction shall be specified on design documents.

(c) * * * (4) * * *

(ii) For structural members and loadings covered by AISC publication, Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, with the exception of earthquake loadings (see paragraph (c)(4)(v) of this section) and tubular structural members under the combined loading of axial compression and bending, the basic allowable stresses of the members shall be obtained using the AISC specification. For tubular members subjected to the aforementioned interaction, stress limits shall be set in accordance with a defensible formulation.

(vii) Whenever the ultimate strength of the platform is used as the basis for the design of its members, the safety factors or the factored loads shall be formulated in accordance with the requirements of AISC publication, Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, or an equivalent code. The capability of the primary structural members to develop their predicted ultimate load capacity shall be demonstrated.

8. In § 250.138, revise paragraphs (b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), and (e)(2)(i) to read as follows:

§ 250.138 Concrete-gravity platforms.

(b) * * *

(4) Aggregates. (i) Aggregates shall conform to the requirements of ASTM C33, Specifications for Concrete Aggregates. Lightweight aggregates conforming to ASTM C330, Specifications for Lightweight Aggregates for Structural Concrete, shall only be permitted if they do not pose durability problems and where they are used in accordance with the applicable provisions of the ACI

publication, ACI 318, Building Code Requirements for Reinforced Concrete, plus Commentary.

(6) Reinforcing and prestressing systems. (i) Reinforcing and prestressing systems shall conform to the requirements of ACI 318; and

(7) Concrete. The concrete shall be designed to ensure sufficient strength and durability. The quality control of concrete shall conform to the requirements of paragraph (e) of this section. The water-cement ratio shall be strictly controlled and in no case shall it exceed 0.45.

(8) Grout for bonded tendons. (i) Grout for bonded tendons shall conform to ACI 318; and

(9) Post-tensioning ducts. Post-tensioning ducts shall conform to the requirements of ACI 318. Ducts and duct splices shall be watertight and grout-tight and shall be of suitable thickness to prevent crushing, deformation, and blockage.

(10) Post-tensioning anchorages and couplers. Post-tensioning anchorages and couplers shall conform to the requirements of ACI 318.

(3) Design strength. The design strength shall conform to requirements of ACI 318 and ACI 357R.

(d) * * * (1) * * *

(v) The material properties used in the analysis shall be based on actual laboratory tests or shall follow the appropriate sections of ACI 318.

(5) Analysis and design for bending and axial loads. The provisions of ACI 318 shall apply to the analysis and design of members subject to flexure or axial loads or to combined flexure and axial loads.

(6) Analysis and design for shear and torsion. The provisions of ACI 318 shall apply to the analysis and design of members subject to shear or torsion or to combined shear and torsion.

(7) Analysis and design of prestressed concrete. The analysis and design of prestressed concrete members and structures shall comply with ACI 318. In addition, the safety requirements of paragraph (c) of this section shall be satisfied.

(8) Details of reinforcement and prestressing systems. Details of reinforcement and prestressing systems shall conform to the requirements of ACI 318 with special attention given to:

the fatigue resistance and ultimate behavior of offshore structures.

(9) Minimum reinforcement. The minimum amount of reinforcement shall conform to the requirements of ACI 318. Additionally, sufficient reinforcement shall be provided to control crack growth, especially at surfaces exposed to severe hydraulic pressures.

(e) * * *

(1) * * *

(i) Construction methods and workmanship shall conform to the provisions of ACI 318 and to the following requirements:

(2) * * *

(i) Mixing of concrete shall conform to the requirements of ACI 318 and ASTM C94, Specification for Ready Mixed Concrete;

§ 250.180 Measurement of liquid hydrocarbons.

(c) * * *

(e) * * *

(i) Chapters 4.1 through 4.7, Proving Systems;

(ii) Chapters 5.1 through 5.5, Metering;

(v) Chapters 8.1 and 8.2, Sampling;

(vi)(A) Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products;

(B) Chapter 9.2, Pressure Hydrometer Test Method for Density or Relative Density;

(viii) (A) Chapter 11.1, Volume 1, Table 5A—Generalized Crude Oils and JP-4, Correction of Observed API Gravity to API Gravity at 60°F and Table 6A—Generalized Crude Oils and JP-4, Correction of Volume to 60°F Against API Gravity at 60°F;

9. In § 250.180, revise paragraphs (c)(6)(i), (ii), (v), and (vi); (c)(6)(viii) (A) and (C); (d)(3)(iv) and (d)(3)(v)(B); and (d)(2)(i), (ii), (iv), (v), and (vii), to read as follows:

(C) Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density Range (60°F/60°F) and –50°F to 140°F Meeting Temperature;

(d) * * *

(3) * * *

(iv) Mechanical-displacement provers and prover tanks shall be calibrated at

least every 3 years in accordance with the API MPMS, Chapters 4.1 through 4.7 and 11.2.3. A copy of each calibration report shall be submitted to the Regional Supervisor within 15 days following calibration.

(v) * * *

(B) The change in volume of the test liquid with the change in temperature (Ct) using APIMPM, Chapter 11.1, Volume 1, Table 6A, Generalized Crude Oils and JP-4, Correction of Volume to 60°F Against API Gravity at 60°F;

(f) * * *

(2) * * *

(i)(A) Chapter 2.2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method;

(B) Chapter 2.2B, Measurement and Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method;

(C) Standards 2551, 2552, 2555, and 2556;

(ii)(A) Chapter 3.1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products;

(B) Chapter 3.1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging;

(C) Standard 2545, Method of Gauging Petroleum Products;

(iv) Chapter 8.1 and 8.2, Sampling;

(v)(A) Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products;

(B) Chapter 9.2, Pressure Hydrometer Test Method for Density or Relative Density;

(vii) Chapter 11.1, Volume 1, Table 5A, Generalized Crude Oils and JP-4, Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A, Generalized Crude Oils and JP-4, Correction of Volume to 60°F, Against API Gravity at 60°F.

10. In § 250.181, revise paragraph (c)(1) to read as follows:

§ 250.181 Measurement of gas.

(c) * * *

(1) The measuring equipment shall be installed and operated in accordance with the recommendations contained in the API MPMS, Chapters 14.3, Parts 1, 2, and 3; 14.5; 14.6; and 14.8, Natural Gas Fluids Measurement.

11. In § 250.291, revise paragraphs (b)(3) and (d)(4)(i) to read as follows:

§ 250.291 Design, installation, and operation of production systems.

(b) * * *

(3) Electrical system information including a plan of each platform deck, outlining all hazardous areas classified in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, and outlining areas in which potential ignition sources are to be installed;

(d) * * *

(4) * * *

(i) A plan of each platform deck, outlining all hazardous areas classified in accordance with API RP 500 and outlining areas in which potential ignition sources are to be installed;

12. In § 250.292, revise paragraph (b)(4)(i) to read as follows:

§ 250.292 Additional production and fuel gas system requirements.

(b) * * *

(4) * * *

(i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit. One approved method of providing adequate ventilation is a change of air volume each 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500.

[FR Doc. 96-29262 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-09-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that CORMORANT (MHC 57) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 08 November 1996.
FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department,

200 Stovall Street, Alexandria, Virginia, 22332-2400, Telephone Number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that CORMORANT (MHC 57) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations; and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Section 706.2 is amended by adding, in numerical order, the following entry for CORMORANT (MHC 57) to Table Four, paragraph 18: § 706.2 Certifications of the Secretary of the Navy under Executive Order 11984 and 33 U.S.C. 1605.

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
CORMORANT	MHC 57	59.5° to 78.3°	281.7° to 300.5°

Dated: November 7, 1996.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 96-30079 Filed 11-25-96; 8:45 am]
BILLING CODE 3010-FF-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 95-054]

RIN 2115-AF17

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; delay of effective date.

SUMMARY: The Coast Guard is delaying the effective date of the interim rule on

regatta and marine parades published in the Federal Register on June 26, 1996. The interim rule more precisely identifies those marine events which require a permit, those which require only written notice to the Coast Guard, and those which require neither. A change in the effective date from January 1, 1997, to January 1, 1998, is necessary to allow time to further assess the potential impact, if any, of the interim rule on the environment.

EFFECTIVE DATE: The interim rule published on June 26, 1996 (61 FR 33027) is effective on January 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. Carlton Perry, Office of Boating Safety, (202) 267-0979. A copy of the interim rule and the draft environmental assessment may be obtained by calling the Coast Guard Customer Infoline at 1-800-368-5647 or, in Washington, DC, 267-0780.

SUPPLEMENTARY INFORMATION: On June 26, 1996, the Coast Guard published an interim rule and notice of availability of environmental assessment (CGD 95-054) entitled "Regattas and Marine Parades" in the Federal Register (61 FR 33027). The interim rule, which was to become effective on January 1, 1997, revised the Coast Guard's marine event regulations to eliminate unnecessary requirements while continuing to protect the safety of life. The rule more precisely identifies those events which require a permit, those which require only written notice of the Coast Guard, and those which require neither. The environmental assessment and proposed finding of no significant impact which support this rulemaking were made available to the public.

Approximately 85 comments were received in response to the USOC request for comments and publication of the interim rule and notice of

availability of the Environmental Assessment. Many of these comments raised concerns regarding the reporting requirements placed on the marine event sponsors and the potential environmental effects associated with changing the current regulations on regatta and marine parade permitting procedures. In addition, several comments received in response to a draft Environmental Impact Statement (EIS) entitled "U.S. Coast Guard Atlantic Protected Living Marine Resources Initiative" reiterated concerns raised by the comments on the interim rule. Based upon these comments, and concerns raised during the ongoing consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, the Coast Guard is reconsidering whether to proceed with a revision of the existing regulations on regatta and marine parade permitting procedures, as published, and is postponing the effective date for the interim rule.

Accordingly, in FR Doc. 96-16319 published in the Federal Register on June 26, 1996, at 61 FR 33027, the effective date for the referenced interim rule is changed from January 1, 1997, to January 1, 1998.

Dated: November 19, 1996.

M.F. McCormack,
Captain, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 96-30066 Filed 11-25-96; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[DOD 05-95-105]

Special Local Regulations for Marine Events; Holidays in the City Boat Parade; Town Point, Elizabeth River, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.501 for the Holidays in the City Boat Parade and Fireworks Display, an annual event to be held on November 30, 1996. The event will include a boat parade of approximately 65 vessels and a fireworks display at the conclusion of the parade. These special local regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and expected vessel congestion. The effect will be to restrict general navigation in the area for the safety of participants, spectators, and other vessels transiting the event area.

EFFECTIVE DATE: The regulations in 33 CFR 100.501 are effective from 5 p.m. to 8:30 p.m., November 30, 1996.

FOR FURTHER INFORMATION CONTACT: LTJG R. Christensen, marine events coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703-2199, (757) 483-8521.

SUPPLEMENTARY INFORMATION: The Downtown Norfolk Council will sponsor the Holidays in the City Boat Parade and Fireworks Display on November 30, 1996. The Boat parade route will run from the Berkeley Bridge to Hospital Point on the Elizabeth River and along the Portsmouth waterfront on the Southern Branch of the Elizabeth River. Approximately 65 vessels are expected to participate in the boat parade. The fireworks display will be launched from Town Point Park. A large number of spectator vessels are expected for both the boat parade and the fireworks display. Therefore, to ensure safety of both participants and spectators, 33 CFR 100.501 will be in effect for the duration of the event. Under the provisions of 33 CFR 100.501, a vessel may not enter the regulated area unless it is registered as a participant with the event sponsor or it receives permission from the Coast Guard patrol commander. These restrictions will be in effect for a limited period and should not result in significant disruption of maritime traffic.

Additionally, 33 CFR 110.72aa and 33 CFR 117.1007(b) will be in effect while 33 CFR 100.501 is in effect. Section 110.72aa establishes special anchorages which may be used by spectator craft. Section 117.1007(b) provides that the draw of the Berkeley Bridge shall remain closed from one hour prior to the scheduled event until one hour after the scheduled event unless the Coast Guard patrol commander allows it to be opened for passage of commercial traffic.

Dated: November 12, 1996.

Kent H. Williams,
Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 96-30227 Filed 11-25-96; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Los Angeles-Long Beach 96-003]

RN 2115-AA97

Safety Zone; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a moving safety zone around any liquefied hazardous gas tank vessel (LHG T/V) while the vessel is anchored, moored, or underway within the Los Angeles-Long Beach port area. The safety zone will take effect upon the entry of any LHG T/V into the waters within three (3) miles outside of the Federal breakwaters encompassing San Pedro Bay, and will remain in effect until the LHG T/V leaves the said three (3) mile limit. Entry into this zone is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach. Prohibiting vessel traffic from entering these moving safety zones will reduce the likelihood of a collision or explosion involving a liquefied hazardous gas carrier.

EFFECTIVE DATE: This final rule is effective on October 15, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Commanding Officer, U.S. Coast Guard Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802 between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The telephone number is (310) 980-4454.

FOR FURTHER INFORMATION CONTACT: Lieutenant Keith T. Whiteman, Chief, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802; phone: (310) 980-4454 or fax: (310) 980-4415.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 17, 1996, the Coast Guard published an NPRM entitled Safety Zone; San Pedro Bay, CA in the Federal Register (61 FR 37714). The Coast Guard received no letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

Liquefied hazardous gas tank vessels (LHG T/V) periodically transit and moor in Los Angeles-Long Beach port areas to load butane at the AmeriGas facility at Los Angeles Berth 120. For each LHG T/V arrival and departure, the Captain of the Port Los Angeles-Long Beach has exercised his authority and established a temporary safety zone around the vessel. These transits are occurring with increasing frequency. To limit the administrative burden of creating a temporary final rule for each vessel, the Captain of the Port created a regulation which establishes a moving safety zone around each LHG T/V while it is in the

port area (within 3 miles offshore of the Federal breakwater) to protect the public and port waterways and resources from the hazards associated with the transport and transfer liquefied hazardous gas. The following areas would be established as safety zones:

(1) The waters within a 500 yard radius around a liquefied hazardous gas tank vessel (LHG T/V), while the vessel is anchored at a designated anchorage area inside the Federal breakwaters bounding San Pedro Bay, or is anchored outside the breakwaters at designated anchorage areas within three (3) miles of the breakwaters;

(2) The waters and land area within 50 yards of a LHG T/V, while the vessel is moored at any berth within the Los Angeles or Long Beach port area, inside the Federal breakwaters;

(3) The waters 1000 yards ahead of and within 500 yards of all other sides of a LHG T/V, while the vessel is underway on the waters inside the Federal breakwaters, or on the waters extending three (3) miles outward from the Federal breakwaters.

Entry into this zone will be prohibited subject to the following exceptions:

(1) Entry may be authorized by the Captain of the Port Los Angeles-Long Beach;

(2) Vessels already moored or anchored when the LHG T/V safety zone goes into effect are not required to get underway to avoid entering into the safety zone boundaries.

The Coast Guard will issue a Broadcast Notice to Mariners advising the marine community of any LHG T/V transits. Enforcement of the safety zone around LHG vessels and the escort of LHG vessels will be conducted by the Coast Guard. Assistance in enforcement and escort functions may also be provided by the Los Angeles Port Police at the request of the Captain of the Port.

Discussion of Comments and Changes

The Coast Guard received no comments on our April 17, 1996 NPRM (61 FR 37714).

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full

Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether these regulations will have a significant economic impact on a substantial number of small entities. "Small Entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard will broadcast scheduled transits, enabling other companies with vessels transiting in the area to adjust their vessel movements accordingly, causing minimal economic impact. Therefore, the Coast Guard certifies—that, if adopted, this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, as revised in 59 FR 38654, July 29, 1994, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A categorical exclusion determination and environmental analysis checklist is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways. In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR part 165 continues to read as follows:

PART 165—[AMENDED]

Authority: 33 U.S.C. 1231; 50 U.S.C. 161; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 100.5; 49 CFR 1.45.

2. A new section 165.1101 is added under the undesignated center heading "Eleventh Coast Guard District" to read as follows:

§ 165.1101 Safety Zone; San Pedro Bay, CA.

(a) *Location.* The following areas are established as safety zones during the specified conditions:

(1) The waters within a 500 yard radius around a liquefied hazardous gas tank vessel (LHG T/V), while the vessel is anchored at a designated anchorage area either inside the Federal breakwaters bounding San Pedro Bay, or anchored outside the breakwaters at designated anchorage areas within three (3) miles of the breakwaters;

(2) The waters and land area within 50 yards of a LHG T/V, while the vessel is moored at any berth within the Los Angeles or Long Beach port area, inside the Federal breakwaters bounding San Pedro Bay;

(3) The waters 1000 yards ahead of and within 500 yards of all other sides of a LHG T/V, while the vessel is underway on the waters inside the Federal breakwaters encompassing San Pedro Bay, or within the waters three (3) miles outside of the Federal breakwaters in an area more particularly described as follows: Beginning at a point which is Point Fermin Light (33°42'18" N, 118°17'36" W); thence along the shoreline to the San Pedro breakwater; thence along the San Pedro breakwater and the Middle breakwater (following the COLREGS Demarcation Lines) to Long Beach Channel Entrance Light "2" (33°43'23" N, 118°10'50" W); thence south southeast to 33°40'31" N, 118°08'42" W; thence west to 33°40'31" N, 118°12'03" W; thence west southwest to 33°39'17" N, 118°16'00" W; thence northwest to 33°40'06" N, 118°17'36" W; thence north to the point of beginning. [Datum: NAD 1983].

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within these zones is prohibited subject to the following exceptions:

(1) Entry may be authorized by the Captain of the Port; or

(2) Vessels already anchored or moored when the safety zone is in effect are not required to get underway to avoid entering into the safety zone boundaries as listed in paragraph (a) of this section.

(c) Notice. The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect via Broadcast Notice to Mariners.

Dated: October 15, 1996.

E.E. Page,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 96-30006 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COG001-95-141]

RIN 2115-AA27

Safety Zone: Sunken Vessel EMPIRE KNIGHT, Boon Island, Maine

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations to establish a permanent safety zone. This action is necessary to ensure that the stern portion of the sunken M/V EMPIRE KNIGHT, and its cargo of mercury, is not disturbed by dredging, diving, salvage, anchoring, fishing, or other activity. This rulemaking is needed to protect the environment, the commercial fishery, and the general public from any adverse effects of contamination from mercury which could result from the disturbance of the stern section of the wreck.

EFFECTIVE DATE: This final rule is effective August 23, 1996.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Chief, Response & Planning Department, U.S. Coast Guard Marine Safety Office, 312 Fore Street, Portland, Maine between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (207) 780-3251, extension 114.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Galken, Response & Planning Department, U.S. Coast Guard Marine Safety Office, P.O. Box 188, Portland, Maine 04112-0108 at (207) 780-3251, extension 114.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In February of 1944, the M/V EMPIRE KNIGHT, a 428 foot British freight ship ran aground on Boon Island Ledge, Maine, and later broke into two sections. The stern section, which includes the ship's cargo holds, sank in approximately 280 feet of water, one and one-half miles from Boon Island Ledge. In August of 1990, the Coast

Guard Captain of the Port, Portland, Maine (COTP) became aware of the existence of a "Proposed" Plan of Stowage for the wreck of the M/V EMPIRE KNIGHT which indicated that 221 flasks containing mercury may have been loaded into cargo hold number 5. The COTP issued a Captain of the Port Order to a company then conducting salvage operations, requiring them to refrain from further salvage activity until the situation could be more thoroughly assessed.

Over the next year, the COTP convened an Incident Specific Regional Response Team (RRT) consisting of representatives from the Maine Department of Environmental Protection, the New Hampshire Department of Environmental Services, the Maine Department of Marine Resources, the New Hampshire Department of Fish and Game, the U.S. Environmental Protection Agency, the U.S. National Oceanic and Atmospheric Administration, and the U.S. Coast Guard to gather information about the M/V EMPIRE KNIGHT and its cargo, and to identify possible courses of action.

During the summer of 1991, the Maine Department of Marine Resources collected samples of bottom sediment around the stern portion of the EMPIRE KNIGHT to determine if mercury was present and, if so, to what extent. Laboratory analyses of the samples revealed levels of mercury consistent with background levels with some exceptions, rendering them inconclusive on whether mercury had been on board the M/V EMPIRE KNIGHT at the time of its sinking.

In the spring of 1993, the COTP, in consultation with the RRT, determined that the possible presence of mercury on board the M/V EMPIRE KNIGHT constituted an imminent and substantial threat to the environment. The RRT agreed that an on site assessment of the stern section of the EMPIRE KNIGHT was necessary to determine the presence of the mercury, and to assess whether it would be necessary, feasible, and safe to remove it if on board.

In August, 1993, the COTP, as the Federal On Scene Coordinator, initiated a \$6.6 million emergency site assessment and removal operation. The presence of mercury on board was quickly confirmed. All 221 manifested mercury flasks were located in cargo hold number 5 and subsequently recovered, but they were found in badly deteriorated condition and were nearly empty. Loose mercury was discovered throughout cargo hold number 5, and approximately 1,230 pounds were recovered. Nearly 2,200 pounds of

mercury-contaminated debris and cargo residue were also recovered.

Extensive sampling and analysis was conducted throughout the operation. Samples included bottom sediments in the vicinity of the stern section of the wreck and various species of fish and shellfish from the area around the vessel. From within cargo hold number 5, samples of the sediment, scrapings off the cargo, and fish and shellfish were taken.

In October, 1993, the operation was suspended due to deteriorating weather conditions. At that time, an estimated 15,000 pounds of mercury remained unaccounted for and is believed to have settled into the sediment, and may have come to rest at a low point of cargo hold number 5.

In February, 1994, the RRT was reconvened by the COTP to consider the results of the sample analyses and to determine the best course of action. The sample analysis results showed that concentrations of mercury were elevated inside cargo hold number 5, but dropped off quickly to background levels in the bottom sediments outside the hold. No contamination of fish or shellfish was identified with the exception of those specimens collected from within cargo hold number 5. The key issue then became the long term fate of mercury in a marine environment. The RRT decided to submit the sample results to NOAA and an independent scientist with a request for an analysis of the available data and scientific literature and to develop a forecast of the long term behavior of the mercury on site.

In August, 1994, a commercial salvage company that had remained prohibited from conducting salvage operations by the Captain of the Port Order, submitted to the COTP a request to lift the order. The company also submitted a request to conduct salvage operations on the wreck of the EMPIRE KNIGHT.

In September, 1994, the RRT was reconvened to consider the reports submitted by NOAA and the independent scientist. While the reports differed in details, they both concluded that the site was currently stable and that the mercury did not pose a substantial threat to the environment. Both reports were written, however, under the presumption that the wreck of the EMPIRE KNIGHT would remain essentially undisturbed with the exception of its gradual decomposition from natural forces. Both reports further agreed that the probability of a catastrophic release of mercury to the environment as a result of activity on or near the EMPIRE KNIGHT was low. The RRT reached the conclusion that the

wreck of the EMPIRE KNIGHT did not meet the condition of "imminent and substantial" threat under CERCLA and that additional emergency response operations would not be conducted. The RRT further agreed to develop a plan for long-term monitoring of the site with the intent of detecting any changing conditions.

In August, 1995, the RRT reconvened to discuss the issue of allowing any type of activity on or near the wreck of the EMPIRE KNIGHT. Consensus was reached that all information currently before the RRT indicated that the predictable risk of activity on the wreck resulting in mercury contamination of the environment was low. It was further agreed that, although the risk of a release was low, the foreseeable consequences of that release could be devastating to the local environment, the public health, and the economy of the region's fisheries. The unanimous recommendation of the RRT was to prohibit any activity on or near the stern section of the wreck of the EMPIRE KNIGHT. The establishment of the safety zone is a result of that meeting.

Regulatory History

On November 13, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "SAFETY ZONE: Sunken Vessel EMPIRE KNIGHT, Boon Island, Maine" in the Federal Register (60 FR 56988). This NPRM proposed the establishment of a Safety Zone in the waters of the State of Maine prohibiting all vessels and persons from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations within a 1000 yard radius of the stern portion of the wreck of the M/V EMPIRE KNIGHT except as authorized by the Captain of the Port, Portland, Maine. The NPRM included a request for comments from interested parties. Comments were received and are discussed below. The final rule does not differ from the NPRM.

Good cause exists for providing for this rule to become effective in less than 30 days after Federal Register publication. Any delay encountered in making this rule would be contrary to the public interest as the rule is needed to protect the environment, the commercial fishery, and the general public from any adverse effects of contamination from mercury which could result from the disturbance of the stern section of the wreck. It is in the public interest that this final rule is being made effective in less than 30 days after publication.

Discussion of Comments and Changes

The Coast Guard received four letters in response to the NPRM. Three of the letters were comments in support of the rulemaking. Two of these supportive comments were from State of Maine intermediaries stating that any activity which would alter conditions of the M/V EMPIRE KNIGHT and which could consequently increase the threat of the spread of the mercury cargo on board should be prevented. The third comment, submitted by a salvage company, expressed concern that the rule did not address future long-term monitoring of the M/V EMPIRE KNIGHT site. Their concurrence with the rule is contingent upon the establishment of a long-term regular sampling program to monitor the inevitable changes over time to conditions at the site and their effect on the containment of the mercury. The Coast Guard agrees that conditions at the site will change over time and that there is a need to monitor those changes and their effect on the fate of the mercury. Accordingly, a sampling and monitoring program has been developed for the site and is in the process of being implemented.

The only objection to the rule, submitted by a salvage company, raised the following issues:

One comment suggested the reports the Coast Guard reviewed provided no scientific basis in support of a permanent safety zone. The Coast Guard disagrees. The scientific reports concluded that for now, the site was stable and the mercury "did not pose a substantial threat" to the environment. The scientific conclusions were based on the presumption that the wreck of the M/V EMPIRE KNIGHT would remain undisturbed with the exception of its gradual decomposition from natural forces. In addition to the scientific reports, the Coast Guard also considered the negative effects on the local economy if consumer confidence in the safety of the area's fisheries was lost. As a result, access to the vessel needs to be regulated. In addition, the injuries that may result from unrestricted recreational and commercial diving in the area due to the attractive nuisance of a copper-laden sunken vessel present a significant safety concern. The Coast Guard has determined a safety zone is necessary to protect the general public from the potential hazards and restrict access to the area.

Therefore, the United States Coast Guard, in consultation with the Incident Specific Regional Response Team, has determined that, although the current level of threat from the mercury cargo is

low, any disturbance of the wreck site, intentional or unintentional, poses an unacceptable risk to the public health, New England area fisheries, actual or perceptual, and the local environment.

Second, the salvage company stated that establishing a permanent safety zone around the wreck of the M/V EMPIRE KNIGHT would cause irreparable harm to the firm by prohibiting them from conducting any future salvage. While the Coast Guard recognizes that its action may impede the ability of this company to conduct salvage, it was necessary to balance that against the potential risk to the environment, human health, and the local economy. The safety zone will continue in force until rescinded by the Captain of the Port (COTP), Portland, Maine.

Regulatory Evaluation

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the rulemaking has no significant effect on shipping as it is not located in a shipping channel, and its impact on fishing is minimal because it restricts less than one square mile of the available fishing grounds.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider the economic impact on small entities if a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have significant impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12812, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under paragraph 2.B.2.(e) of Commandant Instruction M16474.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist are available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 100.5; 49 CFR 1.46.

2. A new section 165.141 is added to read as follows:

§ 165.141 Safety Zone: Sunken vessel EMPIRE KNIGHT, Boon Island, ME.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within a 1,000 yard radius of the stern section of the sunken vessel EMPIRE KNIGHT, in approximate position 43°06'19" N, 70°27'09" W, (NAD 1983) and extending from the water's surface to the seabed floor.

(b) *Effective date.* This section is effective on August 23, 1996, twenty-four hours a day, seven days a week.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port, Portland, Maine. Innocent transit through the area within the

safety zone is not affected by this regulation and does not require the authorization of the Captain of the Port.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 23, 1996.

Burtin S. Russell,

Commander U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 96-30228 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[NMA003; AD-FRL-5654-5]

Clean Air Act Final Full Approval of Operating Permits Program; the State of New Mexico and Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating full approval of the Operating Permits program submitted by the New Mexico Environment Department (NMED) under the signature of the Governor, and separately by the City of Albuquerque/Bernalillo County (the City), for the purpose of complying with Federal requirements for approvable State and local programs to issue operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

DATE: This action is effective on January 27, 1997, unless adverse or critical comments are received by December 26, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the submittals and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6PD-R),

1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

New Mexico Environment Department, Harold Runnels Building, room 50, 2100, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

City of Albuquerque/Bernalillo County, Environmental Health Department, One Civic Plaza, NW, room 3023, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733, telephone 214-685-7226.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose****Introduction**

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act (the Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 required that States develop and submit Operating Permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval and disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

On May 19, 1994, EPA proposed interim approval of the Operating Permits program for the State of New Mexico. (See 59 FR 26158 (May 19, 1994)). The EPA received public comment on the proposal and compiled a final Technical Support Document (TSD) responding to those comments and briefly describing and clarifying aspects of the Operating Permits program. The EPA granted final interim approval to the New Mexico program on December 15, 1994. This final interim approval, published November 18, 1994, required the State to correct the statutory defect in criminal fine authority.

On January 10, 1995, EPA proposed interim approval of the Operating Permits program for the City (See 60 FR 2570 (January 10, 1995)). The EPA received public comment on the proposal and compiled a final TSD

responding to those comments and briefly describing and clarifying aspects of the Operating Permits program. The EPA granted final interim approval to the City with an informational notice in the Federal Register dated March 10, 1995. The effective date of the final interim approval was March 13, 1995. The final interim approval notice (60 FR 2527) required a statutory revision in criminal fine authority by the State and revisions to the City Joint Air Quality Control Board Ordinance and the County Joint AQO Board Ordinance consistent with the State revision.

The State submitted corrections to the Operating Permits program in two letters from the Governor, dated May 15, 1995, and July 3, 1995. A third letter from the Secretary of the NMED, dated July 31, 1996, was submitted to clarify these corrections. These changes fulfill the requirements of 40 CFR part 70 for the State to receive full approval of its Operating Permits program. This corrective action was cited by the Albuquerque/Bernalillo County program in a letter dated June 4, 1996, requesting EPA to complete final approval of the corrected City program. In this document, EPA is taking final action to promulgate full approval of the Operating Permits program for the State of New Mexico and the City of Albuquerque/Bernalillo County.

II. Final Action and Implications**A. Analysis of State Submission**

The State of New Mexico submitted to EPA, under a cover letter from the Governor dated November 15, 1993, the State's Operating Permits program. The City of Albuquerque/Bernalillo County submitted their final Operating Permits program to EPA on April 4, 1994. Both programs have addressed the interim approval issue regarding statutory fine authority and requested full approval of the corrected programs. These submittals have adequately addressed all 16 elements required for full approval as discussed in part 70. The State of New Mexico and the City appropriately addressed all requirements necessary to receive full approval of their Operating Permits program pursuant to title V of the Act and 40 CFR part 70.

The final interim approval for both programs (59 FR 59656 and 60 FR 2527) required the State to correct the statutory defect in criminal fine authority, and for the City to amend the ordinances to be consistent with the State revision, in order to receive full approval. In addition to raising the criminal fine amounts to at least \$10,000 for all offenses listed in 40 CFR

70.11(a)(3)(ii), statutory revisions must provide authority for the imposition of these fines on a per day per violation basis, as required by 40 CFR 70.11(a)(3)(ii). Evidence of these statutory revisions and their procedurally correct adoption were submitted to EPA under the Governor's signature in a letter dated May 15, 1995. This amendment to the State statute corrects the defect noted in both interim approvals.

The State of New Mexico also submitted a list of insignificant activities under the Governor's signature in a letter dated July 3, 1995. The State made this revision based on the requirement that the Administrator approve any list of insignificant activities. This action will approve the list of insignificant activities into the approved program.

B. Options for Approval

The EPA is promulgating full approval of the Operating Permits program submitted by the State on November 15, 1993, and amended on May 15, 1995, and again on July 3, 1995. Further, EPA is promulgating full approval of the Operating Permits program submitted by the City on April 4, 1994, and amended with the changes to the State statute cited in the letter dated June 4, 1996. These amendments were incorporated into the City ordinances on July 3, 1996. The amendments to the program noted above satisfy the full approval requirements set forth in the final interim approval published November 18, 1994, for the State of New Mexico and on January 10, 1995, for the City of Albuquerque/Bernalillo County.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve these Operating Permits programs should adverse or critical comments be filed. This action will be effective January 27, 1997 unless, by December 26, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no

such comments are received, the public is advised that this action will be effective January 27, 1997.

III. Administrative Requirements**A. Docket**

Copies of the State's submittal and other information relied upon for the final full approval, including the submission under the Governor's signature, are contained in docket number FR Docket OPP 4-0-2 and FR Docket OPP 5-0-2, maintained at EPA Region 6 Office. Copies of the City's submittal and other information relied upon for the final full approval are contained in docket number FR Docket OPP 5-0-2, maintained at EPA Region 6 Office. These dockets are an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of these final full approvals. These dockets are available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

C. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 27, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 12, 1996.

Lynne F. Carroll,
Acting Regional Administrator (6RA).

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401; et seq.

2. In appendix A to part 70 the entry for "New Mexico" is amended by adding paragraphs (c) and (d) to read as follows:

Appendix A to Part 70—Approval status of State and Local Operating Permits Programs

New Mexico

(c) The New Mexico Environment Department, Air Pollution Control Bureau submitted an operating permits program on November 15, 1993, which was revised July 31, 1996, and became effective on December 26, 1996.

(d) The City of Albuquerque, Environmental Health Department,

submitted an operating permits program on April 4, 1994, which was revised July 31, 1996, and became effective on December 26, 1996.

[FR Doc. 96-30130 Filed 11-25-96; 8:45 am]

BILLING CODE 5000-06-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-49

[FPMR Amendment M-199]

RM 3000-AQ14

Reporting Requirements for Foreign Gifts and Decorations

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: Section 101-49.601-5 currently defines the minimal value for reporting foreign gifts as \$225. Public Law 95-105 requires that at 3-year intervals following January 1, 1981, minimal value be redefined by the Administrator of General Services, after consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period. The required consultation has been completed and the minimal value has been increased to \$245.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha S. Caswell, Director, Personal Property Management Policy Division (202-501-3828).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101-49

Decoration, medals and awards; Government property; Government property management.

For reasons set forth in the preamble, 41 CFR part 101-49 is amended as follows:

PART 101-49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

1. The authority citation for Part 101-49 continues to read as follows:

Authority: Sec. 205(c), 45 Stat. 390 (48 U.S.C. 440(c)) sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

2. Section 101-49.601-5 is amended by revising the introductory text to read as follows:

§ 101-49.601-5 Minimal value.

Minimal value means a retail value in the United States at the time of acceptance of \$245 or less, except that:

Dated: September 8, 1996.

David J. Barron,

Acting Administrator of General Services.

[FR Doc. 96-30193 Filed 11-25-96; 8:45 am]

BILLING CODE 5000-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in

this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of

Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12812, Federalism

This rule involves no policies that have federalism implications under Executive Order 12812, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:	San Diego (FEMA Docket No. 7193).	City of Poway June 6, 1996, June 13, 1996, Poway News-Chief.	The Honorable Don Higginson, Mayor, City of Poway, P.O. Box 789, Poway, California 92074-0789.	May 15, 1996	050702
	San Diego (FEMA Docket No. 7193).	Unincorporated areas July 12, 1996, July 19, 1996, San Diego Daily Transcript.	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, 1800 Pacific Highway, Room 335, San Diego, California 92101.	June 26, 1996	050284
	Santa Clara (FEMA Docket No. 7196).	City of San Jose July 23, 1996, July 30, 1996, San Jose Mercury News.	The Honorable Susan Hammer, Mayor, City of San Jose, 801 North First Street, Room 600, San Jose, California 95110-1792.	June 20, 1996	050349
Colorado:	Adams, Jefferson, and Boulder (FEMA Docket No. 7193).	City of Broomfield June 20, 1996, June 27, 1996, Broomfield Enterprise.	The Honorable Bill Berens, Mayor, City of Broomfield, P.O. Box 1415, Broomfield, Colorado 80038-1415.	May 16, 1996	055073
	Douglas (FEMA Docket No. 7193).	Town of Castle Rock July 10, 1996, July 17, 1996, Douglas County News Press.	The Honorable Mark Williams, Mayor, Town of Castle Rock, 144 Hillside Drive, Castle Rock, Colorado 80104.	June 18, 1996	050050

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Garfield (FEMA Docket No. 7193).	Unincorporated areas	July 3, 1996, July 10, 1996, <i>Citizen Telegram</i> .	The Honorable Marian Smith, Chairperson, Board of County Commissioners, Garfield County, 109 Eighth Street, Suite 300, Glenwood Springs, Colorado 81601.	May 31, 1996	080205
Jefferson (FEMA Docket No. 7196).	City of Lakewood	July 18, 1996, July 25, 1996, <i>Jefferson Sentinel</i> .	The Honorable Linda Morton, Mayor, City of Lakewood, 445 South Allison Parkway, Lakewood, Colorado 80226-3105.	June 7, 1996	085075
Garfield (FEMA Docket No. 7193).	City of Rifle	July 3, 1996, July 10, 1996, <i>Citizen Telegram</i> .	The Honorable David Ling, Mayor, City of Rifle, P.O. Box 1908, Rifle, Colorado 81650.	May 31, 1996	085078
Hawaii: Maui (FEMA Docket No. 7193).	Unincorporated areas	July 10, 1996, July 17, 1996, <i>Maui News</i> .	The Honorable Linda Crockett-Ling, Mayor, County of Maui, 200 South High Street, Wailuku, Hawaii 96793.	June 6, 1996	150003
Kansas: Johnson (FEMA Docket No. 7180).	City of Olathe	Mar. 20, 1996, Mar. 27, 1996, <i>Johnson County Sun</i> .	The Honorable Larry Campbell, Mayor, City of Olathe, P.O. Box 788, Olathe, Kansas 66051-0788.	Feb. 23, 1996	200173
Johnson (FEMA Docket No. 7180).	City of Overland Park	Mar. 20, 1996, Mar. 27, 1996, <i>Johnson County Sun</i> .	The Honorable Ed Ellert, Mayor, City of Overland Park, P.O. Box 168, Overland Park, Kansas 66212.	Feb. 23, 1996	200174
Missouri: Jackson and Cass (FEMA Docket No. 7193).	City of Lee's Summit	June 12, 1996, June 19, 1996, <i>Lee's Summit Journal</i> .	The Honorable Karen R. Messerli, Mayor, City of Lee's Summit, P.O. Box 1600, Lee's Summit, Missouri 64063.	May 15, 1996	290174
Jackson (FEMA Docket No. 7193).	City of Lee's Summit	July 10, 1996, July 17, 1996, <i>Lee's Summit Journal</i> .	The Honorable Karen R. Messerli, Mayor, City of Lee's Summit, City Hall, 207 Southwest Market, Lee's Summit, Missouri 64063.	June 20, 1996	290174
Nebraska: Douglas (FEMA Docket No. 7196).	City of Omaha	July 19, 1996, July 26, 1996, <i>Omaha World Journal</i> .	The Honorable Hal Daub, Mayor, City of Omaha, City Hall, 1819 Farnam Street, Suite 300, Omaha, Nebraska 68163.	June 6, 1996	315274
Nevada: Clark (FEMA Docket No. 7196).	City of Henderson	July 23, 1996, July 30, 1996, <i>Las Vegas Review Journal</i> .	The Honorable Robert A. Groesbeck, Mayor, City of Henderson, 240 Water Street, Henderson, Nevada 89015.	June 7, 1996	320005
New Mexico: Bernalillo (FEMA Docket No. 7196).	City of Albuquerque	July 22, 1996, Aug. 1, 1996, <i>Albuquerque Journal</i> .	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	June 28, 1996	350002
Oklahoma: Cleveland (FEMA Docket No. 7185).	City of Norman	Apr. 12, 1996, Apr. 19, 1996, <i>Norman Transcript</i> .	The Honorable William Nations, Mayor, City of Norman, 201 West Gray, Norman, Oklahoma 73070.	Mar. 27, 1996	400046
South Dakota: Pennington (FEMA Docket No. 7193).	Unincorporated areas	July 12, 1996, July 19, 1996, <i>The Rapid City Journal</i> .	The Honorable Dolores Coffing, Chairperson, Pennington County Commissioners, 315 St. Joseph Street, Rapid City, South Dakota 57701-2678.	June 18, 1996	460064

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas:					
Travis (FEMA Docket No. 7193).	City of Austin	July 3, 1996, July 10, 1996, <i>American Statesman</i> .	The Honorable Bruce Todd, Mayor, City of Austin, P.O. Box 1088, Austin, Texas 78767.	June 6, 1996	480624
Bexar (FEMA Docket No. 7193).	Unincorporated areas	July 2, 1996, July 9, 1996, <i>San Antonio Express-News</i> .	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, First Floor, 100 Dolorosa, San Antonio, Texas 78205-3036.	May 29, 1996	480035
Cameron (FEMA Docket No. 7193).	Unincorporated areas	July 11, 1996, July 18, 1996, <i>Brownsville Herald</i> .	The Honorable Gilberto Hinojosa, Cameron County Judge, 964 East Harrison, Brownsville, Texas 78520.	May 31, 1996	480101
Dallas, Denton, and Collin (FEMA Docket No. 7193).	City of Carrollton	July 11, 1996, July 18, 1996, <i>Metro Crest News</i> .	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110635, Carrollton, Texas 75011-0535.	June 28, 1996	480167
Tarrant (FEMA Docket No. 7193).	City of Fort Worth	July 2, 1996, July 9, 1996, <i>Fort Worth Star Telegram</i> .	The Honorable Kenneth Ban, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102-6311.	June 18, 1996	480596
Harris (FEMA Docket No. 7193).	Unincorporated areas	July 9, 1996, July 16, 1996, <i>Houston Chronicle</i> .	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	June 12, 1996	480287
Montgomery (FEMA Docket No. 7195).	Unincorporated areas	Apr. 12, 1996, Apr. 19, 1996, <i>Conroe Courier</i> .	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Mar. 27, 1996	480483
Cameron (FEMA Docket No. 7193).	City of Port Isabel	July 11, 1996, July 18, 1996, <i>Port Isabel South Padre Island Press</i> .	The Honorable Quirino Martinez, Mayor, City of Port Isabel, 305 East Maxan, Port Isabel, Texas 78578.	May 31, 1996	480109
Washington: Chelan (FEMA Docket No. 7193).	Unincorporated areas	July 12, 1996, July 19, 1996, <i>The Wenatchee World</i> .	The Honorable John Wall, Chairman, Chelan County Commissioners, Chelan County Courthouse, 350 Orondo Avenue, Wenatchee, Washington 98801.	June 18, 1996	530015
Chelan (FEMA Docket No. 7193).	City of Wenatchee	July 12, 1996, July 19, 1996, <i>The Wenatchee World</i> .	The Honorable Earl Tilly, Mayor, City of Wenatchee, P.O. Box 519, Wenatchee, Washington 98807-0519.	June 18, 1996	530020

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 18, 1996.

Craig S. Wingo,
Deputy Associate Director, Mitigation
Directorate.

[FR Doc. 96-30164 Filed 11-25-96; 8:45 am]

BILLING CODE 6710-04-P

44 CFR Part 65

[Docket No. FEMA-7200]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood

elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community

eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12812, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 28, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Unincorporated areas	Aug. 22, 1996, Aug. 29, 1996, <i>Arizona Republic</i> .	The Honorable Ed King, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson Street, Tenth Floor, Phoenix, Arizona 85003.	Aug. 7, 1996	040037
Maricopa	Town of Paradise Valley.	Aug. 22, 1996, Aug. 29, 1996, <i>Arizona Republic</i> .	The Honorable Marvin Davis, Mayor, Town of Paradise Valley, 8401 East Lincoln Drive, Paradise Valley, Arizona 85253.	Aug. 7, 1996	040049
Maricopa	City of Phoenix	Aug. 22, 1996, Aug. 29, 1996, <i>Arizona Business Gazette</i> .	The Honorable Skip Rimsza, Mayor of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	Aug. 7, 1996	040051
Pima	Unincorporated areas	Sept. 18, 1996, Sept. 25, 1996, <i>Arizona Daily Star</i> .	The Honorable Paul Marsh, Chairman, Pima County, Board of Supervisors, 130 West Congress, Tucson, Arizona 85701.	Aug. 13, 1996	040073

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego	Unincorporated areas	Oct. 1, 1996, Oct. 8, 1996, <i>San Diego Daily Transcript</i> .	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	Sept. 18, 1996	080084
Colorado: Arapahoe	Unincorporated areas	Aug. 22, 1996, Aug. 29, 1996, <i>Villager</i> .	The Honorable Polly Page, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166-0001.	July 15, 1996	080011
Arapahoe	City of Aurora	Aug. 22, 1996, Aug. 29, 1996, <i>Villager</i> .	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Suite 808, Aurora, Colorado 80012.	July 15, 1996	080002
Boulder	Unincorporated areas	Sept. 18, 1996, Sept. 25, 1996, <i>Louisville Times</i> .	The Honorable Ronald K. Stewart, Chairman, Board of County Commissioners, Boulder County, P.O. Box 471, Boulder, Colorado 80306.	Sept. 6, 1996	080023
Jefferson	City of Golden	Sept. 6, 1996, Sept. 13, 1996, <i>Golden Transcript</i> .	The Honorable Jan C. Schenck, Mayor, City of Golden, City Hall, 911 Tenth Street, Golden, Colorado 80401.	Aug. 20, 1996	080090
Jefferson	City of Lakewood	Aug. 22, 1996, Aug. 29, 1996, <i>Jefferson Sentinel</i> .	The Honorable Linda Morton, Mayor, City of Lakewood, 445 South Allison Parkway, Lakewood, Colorado 80226-3105.	Aug. 8, 1996	085075
Boulder	City of Louisville	Sept. 18, 1996, Sept. 25, 1996, <i>Louisville Times</i> .	The Honorable Tom Davidson, Mayor, City of Louisville, 749 Main Street, Louisville, Colorado 80027.	Sept. 6, 1996	085076
Jefferson	City of Wheat Ridge	Sept. 20, 1996, Sept. 27, 1996, <i>Wheat Ridge Transcript</i> .	The Honorable Dan Wilde, Mayor, City of Wheat Ridge, 7500 West 29th Avenue, Wheat Ridge, Colorado 80215.	Aug. 28, 1996	085079
Hawaii: Maui	Unincorporated areas	Aug. 16, 1996, Aug. 23, 1996, <i>Maui News</i> .	The Honorable Linda Crockett-Lingle, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.	July 23, 1996	150003
Kansas: Harvey	City of Halstead	Oct. 3, 1996, Oct. 10, 1996, <i>The Harvey County Independent</i> .	The Honorable Dorel Neufeld, Mayor, City of Halstead, P.O. Box 312, Halstead, Kansas 67056-0312.	Sept. 4, 1996	200131
Harvey	Unincorporated areas	Oct. 3, 1996, Oct. 10, 1996, <i>The Harvey County Independent</i> .	The Honorable Craig R. Simons, Harvey County Administrator, Administration Department, P.O. Box 887, Newton, Kansas 67114-0887.	Sept. 4, 1996	200555
Johnson	City of Leawood	Aug. 20, 1996, Aug. 27, 1996, <i>Legal Record</i> .	The Honorable Marcia Rinehart, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, Kansas 66211.	July 24, 1996	200167
Johnson	City of Overland Park	Aug. 16, 1996, Aug. 23, 1996, <i>Overland Park Sun</i> .	The Honorable Ed Eliert, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	July 24, 1996	200174

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Comanche	City of Lawton	Oct. 1, 1996, Oct. 8, 1996, <i>The Lawton Constitution</i>	The Honorable John T. Marley, Mayor, City of Lawton, 103 Southwest Fourth Street, Lawton, Oklahoma 73501.	Aug. 30, 1996	400048
Ottawa	City of Miami	Sept. 18, 1996, Sept. 25, 1996, <i>Miami News Record</i>	The Honorable Louis E. Mathis, Mayor, City of Miami, P.O. Box 309, Miami, Oklahoma 74355-0309.	Aug. 16, 1996	400157
Oregon: Jackson	City of Medford	Sept. 5, 1996, Sept. 12, 1996, <i>Mail Tribune</i>	The Honorable Jerry Lauermann, Mayor, City of Medford, 411 West Eighth Street, Medford, Oregon 97501.	Aug. 2, 1996	410096
Texas: Tarrant	City of Fort Worth	Aug. 16, 1996, Aug. 23, 1996, <i>Fort Worth Star-Telegram</i>	The Honorable Jewel C. Woods, Mayor Pro Tem, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102-6311.	Aug. 6, 1996	480596
Tarrant	City of Fort Worth	Aug. 23, 1996, Aug. 30, 1996, <i>Fort Worth Star-Telegram</i>	The Honorable Jewel C. Woods, Mayor Pro Tem, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102-6311.	Aug. 5, 1996	480596
Harris	Unincorporated areas	Sept. 18, 1996, Sept. 25, 1996, <i>Houston Chronicle</i>	The Honorable Robert Eckels, Harris County Judge, Harris County Administration Building, 1001 Preston Street, Houston, Texas 77002.	Aug. 16, 1996	480287
Tarrant	City of Haslet	Aug. 16, 1996, Aug. 23, 1996, <i>Fort Worth Star-Telegram</i>	The Honorable L.J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	Aug. 6, 1996	480600
Tarrant	City of Haslet	Sept. 20, 1996, Sept. 27, 1996, <i>Fort Worth Star-Telegram</i>	The Honorable L.J. Frazier, Mayor, City of Haslet, P.O. Box 183, Haslet, Texas 76052.	Aug. 29, 1996	480600
Denison	Town of Hebron	Sept. 11, 1996, Sept. 18, 1996, <i>Lewisville Leader</i>	The Honorable Stanley Dozier, Mayor, Town of Hebron, Route 2, Box 184, Carrollton, Texas 75010.	Aug. 20, 1996	481495
Montgomery	Unincorporated areas	Oct. 1, 1996, Oct. 8, 1996, <i>Carroll Courier</i>	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Carroll, Texas 77301.	Sept. 12, 1996	480483
Collin	City of Plano	Oct. 8, 1996, Oct. 15, 1996, <i>Plano Star Courier</i>	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 660358, Plano, Texas 75086-0358.	Sept. 11, 1996	480140
Collin	City of Plano	Oct. 9, 1996, Oct. 16, 1996, <i>Plano Star Courier</i>	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 660358, Plano, Texas 75086-0358.	Sept. 12, 1996	480140
Wichita	City of Wichita Falls	Oct. 3, 1996, Oct. 10, 1996, <i>Wichita Falls Times Record News</i>	The Honorable Kay Yeager, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307.	Sept. 24, 1996	48062

(Catalog of Federal Domestic Assistance No. 83.106, "Flood Insurance.")

Dated: November 16, 1996.

Craig S. Winge,
Deputy Associate Director, Mitigation Directorate.
[FR Doc. 96-30163 Filed 11-25-96; 8:45 am]
BILLING CODE 6718-04-P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with Section 110 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19387, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	Depth in feet above ground. Elevation in feet (NGVD).
CALIFORNIA	
Tehama County (unincorporated areas) (FEMA Docket No. 7182)	
Roads Creek: Approximately 2,600 feet downstream of Paikenta Road	280
Just upstream of Paikenta Road	284
Brewery Creek Tributary: At corporate limit	291
Maps are available for inspection at the Building Department, Room H, 444 Oak Street, Red Bluff, California.	
COLORADO	
Westminster (city), Jefferson and Adams Counties (FEMA Docket No. 7182)	
Big Dry Creek: Approximately 3,300 feet downstream of Westcliff Parkway	5,296
Approximately 200 feet upstream of Westcliff Parkway	5,311
Just downstream of Wade-worth Boulevard	5,321
Maps are available for inspection at the City of Westminster Engineering Department, 3031 West 76th Avenue, Westminster, Colorado.	
IDAHO	
Bellevue (city), Blaine County (FEMA Docket No. 7182)	
Big Wood River: Approximately 0.36 mile downstream of corporate limits	5,126
At Chestnut Street Extension	5,141
At Broadford Road	5,162
Approximately 1,050 feet upstream of Broadford Road	5,167
Maps are available for inspection at 117 Pine, Bellevue, Idaho.	
Blaine County (unincorporated areas) (FEMA Docket No. 7182)	
Big Wood River: At Broadford Road	5,164
Approximately 60 feet upstream of Star Bridge	5,238
At Croy Creek Road	5,303

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD).
At Deer Creek Road (new road)	*5,411	Maps are available for inspection at 480 East Avenue North, Ketchum, Idaho.		At Canadian-Cleveland County line	*1,180
At Starweather Drive	*5,484			Maps are available for inspection at the Department of Public Works, 420 West Main Street, Suite 700, Oklahoma City, Oklahoma.	
At East Fork Road	*5,546	OKLAHOMA			
Just upstream of Hulen Meadows Road	*5,833				
Approximately 50 feet upstream of State Highway 75	*6,152	Cleveland County (unincorporated areas) (FEMA Docket No. 7134)		Slaughterville (town), Cleveland County (FEMA Docket No. 7134)	
Approximately 270 feet downstream of U.S. Highway 93	*6,219	Canadian River:		Chouteau Creek:	
Big Wood River Overflow Channel:		At lower limit of detailed study approximately 7,000 feet downstream of confluence of Walnut Creek	*1,020	Approximately 2,000 feet downstream of State Highway 77	*1,045
Just downstream of Broadford Road	*5,100	Maps are available for inspection at the Office of County Commissioners, Cleveland County Courthouse, 201 South Jones, Norman, Oklahoma.		Just upstream of State Highway 77	*1,055
Just downstream of Broadford Road (Second Crossing)	*5,193			Approximately 200 feet downstream of Duffy Road	*1,061
At an unnamed road located just downstream of Mammoth Gulch	*5,205			Just downstream of Bryant Road	*1,071
At divergence from Big Wood River just upstream of Star Bridge	*5,238	Lexington (city), Cleveland County (FEMA Docket No. 7134)		Maps are available for inspection at City Hall, 12021 Slaughterhouse Road, Lexington, Oklahoma.	
Aspen Lakes Drive Overflow Channel:		Canadian River:			
At Aspen Lakes Drive	*5,352	Just upstream of U.S. Highway 77	*1,035	Moore (city), Cleveland County (FEMA Docket No. 7134)	
Approximately 2,400 feet upstream of Aspen Lakes Drive	*5,365	Approximately 300 feet downstream of confluence of Chouteau Creek	*1,044	Little River:	
At confluence with Big Wood River	*5,378	Approximately 500 feet upstream of Atchison, Topeka, and Santa Fe Railroad	*1,062	Approximately 300 feet upstream of Olympic Street extended	*1,246
Little Wood River:		Maps are available for inspection at City Hall, 130 West Almond, Lexington, Oklahoma.		Just downstream of Garland Avenue	*1,259
Approximately 100 feet upstream of downstream limit of detailed study	*5,001			Approximately 80 feet upstream of Nail Parkway	*1,267
Approximately 13,900 feet upstream of downstream limit of detailed study	*5,093	Noble (town), Cleveland County (FEMA Docket No. 7134)		Kelly Creek:	
Maps are available for inspection at 208 First Avenue South, Hailey, Idaho.		Canadian River:		Approximately 800 feet downstream of Northwest Fifth Street	*1,124
		At Cemetery Road extended	*1,072	Approximately 50 feet upstream of Maxwell Avenue	*1,240
Hailey (city), Blaine County (FEMA Docket No. 7188)		Maps are available for inspection at City Hall, 304 South Main, Noble, Oklahoma.		At Northwest 20th Street	*1,288
Big Wood River:				Just upstream of Northwest 22nd Street	*1,273
At downstream corporate limits	*5,272			Northmore Creek:	
At Chestnut Street Extension	*5,293	Norman (city), Cleveland County (FEMA Docket No. 7134)		Just upstream of Bellaire Drive	*1,246
At Walnut Street Extension	*5,300	Canadian River:		At Northeast 18th Street	*1,254
Maps are available for inspection at the City of Hailey, 115 South Main, Hailey, Idaho.		Just downstream of U.S. Highway 35	*1,107	Approximately 100 feet downstream of Northeast 27th Street	*1,280
		At intersection of Robinson Street and 60th Avenue	*1,125	Approximately 1,800 feet upstream of Northeast 27th Street	*1,292
Ketchum (city), Blaine County (FEMA Docket No. 7188)		Maps are available for inspection at City Hall, 201 West Gray, Norman, Oklahoma.		Maps are available for inspection at City Hall, 301 North Broadway, Moore, Oklahoma.	
Big Wood River:				TEXAS	
Approximately 840 feet downstream of Koa Bridge	*5,717			Denton County (unincorporated areas) (FEMA Docket No. 7188)	
Approximately 80 feet upstream of Warm Springs Road	*5,811	Oklahoma City (city), Cleveland County (FEMA Docket No. 7134)		Graveyard Branch:	
Approximately 50 feet upstream of Adams Gulch Road	*5,872	Canadian River:		Along entire shoreline of Lewisville Lake within the Town of Hickory Creek	*537
Approximately 2,190 feet upstream of Adams Gulch Road	*5,882	Approximately 800 feet downstream of confluence of Canadian River Tributary 1	*1,147	Maps are available for inspection at the Town of Hickory Creek, 8696 Stemmons Freeway, Hickory Creek, Texas.	
		Just upstream of Interstate Highway 44	*1,165		

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD).
Approximately 2,700 feet downstream of U.S. Highway 377	*629	Highland Village (city), Denton County (FEMA Docket No. 7188)		Maps are available for inspection at the City of The Colony, City Hall, 5151 North Colony Boulevard, The Colony, Texas.	
Loving Branch:				(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")	
Approximately 1,700 feet downstream of Post Oak Lane	*625	Copperas Branch:		Dated: November 18, 1996.	
Just upstream of Post Oak Lane	*635	Approximately 1,500 feet downstream of Brazos Boulevard		Craig S. Wingo,	
Ray Roberts Lake:		Approximately 100 feet downstream of Brazos Boulevard		Deputy Associate Director, Mitigation Directorate.	
Along entire shoreline of Ray Roberts Lake above Ray Roberts Dam	*646	Approximately 125 feet upstream of Brazos Boulevard		Dated: November 18, 1996.	
Stream WB-1:		Approximately 75 feet upstream of Cripple Creek Lane		[FR Doc. 96-30166 Filed 11-25-96; 8:45 am]	
Approximately 3,300 feet downstream of Jetter Road	*594	Approximately 75 feet upstream of Cuero Place		BILLING CODE 4710-04-P	
Approximately 1.23 miles downstream of Jetter Road	*614	Maps are available for inspection at the City of Highland Village, City Hall, 1800 F.M. 407, Highland Village, Texas.		FEDERAL COMMUNICATIONS COMMISSION	
Whites Branch:				47 CFR Part 73	
Approximately 2,100 feet downstream of Stock Tank Dam	*596			[MM Docket No. 95-181; RM-8727]	
Approximately 100 feet downstream of Stock Tank Dam	*607	Little Elm (town), Denton County (FEMA Docket No. 7188)		Radio Broadcasting Services; Bagdad and Chino Valley, AZ	
Approximately 50 feet upstream of private drive	*621			AGENCY: Federal Communications Commission.	
Approximately 150 feet downstream of Glenview Road	*632	Cottonwood Branch:		ACTION: Final rule.	
Approximately 1,100 feet upstream of Glenview Road	*637	Approximately 2,200 feet downstream of State Route 423			
Approximately 4,600 feet upstream of Glenview Road	*651	Approximately 150 feet downstream of State Route 423		SUMMARY: This document reallocates Channel 280A from Bagdad to Chino Valley, Arizona, and modifies the authorization of 21st Century Radio Ventures, Inc. for Station KAKP(FM) to specify operation on Channel 280C3 at Chino Valley, as requested, pursuant to the provisions of Section 1.420 (g) and (i) of the Commission's Rules. See 61 FR 2469, January 26, 1996. The allotment of Channel 280C3 to Chino Valley will provide that community with its first local aural transmission facility without depriving Bagdad of the opportunity for local FM service. Coordinates used for Channel 280C3 at Chino Valley are North Latitude 34-43-46 and West Longitude 112-29-22. As Chino Valley is located within 320 kilometers (199 miles) of the Mexican border, the Commission obtained concurrence of the Mexican government to the proposal. With this action, the proceeding is terminated.	
Maps are available for inspection at the Denton County Government Center, 308 North Loop 268, Suite 115, Denton, Texas.		Approximately 400 feet upstream of State Route 423		EFFECTIVE DATE: December 23, 1996.	
		Maps are available for inspection at the Town of Little Elm, City Hall, 100 Hardwicke, Little Elm, Texas.		FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.	
Denton (city), Denton County (FEMA Docket No. 7188)		Sanger (city), Denton County (FEMA Docket No. 7188)		SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95-181, adopted November 1, 1996, and released November 8, 1996. The full text of this	
Graveyard Branch:					
Approximately 4,400 feet downstream of U.S. Highway 377	*623	Clear Creek:			
Approximately 1,800 feet downstream of U.S. Highway 377	*633	Approximately 400 feet upstream of Old U.S. Highway 77			
Approximately 200 feet upstream of Missouri-Pacific Railroad	*643	Approximately 300 feet upstream of Interstate Highway 35			
Maps are available for inspection at the City of Denton, City Hall, 215 East McKinney, Denton, Texas.		Maps are available for inspection at the City of Sanger, City Hall, 201 Bolivar Street, Sanger, Texas.			
Hickory Creek (town), Denton County (FEMA Docket No. 7188)		The Colony (city), Denton County (FEMA Docket No. 7188)			
Lewisville Lake:		Indian Creek:			
Along entire shoreline of Lewisville Lake within the Town of Hickory Creek	*537	At McKamy Road			
Maps are available for inspection at the Town of Hickory Creek, 8696 Stemmons Freeway, Hickory Creek, Texas.		Approximately 200 feet downstream of Burlington Northern Railroad			
		Just upstream of Burlington Northern Railroad			

Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona is amended by removing Channel 280A at Bagdad and adding Chino Valley, Channel 280C3.

Federal Communications Commission.

John A. Karouzos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-30128 Filed 11-25-96; 8:45 am]

BILLING CODE 6710-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 900124-0127; LD: 111396D]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fisheries; Minimum Clam Size for 1997

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Suspension of surf clam minimum size limit.

SUMMARY: NMFS announces that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 1997 fishing year. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the vast majority of surf clams harvested are larger than the minimum size limit.

EFFECTIVE DATE: January 1, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 508-281-9280.

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) was published on June 14, 1990 (55 FR 24184). Section 648.72(c) of the FMP allows the Regional Administrator, Northeast Region, NMFS, to suspend annually, by publication of an announcement in the Federal Register, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent or more of the Atlantic surf clam resource is smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where growth of the individual clams has been reduced because of density-dependent factors.

At its September 1996 meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Statistical and Scientific Committee and Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit for surf clams in 1997. Commercial surf clam shell length data for 1996 indicate that only 19.2 percent of the samples were composed of clams that were less than 4.75 inches (12.065 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this announcement to suspend the minimum size limit for Atlantic surf clams for the period January 1, 1997, through December 31, 1997.

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96-30075 Filed 11-25-96; 8:45 am]

BILLING CODE 3010-25-P

50 CFR Part 679

[Docket No. 961114318-6318-01; LD: 110498A]

RIN 0648-JX71

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 1997 Harvest Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim 1997 harvest specifications for groundfish; associated management measures; and closures.

SUMMARY: NMFS issues interim 1997 total allowable catch (TAC) amounts for each category of groundfish, pollock Community Development Quota (CDQ) amounts, and prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is closing certain fisheries as specified in the interim 1997 groundfish specifications. The intended effect is to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: 0001 hours, Alaska local time (A.L.T.), January 1, 1997, until the effective date of the Final 1997 Initial Harvest Specifications for Groundfish, which will be published in the Federal Register.

ADDRESSES: The preliminary 1997 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1996, is available from the North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501-2252, telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Susan J. Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met September 18-22, 1996, to review scientific information concerning groundfish stocks. The Council adopted for public review the

preliminary SAFE Report for the 1997 BSAI groundfish fisheries. The preliminary SAFE Report, dated September 1996, provides an update on the status of stocks. Copies of the SAFE Report are available from the Council (see ADDRESSES). The preliminary TAC amounts for each species are based on the best available biological and socioeconomic information. The Council recommended preliminary total TAC amounts of 1,943,190 metric tons (mt) and preliminary total acceptable biological catch (ABC) amounts of 2,507,935 mt for the 1997 fishing year.

Under § 679.20(c)(1), NMFS is publishing in the Proposed Rules section of this issue of the Federal Register for review and comment proposed initial harvest specifications for groundfish and associated management measures in the BSAI for the 1997 fishing year. That document contains a detailed discussion of the proposed 1997 annual TACs, initial TACs (ITACs) and related apportionments, ABC amounts and overfishing levels, prohibited species bycatch allowances, and associated management measures for the BSAI groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 1997 fishing year that will become available on January 1, 1997, and remain in effect until superseded by the final 1997 harvest

specifications. Background information concerning the 1997 groundfish harvest specification process upon which this interim action is based is provided in the above mentioned proposed initial specification document appearing in the Proposed Rules section of this Federal Register issue.

1. Establishment of Interim TACs

Except for the hook-and-line and pot gear allocation of sablefish, each species' TAC initially is reduced by 15 percent to establish the ITAC for each species (§ 679.20(b)(1)(i)). The sum of the 15-percent amounts is the reserve. One half of the pollock TACs placed in the reserve is designated as a CDQ reserve for use by CDQ participants (§ 679.31(a)(1)). The remainder of the reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing of a target species or the "other species" category. The ITAC amount for each species, except for the hook-and-line and pot gear allocation for sablefish, is the remainder of the TAC amount after subtraction of the reserve.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed ITAC amount and apportionment thereof (not including the first seasonal

allowance of pollock and except for the hook-and-line and pot gear allocations of sablefish), one-fourth of each prohibited species catch (PSC) allowance established under § 679.21, and the first seasonal allowance of pollock TAC become effective 0001 hours, A.L.T., January 1 (see § 679.23(a)), on an interim basis and remain in effect until superseded by the final harvest specifications.

2. Interim 1997 BSAI Groundfish Harvest Specifications

Table 1 of this document provides interim TAC amounts and apportionments thereof, interim TAC allocations of pollock to the inshore and offshore components, first seasonal allowances of pollock TAC and pollock CDQ, an interim sablefish apportionment to trawl gear, and Pacific cod TAC apportionments to gear types. The interim harvest specifications become effective at 0001 hours, A.L.T., January 1, 1997.

Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification either for sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota management plan. As a result, fishing for CDQ sablefish and sablefish harvested with fixed gear is prohibited until the effective date of the Final 1997 Initial Groundfish Specifications.

TABLE 1—INTERIM 1997 TAC AMOUNTS¹ FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA²

Species and component (if applicable)	Area and gear (if applicable)	Interim TAC and CDQ
Pollock ^{3,4,5}		
Inshore	BS	159,311
Offshore	BS	295,864
Inshore	AI	10,591
Offshore	AI	19,689
Inshore	BogDist	298
Offshore	BogDist	552
CDQ	BS	40,162
CDQ	AI	2,670
CDQ	BogDist	75
Total		529,192
Pacific cod ⁶	BSAI-wide	
	Jig	1,084
	H/L & Pot	27,635
	TRW catcher vessels	12,734
	TRW C/Ps	12,734
Total		54,187
Sablefish ^{7,8}	BS-TRW	64
	BS-H/L & Pot	N/A
	AI-TRW	47
	AI-H/L & Pot	N/A
Total		131
Atka mackerel	Western AI	6,842
	Central AI	4,144
	Eastern AI/BS	3,187
Total		14,173
Yellowfin sole	BSAI-wide	42,500
Rock sole	BSAI-wide	14,575

TABLE 1—INTERIM 1997 TAC AMOUNTS¹ FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA²—Continued

Species and component (if applicable)	Area and gear (if applicable)	Interim TAC and CDQ
Greenland turbot	BS	996
	AI	491
Total		1,487
Arrowtooth flounder	BSAI-wide	1,912
Flathead sole	BSAI-wide	6,375
Other flatfish ⁹	BSAI-wide	7,437
Pacific ocean perch	BS	329
	Western AI	1,285
	Central AI	642
	Eastern AI	642
Total		2,898
Other red rockfish ¹⁰	BS	223
Sharpchin/Northern	AI	926
Shortraker/Rougheye	AI	199
Other rockfish ¹¹	BS	79
	AI	151
Total		230
Squid	BSAI-wide	212
"Other species" ¹²	BSAI-wide	4,277
Total interim TAC		681,234

¹ Interim TAC amounts are in metric tons and have been rounded.

² Amounts apply to the entire Bering Sea and Aleutian Islands management area (BSAI), Bering Sea (BS), or Aleutian Islands (AI), as indicated. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District (BogDis).

³ After subtraction of reserves, the ITAC amounts of pollock for each subarea or district are divided into roe and non-roe seasonal allowances. (See § 679.20(a)(5)(i).) For the BS subarea, the roe and non-roe seasonal allowances are 45 and 55 percent of the pollock ITAC amounts, respectively. The AI subarea and the Bogoslof District receive 100 percent of their respective ITAC seasonal allowances during the roe-season with the remainder of the respective ITAC seasonal allowance during the non-roe season.

⁴ Inshore and offshore component allocations are 35 and 65 percent of the ITAC amounts, respectively. (See § 679.20(a)(6)(i).) The first seasonal allowance of the inshore/offshore component allocations are in effect on January 1 as an interim TAC.

⁵ One-half of the pollock TAC (7.5 percent of each TAC) placed in the reserve for each subarea or district will be assigned to the Community Development Quota (CDQ) program. (See § 679.31(a)(1).) For the BS subarea, the roe and non-roe seasonal allowances are 45 and 55 percent, respectively, of the CDQ pollock reserve. The AI subarea and the Bogoslof District receive 100 percent of their respective CDQ reserve allocations during the roe-season with the remainder of the reserve becoming available during the non-roe season. The first seasonal allowance of the CDQ reserve is available on January 1 as an interim TAC.

⁶ After subtraction of the reserve, the ITAC amount for Pacific cod, is allocated 2 percent to vessels using jig gear, 51 percent to H/L gear, and 47 percent to trawl (TRW) gear. The Pacific cod allocation to TRW gear is split evenly between catcher vessels and catcher/processor vessels (See § 679.20(a)(7)(i) and the proposed initial specification document appearing in the Proposed Rules section of this FEDERAL REGISTER issue). Pacific cod ITAC seasonal apportionments to vessels using H/L or pot gear are not reflected in the interim TAC amounts. One-fourth of the ITAC gear apportionments are in effect on January 1 as an interim TAC.

⁷ Sablefish TRW gear allocations are as follows: in the BS subarea—50 percent of TAC; and in the AI subarea—25 percent of TAC (See § 679.20(a)(4)(iii) (B) and (iv)(B)). Fifteen percent of the sablefish TRW gear allocation is placed in the nonspecific reserve. One-fourth of the ITAC amount for TRW gear is in effect January 1 as an interim TAC amount.

⁸ The sablefish H/L gear fishery is managed under the Individual Fishing Quota (IFQ) program and subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Twenty percent of the sablefish H/L and pot gear final TAC amount will be reserved for use by CDQ participants. (See § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ sablefish reserve or an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(i)(3), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1997, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1997 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. See subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.

⁹ "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, and yellowfin sole.

¹⁰ "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

¹¹ "Other rockfish" includes all *Sebastes* and *Sebastes* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

¹² "Other species" includes sculpin, sharks, skates, eulachon, smelts, capelin, and octopus.

3. Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21(e), annual PSC limits for the trawl fisheries are specified for red king crab and *Chionoecetes bairdi* Tanner crab in applicable Bycatch Limitation Zones (see § 679.2) of the BS

subarea, and for Pacific halibut and Pacific herring throughout the BSAI. Regulations under § 679.21(e) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed PSC allowance be

made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The interim PSC limits are specified in Table 2 and are in effect at 0001 hours, A.L.T., January 1, 1997.

TABLE 2—INTERIM 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

Trawl Fisheries	Zone 1 ¹	Zone 2 ¹	BSAI-wide
Red king crab, number of animals:			
Yellowfin sole	12,500		
Rock/oth.flat/flathead sole ²	27,500		
Rockfish	0		
Turb/arrow/sabl ³	0		
Pacific cod	2,500		
Pick/Atka/otr ⁴	7,500		
Total	50,000		
C. bairdi Tanner crab, number of animals:			
Yellowfin sole	62,500	382,500	
Rock/oth.flat/flathead sole	106,250	127,500	
Turb/arrow/sabl	0	0	
Rockfish	0	2,500	
Pacific cod	62,500	65,000	
Pick/Atka/otr	16,750	172,500	
Total	250,000	750,000	
Pacific halibut, mortality (mt):			
Yellowfin sole			205
Rock/oth.flat/flathead sole			163
turb/arrow/sabl			0
Rockfish			28
Pacific cod			421
Pick/Atka/otr			107
Total			944
Pacific herring, mt:			
Midwater pollock			307
Yellowfin sole			72
Rock/oth.flat/flathead sole			0
Turb/arrow/sabl			0
Rockfish			2
Pacific cod			6
Pick/Atka/otr ⁵			38
Total			425
Nontrawl Fisheries:			
Pacific halibut, mortality (mt):			
Pacific cod hook-and-line			200
Other nontrawl			25
Groundfish pot gear			3
Groundfish jig gear			3
Sablefish hook-and-line			3
Total			225

¹ Refer to § 679.2 for definitions of Bycatch Limitation Zones.

² Rock sole, flathead sole, and other flatfish fishery category.

³ Greenland turbot, arrowtooth flounder, and sablefish fishery category.

⁴ Pollock, Atka mackerel, and "other species" fishery category.

⁵ Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.

4. Closures to Directed Fishing

In accordance with § 679.20(d), if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 679.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery

category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the interim TAC amounts of pollock in the Bogoslof District, Pacific ocean perch in the Bering Sea subarea, sharpchin/northern in the Aleutian Islands, shortraker/rougheye in the Aleutian Islands, other rockfish in the Bering Sea and Aleutian Islands subareas, and other red rockfish in the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are in effect for the 1997 fishing year (Table 3). Therefore, in

accordance with § 679.20(d), NMFS is prohibiting directed fishing for these target species and gear types in the specified area identified in Table 3 to prevent exceeding the interim amounts of groundfish TACs specified in Table 1 of this document.

An interim Zone 1 red king crab bycatch allowance of zero crab is specified for the rockfish trawl fishery, which is defined at § 679.21(e)(3)(iv)(D). Similarly, the interim BSAI halibut bycatch allowance specified for the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category, defined at § 679.21(e)(3)(iv)(C), is 0 mt. The Regional Administrator has determined, in accordance with §§ 679.21(e)(7)(ii) and 679.21(e)(7)(iv), that the interim red king crab bycatch allowance specified for the trawl rockfish fishery in Zone 1

and the interim halibut bycatch allowance specified for the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category has been caught. Therefore, NMFS is prohibiting directed fishing for rockfish in Zone 1 by vessels using trawl gear, and for Greenland turbot/arrowtooth flounder/ sablefish by vessels using trawl gear in the BSAI (Table 3).

The closures listed in Table 3 will be in effect during the period that the 1997 interim specifications for groundfish TAC amounts are in effect beginning at 0001 hours, A.L.T., January 1, 1997, until superseded by the Final 1997 Initial Harvest Specifications for Groundfish. While these closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) apply at any time during a fishing trip. Additional closures and restrictions may be found in existing regulations at 50 CFR part 679.

TABLE 3—CLOSURES TO DIRECTED FISHING UNDER 1997 INTERIM TAC AMOUNTS¹

Fishery (all gear)	Closed area ²
Pollock in Bogoelof District	Statistical Area 518.
Pacific ocean perch	Bering Sea Subarea.
Sharpchin/northern rockfish.	Aleutian Islands sub-area.
Shortraker/rougheye rockfish.	Aleutian Islands sub-area.
Other rockfish ³	BSAI.
Other red rockfish ⁴	Bering Sea subarea.
Rockfish (trawl only)	Zone 1.

TABLE 3—CLOSURES TO DIRECTED FISHING UNDER 1997 INTERIM TAC AMOUNTS¹—Continued

Fishery (all gear)	Closed area ²
Greenland turbot/arrowtooth/sablefish (trawl only).	BSAI.

¹ These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.

² Refer to § 679.2 for definitions of areas.

³ In the BSAI, "Other rockfish" includes Sebastes and Sebastolobus species except for Pacific ocean perch and the "other red rockfish" species.

⁴ "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

After consideration of public comments on the Proposed 1997 Initial Specifications for Groundfish and additional scientific information presented at its December 1996 meeting, the Council may recommend other closures to directed fishing. NMFS may implement other closures at the time the Final 1997 Initial Harvest Specifications are implemented or during the 1997 fishing year, as necessary for effective management.

Classification

This action is authorized under 50 CFR part 679 and is exempt from review under E.O. 12866.

The AA finds for good cause under 5 U.S.C. 553(b)(B) that the need to establish interim total allowable catch limitations and other restrictions on fisheries in the BSAI, effective on

January 1, 1997, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule.

Regulations at § 679.20(c)(2) require NMFS to specify interim harvest specifications to be effective on January 1 and remain in effect until superseded by the final specifications in order for the BSAI groundfish fishing season to begin on January 1 (see § 679.23). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on January 1 which would result in unnecessary closures and disruption within the fishing industry. Because the stock assessment reports and other information concerning the fisheries in the BSAI became available only recently, NMFS is not able to provide an opportunity for comment on the interim specifications. It is anticipated that the interim specifications will be in effect for only a short period of time before they are superseded by the final specifications. The proposed specifications are published as a proposed rule in this issue of the Federal Register and provide the opportunity for public comment.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

Dated: November 19, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96-30046 Filed 11-22-96; 8:45 am]

BILLING CODE 3010-22-W

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 433 and 457

RIN 0563-AB02

Common Crop Insurance Regulations, Dry Bean Crop Insurance Provisions; and Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of dry beans, including dry beans produced under seed bean processor contracts. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, to include the current Dry Bean Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the application to the current Dry Bean Crop Insurance Regulations effective for the 1997 and succeeding crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business December 26, 1996, will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through January 24, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building,

United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0003 through September 30, 1993.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Dry Bean Crop Insurance Provisions." The information to be collected includes a crop insurance application, an acreage report, and a continuous contract. Information collected from the application and acreage report is electronically submitted to FCIC by reinsured companies. Potential respondents to this information collection are producers of dry beans that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies

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and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Farm Service Agency, United States Department of Agriculture, Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2415, STOP 0572, Washington, D.C. 20013-2415, telephone (202) 690-2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production if adequate records are available to support the certification, or receive an assigned yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 740 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.150, Dry Bean Crop Insurance Provisions. The new provisions will be effective for the 1997 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring dry beans found at 7 CFR part 433 (Dry Bean Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 433 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 433.

This rule makes minor editorial and format changes to improve the Dry Bean Crop Insurance Regulations compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring dry beans as follows:

1. Section 1—Remove the definition of "county," to default to the definition contained in the Basic Provisions

(§ 457.8). The current definition includes land identified by an FSA farm serial number for the county that is physically located in another county, the new definition does not. This change will require land in another county to be insured using the actuarial materials for the county where the land is located. Add definitions for the terms "actual value," "base price," "beans," "combining," "contract seed beans," "days," "dry beans," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practices," "late planted," "late planting period," "local market price," "net price," "planted acreage," "practical to replant," "prevented planting," "production guarantee (per acre)," "seed bean processor contract," "seed company," "swathing or knifing," "timely planted," "type," "variety," and "written agreement" for clarification purposes. The Definition of "Harvest" is clarified to indicate that beans which are swathed or knifed and left in the field for drying prior to combining are not considered harvested.

2. Section 2—Allow separate bean types to qualify for optional units rather than basic units as previously allowed. Basic units will be provided as specified in section 1 of the Basic Provisions (§ 457.8). This change makes basic unit division provisions for dry beans consistent with provisions for other crops. Contract seed beans are only eligible for optional units if the seed company contracts on an acreage basis and not on a contract of production basis. Clarify unit division for non-irrigated corners of center-pivot irrigation systems.

3. Section 3—Specify that the insured may select only one price election for all the dry beans in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each dry bean type designated in the Special Provisions. The price elections selected are not required to have the same percentage relationship to the maximum price offered for each type.

4. Section 4—The contract change date has been changed to November 30 for all counties to maintain an adequate time period between this date and the revised cancellation dates (see item 7 below).

5. Section 5—Change the cancellation and termination dates from March 31 to February 28 in California and from April 15 to March 15 in all other States. These changes are made to standardize the cancellation and termination dates with the sales closing dates. The sales closing dates were previously amended

to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that spring planted crop sales closing dates be moved 30 days earlier. California dates are earlier than in other States because dry beans are planted earlier in California than they are in other States.

6. Section 6—Add a requirement for the insured to submit a copy of any applicable seed bean processor contract with the report of acreage. This change is made to allow the insurance provider to verify that the policy requirement for a contract has been met when establishing the liability under the policy.

7. Section 7(a)(4)(ii)—Clarify that dry beans planted into an established grass or legume are not insurable unless allowed by the Special Provisions or by written agreement because of the adverse impact such plants would have on the dry bean production.

8. Section 7(b)—Clarifies that any acreage of contract seed beans produced by a seed company are not insurable, such seed beans are usually produced for experimental purposes and experimental crops are not insurable.

9. Section 7(c)—Clarifies the number of years that test plot results must be provided to insure dry bean types not shown in the Special Provisions. Previous provisions did not indicate the number of years test results were required.

10. Section 9—Establishes the end of the insurance period dates by State in accordance with the latest usual harvest dates published by National Agricultural Statistics Service. The previous policy contained only one calendar date for the end of the insurance period and was too late in some areas.

11. Section 10—Clarifies that insect or disease damage due to insufficient or improper application of pest or disease control measures are not an insurable cause of loss.

12. Section 11(b)—Change the replant payment factor from 100 pounds to the lesser of 10 percent of the production guarantee or 120 pounds for dry beans or contract seed beans. This amount will be multiplied by the price election for the newly seeded beans and the insured's share to determine the maximum replant payment per acre. This change will result in replant payment amounts that more accurately represent the costs of replanting and seeding rates in various production areas.

13. Section 13(b)—Modify the calculations used to determine dry bean claim amounts to allow the aggregation of production guarantees and

production to count when more than one bean type is in one unit or the unit has both contract seed beans and other bean production.

14. Section 13(e)—Add provisions that require the value of contract seed production to be multiplied by the elected price election percentage. The value of production to count must also be multiplied by the elected price election percentage to be consistent with the amount of insurance for the insured acreage.

15. Section 13(f)—Allow adjustments in production to count containing excessive moisture to be made separately from any adjustments for quality deficiencies. Previous provisions combined adjustments for moisture and quality when both were applicable. This change is made because wide variations in charges associated with the drying and handling of high moisture production have caused production of equal quality and moisture content to be valued differently. Also, quality adjustment procedures are clarified for situations in which the pick exceeds the percentage shown on the Special Provisions or the production does not meet the grade requirements for U.S. No. 2. Such production to count will be adjusted using either a conversion factor shown in the Special Provisions or, if this is not available, the production will be multiplied by a factor that results from dividing the value per hundredweight of the damaged production by the local market price.

16. Section 14—Add late planting provisions that cover acreage not planted by the final planting date but is planted within 25 days after the final planting date to standardize the dry bean policy with all other policies which had previously offered late planting coverage as a separate option. This provision will also provide for reduction in the guarantee to reflect the increased risk associated with planting the crop late. The late planting period is also extended from 20 to 25 days to conform the late planting period of other crop policies. New provisions providing coverage for acreage that is prevented from being planted by the final planting date or during the late planting period have also been added in this section.

17. Section 15—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting modification of certain provisions of insurance contracts by written agreement. Written agreements are not specifically permitted under the current Dry Bean Crop Insurance Regulations. The new

section will cover the procedures for, and duration of, written agreements.

List of Subjects**7 CFR part 433**

Crop insurance, Dry beans.

7 CFR part 457

Crop insurance, Dry beans.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457); and the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1997 and succeeding crop years, as follows:

PART 433—[AMENDED]

1. The authority citation for 7 CFR part 433 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The heading of the subpart is revised to read as follows:

Subpart—Regulations for the 1996 through 1999 Crop Years.

3. Section 433.7 is amended by revising the introductory text of paragraph (d) of the Dry Bean Crop Insurance Regulations to read as follows:

§ 433.7 The application and policy.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Dry Bean Insurance Policy for the 1986 through 1996 crop years are as follows:

PART 457—[AMENDED]

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. 7 CFR part 457 is amended by adding a new § 457.150 to read as follows:

§ 457.150 Dry Bean Crop Insurance Provisions.

The Dry Bean Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Dry Bean Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions.

Actual value—The dollar value received, or that could be received, for contract seed beans under a seed bean processor contract if the contract seed bean production is properly handled.

Base price—The price per pound that is stated in the seed bean processor contract and that is paid to the grower for at least 50% of the total production under contract with the seed company.

Beans—Means dry beans and contract seed beans.

Combining—A harvesting process that is completed using a machine that separates the beans from the pods and other vegetative matter and places the beans into a temporary storage receptacle.

Contract seed beans—Dry beans grown under the terms of a seed bean processor contract for the purpose of producing seed to be used for producing dry beans or vegetable beans in a future crop year.

Days—Calendar days.

Dry beans—The crop defined by the official United States Standards for Beans.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Combining the beans. Beans which are swathed or knifed prior to combining are not considered harvested.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing

season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Late planted—Acreage planted to the insured crop during the late planting period.

Late planting period—The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date.

Local market price—The cash price per hundredweight for the U.S. No. 2 grade of dry beans offered by buyers in the area in which you normally market the dry beans. Factors not associated with grading under the United States Standards for Beans, such as moisture content, will not be considered.

Net price—The dollar value of dry bean production after reductions in value due to insurable causes of loss are considered.

Pick—The percentage, on a weight basis, of defects such as splits, damaged (including discolored) beans, contrasting types, and foreign material remaining in the dry beans after dockage has been removed by the proper use of screens or sieves.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Beans must initially be planted in rows far enough apart to permit cultivation to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

Prevented planting—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured

crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Production guarantee (per acre)—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect, and multiplying the result by any applicable adjustment factor specified in the Special Provisions.

Replanting—Performing the cultural practices necessary to replace the bean seed and then replacing the bean seed in the insured acreage with the expectation of growing a successful crop.

Seed bean processor contract—A written agreement between the contract seed bean producer and the seed company, containing at a minimum:

(a) The contract seed bean producer's promise to plant and grow one or more specific varieties of contract seed beans, and deliver the production from those varieties to the seed company;

(b) The seed company's promise to purchase all the production stated in the contract; and

(c) A base price or a method to determine such price, that will be paid to the contract seed bean producer for the production stated in the contract.

Seed company—A corporation that possesses all licenses and permits for marketing seed beans required by the State in which it is domiciled or operated, and that possesses facilities, or has contractual access to such facilities, with enough drying, screening and bagging equipment to accept and process the seed beans within a reasonable amount of time after harvest.

Swathing or knifing—Severance of the bean plant from the ground, including the pods and beans, and placing them into windrows.

Timely planted—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Type—A category of beans identified as a type in the Special Provisions.

Variety—A kind of contract seed bean specified in the Special Provisions and named in the seed bean processor contract.

Written agreement—A written document that alters designated terms of this policy in accordance with section 15.

2. Unit Division.

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) the Basic Provisions (§ 457.8), a basic unit, may be divided

into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, variety, and planting period, other than as described in this section.

(c) Optional units will only be available for contract seed beans if the seed bean processor contract specifies that it is a specified number of acres that are under contract and not a specified amount of production.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria, as applicable:

(i) **Optional Units by bean type:** A separate optional unit may be established for each bean type shown in the Special Provisions.

(ii) **Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:**

Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by

other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(iii) **Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:**

In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the dry beans in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each dry bean type designated in the Special Provisions. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one

type, you may also choose 75 percent of the maximum price election for another type.

(b) For contract seed beans only, the dollar amount of insurance is obtained by multiplying the production guarantee per acre for each variety in the unit by the insured acreage of that variety, times the applicable base price, and times the price election percentage you selected. The total of these results will be the amount of insurance for contract seed beans in the unit.

4. Contract Changes.

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
California _____	Feb. 28.
All other States _____	Mar. 15.

6. Report of Acreage.

For contract seed beans only, in addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must submit a copy of the seed bean processor contract at the time you file your report of acreage.

7. Insured Crop.

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the beans in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are planted for harvest as:

(i) Dry beans; or

(ii) If applicable, contract seed beans, if the seed bean processor contract is executed before the acreage reporting date;

(3) That are not volunteer beans; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) For contract seed beans only:

(1) An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a seed bean processor contract may be treated as a contract

under which you have an insurable interest in the crop; and

(2) We will not insure any acreage of contract seed beans produced by a seed company.

(c) In addition to the types of beans designated in the Special Provisions, we will insure other types provided:

(1) The type you intend to plant has been demonstrated to be adapted to the area. Evidence of adaptability must include:

(i) Results of test plots for 2 years and recommendations by a university or seed company; or

(ii) Two years of production reports that indicate your experience producing the type in your production area;

(2) You submit on or before the sales closing date your production reports and prices received, or the test plot results and evidence of market potential, including the price buyers are willing to pay for the type; and

(3) We provide you a written agreement allowing insurance on the type.

(d) Any acreage of beans that is destroyed and replanted to a different insurable type of beans will be considered insured acreage.

8. Insurable Acreage.

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) We will not insure any acreage that does not meet the rotation requirements shown in the Special Provisions; or

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical. We will not require you to replant if it is not practical to replant to the same type of beans as originally planted.

9. Insurance Period.

In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) October 15 in Oklahoma, New Mexico, and Texas;

(b) November 15 in California; and

(c) October 31 in all other States.

10. Causes of Loss.

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

11. Replanting Payments.

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the bean crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 10 percent of the production guarantee or 120 pounds for dry beans or contract seed beans, times your price election for the newly seeded type, times your insured share.

(c) When beans are replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

12. Duties in The Event of Damage or Loss.

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage to your bean crop covered by this policy, we will settle your claim on by:

(1) Multiplying the insured acreage of each dry bean type by the respective production guarantee;

(2) Multiplying each result in section 13(b)(1) by the respective price election for the type;

(3) Totalling the results in section 13(b)(2);

(4) Multiplying the insured acreage of each contract seed bean variety by its respective production guarantee;

(5) Multiplying each result in section 13(b)(4) by the applicable base price;

(6) Multiplying each result in section 13(b)(5) by your selected price election percentage;

(7) Totalling the results in section 13(b)(6);

(8) Totalling the results in section 13(b)(3) and section 13(b)(8);

(9) Multiplying the total production to be counted of each dry bean type if applicable, (see section 13(d)) by the respective price election;

(10) Totalling the value of all contract seed bean production (see section 13(c));

(11) Totalling the results in section 13(b)(9) and section 13(b)(10);

(12) Subtracting the total in section 13(b)(11) from the total in section 13(b)(8); and

(13) Multiplying the result by your share.

(c) The value of contract seed bean production to count for each variety in the unit will be determined as follows:

(1) For production meeting the minimum quality requirements contained in the seed bean processor contract and for production that does not meet such requirements due to uninsured causes:

(i) Multiplying the actual value or base price per pound, whichever is greater, by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(2) For production not meeting the minimum quality requirements contained in the seed bean processor contract due to insurable causes:

(i) Multiplying the actual value by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(d) The total bean production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of dry beans

may be adjusted for quality deficiencies and excess moisture in accordance with section 13(e)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature dry bean production to count may be adjusted for excess moisture and quality deficiencies. Adjustment for excess moisture and quality deficiencies will not be applicable to contract seed beans. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 18 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) A pick is designated in the Special Provisions and the pick of the damaged production exceeds this designation; or

(ii) A pick is not designated in the Special Provisions and deficiencies in quality, in accordance with the United States Standards for Beans, result in dry beans not meeting the grade requirements for U.S. No. 2 (grades U.S. No. 3 or worse) because the beans are damaged or badly damaged; or

(iii) Substances or conditions are present that are identified by the Food and Drug Administration or other public

health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade dry beans under the authority of the United States Agricultural Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may be determined by our loss adjuster.)

(4) Dry bean production that is eligible for quality adjustment, as specified in sections 13(e) (2) and (3), will be reduced:

(i) If a conversion factor is designated by the Special Provisions, by multiplying the number of pounds of eligible production by the conversion factor designated in the Special Provisions for the applicable grade or pick; or

(ii) If a conversion factor is not designated by the Special Provisions as follows:

(A) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. If a local market price is not available for the insured crop year, the current years' maximum price election available for the applicable type will be used. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the dry beans to those buyers. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price of

the damaged production will not be reduced for:

(1) Moisture content;

(2) Damage due to uninsured causes; or

(3) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the dry beans; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning;

(B) The value per pound of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor; and

(C) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

14. Late Planting and Prevented Planting.

(a) In lieu of provisions contained in the Basic Provisions (§ 457.8), regarding acreage initially planted after the final planting date and the applicability of a Late Planting Agreement Option, insurance will be provided for acreage planted to the insured crop during the late planting period (see section 14(c)), and acreage you were prevented from planting (see section 14(d)). These coverages provide reduced production guarantees. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided, no premium will be due, and no indemnity will be paid for such acreage.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting

(1) For bean acreage planted during the late planting period, the production guarantee or amount of insurance for each acre will be reduced for each day planted after the final planting date by:

(i) One percent for the 1st through the 10th day; and

(ii) Two percent for the 11th through the 25th day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of beans continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from timely planting beans, you may elect:

(i) To plant beans during the late planting period. The production guarantee or amount of insurance for such acreage will be determined in accordance with section 14(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee or amount of insurance for such acreage will be 50 percent of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 1,500 pounds per acre, your prevented planting production guarantee would be 750 pounds per acre (1,500 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with section 13; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the 10th day following the final planting date for the insured crop; or

(B) A production guarantee equal to 25 percent of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre

(30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Production guarantees for timely, late, and prevented planting acreage within a unit will be combined to determine the production guarantee for the unit. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres were not planted but are eligible for a prevented planting production guarantee or amount of insurance. The production guarantee for the unit will be computed as follows:

(i) For the timely planted acreage, multiply the per acre production guarantee or amount of insurance for timely planted acreage by the 50 acres planted timely;

(ii) For the late planted acreage, multiply the per acre production guarantee or amount of insurance for timely planted acreage by 93 percent and multiply the result by the 50 acres planted late; and

(iii) For prevented planting acreage, multiply the per acre production guarantee or amount of insurance for timely planted acreage by:

(A) Fifty percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(B) Twenty five percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This paragraph (B) is not applicable, and prevented planting coverage is not available under these crop provisions, if you elected the Catastrophic Risk Protection

Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 14(d)(1)(iii)).

Your premium will be based on the result of multiplying the per acre production guarantee/amount of insurance for timely planted acreage by the 150 acres in the unit.

(3) We may require proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee or amount of insurance.

(4) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for dry beans for the 1997 crop year, prevented planting coverage will begin on the 1997 sales closing date for dry beans in the county. If the dry bean coverage remains in effect for the 1998 crop year (is not terminated or canceled during or after the 1997 crop year), prevented planting coverage for the 1998 crop year began on the 1997 sales closing date.

Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

(5) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all FSA Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date,

eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to dry beans on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent of the simple average of the number of acres planted to dry beans during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) A prevented planting production guarantee or amount of insurance will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in section 14 (d)(2)(iii)(A), or a substitute crop allowed in section 14(d)(2)(iii)(B)), unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop

for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double-cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or:

(C) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of dry bean acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of dry beans on one optional unit and 40 acres of dry beans on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(6) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee, the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

15. Written Agreements.

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy provisions.

Done in Washington, D.C., on November 15, 1996.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 96-29864 Filed 11-25-96; 3:45 am]
BILLING CODE 3410-FA-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

[Docket No. PRM-70-7]

Nuclear Energy Institute; Receipt of a
Petition for Rulemaking

AGENCY: Nuclear Regulatory
Commission.

ACTION: Petition for rulemaking; Notice
of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI). The petition has been docketed by the Commission and assigned Docket No. PRM-70-7. The petitioner requests that the NRC amend its regulations to require uranium processing, uranium enrichment, and fuel fabrication licensees to use an integrated safety assessment (ISA), or an acceptable alternative, to confirm that adequate controls are in place to protect public health and safety. The petitioner also requests that a backfitting provision be established to ensure regulatory stability for these types of licensees.

DATES: Submit comments by February 10, 1997. Comments received after this date will be considered if it is practical

to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

For information on sending comments by electronic format, see "Electronic Access," under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: 301-415-7163 or Toll Free: 800-368-5642, or e-mail MTL@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Petitioner

NEI represents that it is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Background

The petitioner is aware that the NRC staff has considered a possible revision of 10 CFR Part 70 for several years. The petitioner believes that the NRC staff is motivated to amend 10 CFR Part 70 because of its assessment of certain conditions and events that have occurred at fuel facilities in the past, and the NRC Materials Regulatory Review Task Force report of 1992, "Proposed Method for Regulating Major Materials Licensees" (NUREG-1324).

However, the petitioner does not believe NUREG-1324 should serve as a blueprint for a major revision to 10 CFR Part 70. It further believes that possible future NRC regulation of Department of Energy facilities does not warrant a major revision to 10 CFR Part 70 and that wholesale changes to the part are

not necessary. Instead, the petitioner is proposing a focused and performance-based addition to the existing regulation to address the NRC's concern about possible hazards at 10 CFR Part 70 licensed facilities.

Petitioner's Request

The petitioner requests that the NRC amend 10 CFR Part 70 to require that uranium processing, uranium enrichment, and fuel fabrication licensees ensure that their safety programs are evaluated and modified, as necessary, on the basis of an ISA, or an acceptable alternative, within an appropriate time period. The petitioner also requests that 10 CFR Part 70 be modified to ensure regulatory stability for 10 CFR Part 70 licensees through the inclusion of a comprehensive backfitting requirement similar to the backfitting regulation applicable to 10 CFR Part 50 licensees.

The petitioner states that the proposed amendments would require 10 CFR Part 70 licensees to evaluate and enhance, if appropriate, their overall safety program on the basis of data generated from an ISA, or an acceptable alternative, and specifically defined performance criteria. According to the petitioner, the three principal hazards for 10 CFR Part 70 facilities are nuclear criticality, fire, and chemical accidents. The petitioner believes that its proposed changes would establish performance criteria for the evaluation of these three hazards, as well as for general radiation safety.

Discussion of Petitioner's Request

The petitioner's basis for the recommended revisions is that the fuel facilities are being operated safely under existing regulations and that the NEI's members have reviewed most of the conditions and events on which the NRC staff apparently has based its concerns. In each case reviewed, the petitioner states that:

- (1) Substantial margins of safety and conservatism existed;
- (2) The double contingency principle and conservative assumptions built into criticality safety analyses operated effectively to prevent an accidental criticality event; and
- (3) Lessons learned from these events, as well as continuing efforts to make cost-effective improvements to operations, have provided the industry with an even larger margin of safety than existed several years ago.

The following discussion presents the principal components of the petitioner's suggested amendments and their supporting bases.

1. Integrated Safety Assessment

The petitioner states that an ISA is a process conducted to identify hazards and the potential for initiating event sequences and to assess the potential event sequences and their consequences relative to the performance objectives for the facilities, the plant structures, systems and components (SSCs), and programs relied on to prevent or mitigate these consequences. The petitioner states that subsequent to the integrated assessment, safety-related SSCs and programs would be ranked on the basis of their importance to safety and a balanced safety program. The petitioner believes that this ranking of SSCs and programs would optimize safety program implementation because the establishment of importance-to-safety rankings and interrelationships would focus facility resources effectively.

2. Performance Criteria

The petitioner believes that the establishment of performance criteria that comprise the safety template against which licensees will be required to judge the effectiveness of their safety programs must be part of the proposed regulations. The performance criteria would be based on the criticality, radiation protection, chemical safety, and fire protection aspects of the SSCs and programs deemed important to safety. The petitioner recommends performance criteria that would:

- (1) Satisfy the requirements of 10 CFR Part 20;
- (2) Avoid accidental criticalities; and
- (3) Make it unlikely that any member of the public off the site would receive a radiation dose of 25 rem total effective dose equivalent, an intake of 30 milligrams of uranium in a soluble form, or an exposure to hydrogen fluoride in air equivalent to immersion for 30 minutes in a concentration of 25 milligrams per cubic meter under accident conditions.

3. Reference to Industry Practices

The petitioner states that while the petitioner's suggested rule does not specifically reference the American Institute of Chemical Engineer (AIChE), "Guidelines for Hazard Evaluation Procedures, Second Edition With Worked Examples," 1992, this publication is frequently referenced by the NRC staff as an acceptable guide for performing the hazard-evaluation portion of an ISA. The petitioner believes that the AIChE document provides reasonable approaches and that other formal methods may also be acceptable.

The petitioner states that some licensees are currently performing hazard analyses under other applicable requirements, such as the Occupational Safety and Health Administration's (OSHA) Process Safety Management regulations and the Environmental Protection Agency's (EPA) Risk Management Program regulations. The petitioner believes that analyses performed under these other regulations should be considered an acceptable means of meeting the ISA requirement for evaluating hazards within the NRC's jurisdiction.

4. Graded Approach

The petitioner states that once any credible event is identified by an ISA, licensees will confirm that there is reasonable assurance that the performance criteria will not be exceeded and that adequate controls are in place at their facilities to prevent or mitigate any such postulated event. If credible event or accident sequences are examined and, on the basis of a realistic evaluation, determined not to be reasonably capable of producing effects in excess of the performance criteria, no further action would be required by a licensee.

The petitioner believes that events or accidents of lesser significance would continue to be prevented and mitigated through existing licensee safety programs. The petitioner states that where an accident or event could credibly produce consequences exceeding those specified in the suggested regulations, the licensee would evaluate the controls relied upon to prevent or mitigate the incident and take additional measures as necessary. The anticipated likelihood of an event or accident and its potential effects would be evaluated by a licensee in the process of grading the safety programs. Using these criteria, the petitioner suggests one approach to grading would be to classify SSCs and programs on the basis of their safety significance and to apply controls equal to that classification. Other approaches also may be appropriate.

5. Changes in Facility Operations

The petitioner states that, upon completion of the ISA, each licensee would determine what, if any, changes in existing controls are needed to provide reasonable assurance that the threshold performance criteria are not exceeded. The licensee would then implement these changes in a timely manner. The petitioner states that if the ISA results indicate that relaxation of some controls or reallocation of resources is justified, the licensee may

do so, in accordance with applicable license amendment or commitment change procedures.

6. Alternative Approaches

The petitioner states that efforts underway at a number of fuel cycle facilities to reevaluate and/or redocument the safety basis for their operations may fulfill the requirement for the conduct of an ISA. In other cases, a licensee may have an alternative approach or program for which it believes may assure and demonstrate the safety of its operations. The petitioner believes that the proposed regulations would provide flexibility for licensees to offer alternative approaches for the NRC's consideration. The petitioner states that these approaches might not conform to a formal "hazards analysis" but could still provide the NRC and the licensee with adequate confidence in facility safety. The petitioner believes that the proposed regulations should allow for these alternative approaches, and require the licensee to obtain NRC approval of, and complete its efforts, as the suggested rule would require for formal ISAs.

7. License Format

The petitioner states that under its suggested regulations, ISA results would be available for review at each licensee's site but would not become part of the license. These results would include a discussion of the controls relied on to ensure that the performance criteria are not exceeded and the bases for concluding these controls are adequate. The petitioner states that a formal submittal to the NRC of an ISA report would not be required and, most importantly, the ISA would not become part of the license, which may only be changed through a codified change process. In accordance with licensees' configuration control programs, when significant plant changes are considered, licensees would be required to review and update the ISA and to implement any new controls that may be necessary as a result of that review and updating.

The petitioner states that incorporation of the ISAs into the license would necessitate significant changes in the current license application format by dramatically expanding the description of the plant site, facilities, equipment, processes and controls that form the basis of the license. The petitioner states that the certification applications submitted by the United States Enrichment Corporation (under criteria similar to those in the draft Part 70 SRP and SF&CG) included over 1,000 pages per

plant dedicated to site, facility, and process descriptions and safety (accident) analyses. The petitioner believes that this could potentially represent a significant administrative burden for licensees and the NRC staff, producing no measurable improvement in the safety of licensed 10 CFR Part 70 facilities.

The petitioner states that incorporation of an ISA into an NRC license, in a manner similar to a reactor licensee's safety analysis report (SAR), would represent a fundamental departure from the traditional two-part license format used by many fuel cycle licensees. Under these licenses, one part establishes binding license conditions and the other provides a safety demonstration in support of those license conditions. A request for a license amendment is needed to change the license conditions portion. However, the safety demonstration part may be modified without prior NRC approval, as long as the licensee continues to adhere to the binding license conditions. The petitioner states that the existing system provides adequate control over necessary license parameters while providing licensees with sufficient flexibility to accommodate changes within the safety envelope established by license conditions. The petitioner states that the industry does not believe that the administrative effort required to comply with a new license format—which would be similar to a reactor licensee's SAR and which would presumably include a "\$50.59" type change process—is warranted or necessary.

8. Backfitting Provision

The petitioner states that inclusion of a backfitting provision would ensure that future modifications to 10 CFR Part 70 licensees brought about by new regulatory requirements are based on public health and safety considerations and are appropriately cost-justified. The petitioner states that modifications resulting from new or different NRC requirements or NRC staff positions should be subjected to an appropriate analysis before implementation to ensure that the benefits obtained justify the burden that the proposed regulations would impose on licensees. The petitioner states that once its suggested regulations are issued, any subsequent plant or program modifications imposed as a result of the NRC's interpretation of the rule would require a cost-benefit review in accordance with the petitioner's rule. The petitioner believes that the concern is to seek, for example, protection from requirements to conduct highly complex

and very costly probabilistic risk assessments for these low-risk facilities. The petitioner believes that this would be consistent with other NRC guidance.

The Petitioner's Proposed Amendment

1. The definition of a uranium processing and fuel fabrication plant is added to read as follows:

Section 70.4 Definitions.

Uranium Processing and Fuel Fabrication Plant means a plant in which the following operations or activities are conducted:

- (1) Operations for manufacture of reactor fuel containing uranium, including any of the following:
 - (i) Preparation of fuel material;
 - (ii) Formation of fuel material into desired shapes;
 - (iii) Application of protective cladding;
 - (iv) Recovery of scrap material; or
 - (v) Storage associated with such operations.
- (2) Research and development activities involving any of the operations described in paragraph (1) of this definition except for research and development activities utilizing insubstantial amounts of uranium.

2. Section 70.40 is added to read as follows:

Section 70.40 Integrated Safety Assessment.

(a) Uranium processing, fuel fabrication, and uranium enrichment plant licensees licensed under 10 CFR Part 70, shall perform an integrated safety assessment (ISA), or provide an acceptable alternative integrated approach to safety, to determine the SSCs and programs that will be used by the licensee to protect public health and safety and, on the basis of the results of the ISA, implement changes to SSCs or associated licensee programs that provide reasonable assurance that the performance criteria set forth in § 70.40(b) are not exceeded. Licensees will classify SSCs on the basis of safety significance and will apply controls commensurate with that classification.

(b) The ISA will identify and evaluate those hazards that could result in not meeting any of the following performance criteria and will determine whether adequate controls and protective measures are in place to provide reasonable assurance that:

- (1) the requirements of 10 CFR Part 20 are satisfied;
- (2) accidental criticalities are avoided; and
- (3) for accident conditions, it is unlikely that any member of the public

off the site will receive a radiation dose of 25 rem total effective dose equivalent, an intake of 30 milligrams of uranium in soluble form, or an exposure to hydrogen fluoride in air equivalent to immersion for 30 minutes in a concentration of 25 milligrams per cubic meter.

(c) The ISA will be completed before issuance of an initial license to operate, or for existing facilities, within 5 years after the promulgation of the rule and associated implementation guidance.

(d) Licensees who have notified the NRC of plans to decommission their facilities in accordance with the Timeliness Rule (§ 70.38) are not required to perform an ISA per this section.

(e) The results of the ISA shall be maintained at the licensee's facilities. Licensees will update the ISA for significant facility changes.

3. Section 70.76 is added to read as follows:

Section 70.76 Backfitting Provision.

(a)(1) Backfitting is defined as the modification of, or addition to, systems, structures, or components of a plant, or to the procedures or organization required to operate a plant, any of which may result from licensee-performed analyses, a new or amended provision in the NRC's regulations, or the imposition of a regulatory staff position interpreting the NRC's regulations that is either now or different from a previous NRC staff position.

(2) Except as provided in paragraph (a)(4) of this section, the NRC shall require a systematic and documented analysis, pursuant to paragraph (c) of this section for backfits that it seeks to impose.

(3) Except as provided in paragraph (a)(4) of this section, the NRC shall require the backfitting of a plant only when it determines, on the basis of the analysis described in paragraph (b) of this section, that there is a substantial increase in the overall protection for public health and safety or common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that plant are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or NRC staff, as appropriate, finds and declares, with appropriately documented evaluation for its finding, any of the following:

(i) That a modification is necessary to bring a plant into compliance with the rules or orders of the Commission or into conformance with written commitments by the licensee;

(ii) That regulatory action is necessary to ensure that the plant provides adequate protection to public health and safety and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require backfitting of a plant if it determines that the regulatory action is necessary to ensure that the plant provides adequate protection to public health and safety and is in accord with common defense and security.

(6) The documented evaluation, required by paragraph (a)(4) of this section, must conclude a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediate effective regulatory action is required, then the documented evaluation may follow, rather than precede the regulatory action.

(7) If there are two or more ways to achieve compliance with the rules or orders of the Commission, or with written licensee commitments, or there are two or more ways to reach a level of protection that is adequate, then ordinarily the licensee is free to choose the way that best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) In reaching the determination required by paragraph (a)(3) of this section, the Commission will consider how the backfit should be scheduled, in light of other ongoing regulatory activities at the plant and, in addition, will consider information available concerning any of the following factors, as may be appropriate, and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the licensee in order to complete the backfit;

(3) Potential change in the risk to public health and safety from the accidental release of radioactive

material or chemical hazards per § 70.40(b)(iii);

(4) Potential impact on radiological exposure of facility employees;

(5) Installation and continuing costs associated with the backfit, including the direct and indirect costs of plant downtime;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in plant type, design, or age on the relevancy and practicality of the proposed backfit; and

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(c) No license will be withheld during the pendency of backfit analyses required by the Commission's regulations.

(d) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his or her designee.

Summary

The petitioner believes that this proposed amendment has the potential to benefit both licensees and the NRC by requiring a clear, outcome-based understanding of the risks, their consequences, and established levels of safety, and by focusing regulatory and licensee attention on those areas that have the greatest risks. The petitioner believes that issuing the proposed regulations would focus both licensee and NRC resources on those areas in which public health and safety will benefit, and away from low risk, low consequence issues.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the petition for rulemaking also are available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number 800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem then can be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct dial telephone number for the main FedWorld BBS, 703-321-3339, or by using Telnet via Internet: fedworld.gov. If using 703-321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mail." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take the user to the NRC online main menu. The NRC online area also can be accessed directly by typing "go NRC" at a FedWorld command line. If the user accesses NRC from FedWorld's main menu, he or she may return to FedWorld by selecting the "Return to FedWorld" option from the NRC online main menu. However, if the user accesses NRC at FedWorld by using NRC's toll-free number, he or she will have full access to all NRC systems but will not have access to the main FedWorld system.

If the user contacts FedWorld using Telnet, he or she will see the NRC area and menus, including the Rules Menu. Although the user will be able to download documents and leave messages, he or she will not be able to write comments or upload files (comments). If the user contacts FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all the user will see is a list of files without descriptions (normal Gopher look). An index file is available listing and describing all files within a subdirectory. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems

Integration and Development Branch, NRC, Washington, DC 20555-0001, telephone 301-415-6780; e-mail AXD3@nrc.gov.

Single copies of this petition for rulemaking may be obtained by written request or telefax ((301) 415-5144) from: Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001. Certain documents related to this petition for rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this petition for rulemaking as indicated above.

Dated at Rockville, Maryland, this 20th day of November, 1996.

For the Nuclear Regulatory Commission,

William M. Hill, Jr.,

Acting Secretary of the Commission.

(FR Doc. 96-30140 Filed 11-25-96; 8:45 am)

BILLING CODE 7590-91-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NM003; AD-FRL-5584-4]

Clean Air Act Final Full Approval of Operating Permits Program; the State of New Mexico and Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing full approval of the Operating Permits program submitted by the New Mexico Environment Department under the signature of the Governor, and separately by the City of Albuquerque/Bernalillo County, for the purpose of complying with Federal requirements for approvable State and local programs to issue operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands. In the final rules section of this Federal Register, EPA is promulgating full approval for the State of New Mexico and the City of Albuquerque/Bernalillo County Operating Permits programs as a direct final rule without prior proposal. This action is taken as the corrected programs are not controversial and the Agency expects no

adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, then the direct final rule will be withdrawn, and all public comments will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by December 26, 1996.

ADDRESSES: Comments must be submitted to Wm. Nicholas Stone, Air Permits Section (6PD-R), EPA, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

Copies of the submittals and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6PD-R), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

New Mexico Environment Department, Harold Runnels Building, room So. 2100, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

City of Albuquerque/Bernalillo County, Environmental Health Department, One Civic Plaza, NW., room 3023, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733, telephone 214-665-7226.

SUPPLEMENTARY INFORMATION: Please refer to the information provided in the direct final rule of the same title which is located in the Rules section of this Federal Register.

Dated: November 12, 1996.

Lynda F. Carroll,

Acting Regional Administrator (6RA).

[FR Doc. 96-30160 Filed 11-25-96; 8:45 am]

BILLING CODE 6890-06-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7192]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to

meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12812, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12812, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Apache County (Unincorporated Areas).	Nirriosa Creek Colter Creek.	At Nelson Reservoir	None	*7,416
			At confluence of Milk Creek (limit of detailed study).	None	*7,777
		Colter Creek	At County Road 2112		*7,595
			Approximately 10,800 feet upstream of County Road 2112.	None	*7,772

Maps are available for inspection at 75 West Cleveland, St. Johns, Arizona.

Send comments to The Honorable Joe Shirley, Jr., Chairman, Apache County Board of Commissioners, P.O. Box 428, St. Johns, Arizona 85936.

Arizona	Graham County (Unincorporated Areas).	Gila River	At downstream limit of detailed study (approximately 4,300 feet downstream of Eighth Avenue).	*2,885	*2,936
			At upstream limit of detailed study	*2,888	*2,938

Maps are available for inspection at the Graham County Planning and Zoning Department, 800 Main Street, Safford, Arizona.

Send comments to The Honorable Delbert Householder, Chairman, Graham County Board of Supervisors, 800 Main Street, Safford, Arizona 85546.

Arizona	Safford (City) Graham County.	Gila River	Approximately 100 feet upstream of First Avenue.	None	*2,908
			At upstream corporate limits	None	*2,916

Maps are available for inspection at the City of Safford Department of Public Works, 717 Main Street, Safford, Arizona.

Send comments to The Honorable Van Talley, Mayor, City of Safford, P.O. Box 272, Safford, Arizona 85548.

Arizona	Tucson (City) Pima County.	Anklam Wash	Approximately 2,750 feet upstream of confluence with Silvercreek Wash.	None	*2,345
			At Grasswood Road	None	*2,388
		"A" Wash	Approximately 750 feet upstream of confluence with Anklam Wash.	None	*2,357
			Approximately 2,000 feet upstream of confluence with Anklam Wash.	None	*2,379

Maps are available for inspection at the Tucson City Engineer's Office, County-City Public Works Building, 201 North Stone Avenue, Third Floor, Tucson, Arizona.

Send comments to The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726-7210.

Arkansas	Franklin County and Incorporated Areas.	Arkansas River	At Franklin-Johnson County line	None	*380
			At Franklin-Johnson County line	None	*388
		Mulberry River	Approximately 2.2 miles downstream of State Highway 23.	None	*686
			Approximately 3.1 miles upstream of State Highway 23.	None	*741
		Fane Creek	At confluence with Mulberry River	None	*723
			Approximately 0.4 mile upstream of State Highway 23.	None	*758

Maps are available for inspection at the Franklin County Courthouse, 211 West Commercial, Ozark, Arkansas.

Send comments to The Honorable Joe Powell, Franklin County Judge, County Courthouse, 211 West Commercial, Ozark, Arkansas.

Maps are available for inspection at City Hall, City of Ozark, 607 College Street, Ozark, Arkansas.

Send comments to The Honorable Vernon McDaniel, Mayor, City of Ozark, City Hall, P.O. Box 252, Ozark, Arkansas 72949.

California	Amador County (Unincorporated Areas).	Sutter Creek	Just upstream of Sutter Creek Road	None	*1,250
			Approximately 5 miles upstream of Sutter Creek Road.	None	*1,452
		North Fork Jackson Creek	Approximately 850 feet upstream of Stark Lane.	None	*1,278
			Approximately 50 feet upstream of Jackson Gate Road.	None	*1,300
			Approximately 940 feet upstream of Jackson Gate Road.	None	*1,318

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Onsida Creek	Approximately 1,340 feet upstream of confluence with North Fork Jackson Creek.	None	*1,318
		South Fork Jackson Creek	Approximately 3,150 feet upstream of Broadway.	None	*1,249

Maps are available for inspection at the Department of Planning, Amador County Administrative Center, 500 Argonaut Lane, Jackson, California.

Send comments to The Honorable Stephanie Moreno, Chairperson, Amador County Board of Supervisors, Amador County Administrative Center, 500 Argonaut Lane, Jackson, California 95642.

California	Jackson (City) Amador County.	North Fork Jackson Creek	Approximately 200 feet upstream of Stark Lane.	None	*1,289
			Approximately 930 feet upstream of Jackson Gate Road.	None	*1,316
		Onsida Creek	At confluence with North Fork Jackson Creek.	None	*1,296
			Approximately 1,820 feet upstream of confluence.	None	*1,334
		New York Ranch Creek	Approximately 150 feet downstream of Court Street.	*1,216	*1,215
			Approximately 1,340 feet upstream of Rollingwood Drive.	None	*1,341
		Placer Drive	At storm drain inlet approximately 1,520 feet upstream of confluence with New York Ranch Creek.	None	*1,248
			Approximately 2,000 feet upstream of confluence.	None	*1,255

Maps are available for inspection at City Hall, City of Jackson, 33 Broadway, Jackson, California.

Send comments to The Honorable Paul Pietronave, Mayor, City of Jackson, 33 Broadway, Jackson, California 95642.

California	Orinda (city) Contra Costa County.	Orinda Village Overflow from San Pablo Creek	Approximately 150 feet downstream of Orinda Way.	*402	*402
			Just upstream of Orinda Way	#2	*412
			Approximately 600 feet upstream of Camino Sobrante.	*431	*430
		San Pablo Creek (Reach 1)	Approximately 500 feet upstream of Camino Sobrante.	*431	*432
			Approximately 800 feet upstream of confluence with Overhill Creek.	*479	*479
		San Pablo Creek (Reach 2)	Approximately 150 feet downstream of Brookside Road.	*527	*527
			Just upstream of Brookside Road	None	*538
			Just upstream of Greenwood Court	None	*731
		Brookside Road Tributary	At confluence with San Pablo Creek	None	*522
			Approximately 1,500 feet upstream of Brookside Road.	None	*591

Maps are available for inspection at the City of Orinda Department of Planning, City Hall, 26 Orinda Way, Orinda, California.

Send comments to The Honorable Gregg Wheatland, Mayor, City of Orinda, 26 Orinda Way, Orinda, California 94563.

California	Saratoga (city) Santa Clara County.	Calabazas Creek	Approximately 600 feet upstream of Prospect Road.	*307	*306
			Just upstream of Wardell Road	*343	*341
		Prospect Creek	At confluence with Calabazas Creek	None	*315
			Just downstream of Prospect Road	None	*351

Maps are available for inspection at 13777 Fruitvale Avenue, Saratoga, California.

Send comments to Mr. Harry Peacock, City Manager, City of Saratoga, 13777 Fruitvale Avenue, Saratoga, California 95070.

California	Sonoma County (unincorporated areas).	Fryer Creek	Just upstream of Laveroni Road	None	*56
			Approximately 0.5 mile upstream of Laveroni Road.	*60	*60

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps are available for inspection at the Department of Permits and Resources, 575 Administrative Drive, Santa Rosa, California.

Send comments to The Honorable Tim Smith, Chairman, Sonoma County Board of Supervisors, 575 Administrative Drive, Room 100A, Santa Rosa, California 95403.

Louisiana	Calcasieu Parish (unincorporated areas).	Amoco Lateral	Approximately 1,600 feet downstream of Gauthier Road.	None	*9
			Approximately 300 feet upstream of State Highway 14.	None	*19
		Antoine Gully	Approximately 200 feet downstream of U.S. Highway 90.	*12	*12
			Just downstream of State Highway 307	*15	*14
			At McCown Road	None	*15
		Bayou d'Inde Lateral	At Barney Hoffpauir Road	None	*15
		Bayou Verdine	At the intersection of Rigmalden and Fifth Avenue.	None	*15
		Belfield Lateral	At confluence with Little Indian Bayou	*22	*23
			Approximately 1,800 feet upstream of Joe Miller Road.	*23	*24
		Bellevue Lateral	At confluence with West Fork of English Bayou.	None	*20
			Just upstream of Metzger Road	None	*22
		Diamond Gully	At confluence with Belfield Lateral	*22	*23
			At private drive approximately 7,000 feet upstream of U.S. Highway 171.	None	*25
		Fairground Lateral	At confluence with Bayou d'Inde Lateral	None	*15
			At Old State Highway 27	None	*16
		Gillie Lateral	At confluence with Little Indian Bayou	None	*19
			Approximately 2,000 feet upstream of Southern Pacific Railroad.	None	*25
		Hebert Lateral	Approximately 2,000 feet downstream of Plant Road.	None	*14
			Just upstream of Plant Road	*16	
		Indian Bayou	Approximately 500 feet upstream of Coffey Road.	None	*18
			Approximately 6,000 feet upstream of Hickory Branch Road.	None	*28
			None	*15	
		Lateral 2B East and Lateral 2B West Just downstream of New State Highway 27.			
		West	At Old State Highway 27	None	*16
		Little Indian Bayou	At an unnamed road approximately 1,300 feet upstream of confluence with Indian Bayou.	*18	*19
			Approximately 3,600 feet upstream of Birdnest Road.	None	*26
		Manchester Lateral	At McCown Road	None	*15
		Maple Fork	At U.S. Highway 90	None	*10
			At Reeves Road	None	*15
		Sabine River	Approximately 4,500 feet upstream of Southern Pacific Railroad.	*11	*11
			Approximately 70,000 feet upstream of State Highway 12.	None	*33
		Sturrock Lateral	At confluence with Indian Bayou	None	*21
		Branch Road	1,400 feet upstream of Hickory	None	*25
		West Fork of English Bayou	At confluence with East Fork of English Bayou.	*14	*14
			None	*22	
		Just upstream of Metzger Road			
		30 West Main Lateral	At New State Highway 27	None	*16
			At the intersection of Jude and Jerrie Streets.	None	*17

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps are available for inspection at the Department of Planning and Development, Government Building, 1015 Pithon, Lake Charles, Louisiana.

Send comments to The Honorable Arthur Planchard, Chief Judge, Calcasieu Parish Police Jury, P.O. Box 3210, Lake Charles, Louisiana 70602.

Missouri	Lamar Heights (village) Barton County.	North Fork Spring River	Approximately 1,500 feet downstream of Burlington Northern Railroad.	None	*938
			Just upstream of First Street	None	*941

Maps are available for inspection at 128 West Tenth Street, Lamar, Missouri.

Send comments to The Honorable Jeff Moyers, Mayor, Village of Lamar Heights, 128 West Tenth Street, Lamar, Missouri 64759.

New Mexico	Chama (village) Rio Arriba County.	Rio Chama	Approximately 5,000 feet downstream of State Highway 17.	None	*7,717
			Approximately 700 feet upstream of Cumbers Tollac Railroad.	None	*7,883
		Rio Chama	Approximately 2,200 feet downstream of State Highway 64.	None	*7,764
			Approximately 2,100 feet upstream of Escondido Road.	None	*7,864

Maps are available for inspection at Village Hall, 294 Fourth Street, Chama, New Mexico.

Send comments to The Honorable Antonio D. Gorizales, Mayor, Village of Chama, P.O. Box 794, Chama, New Mexico 87520.

New Mexico	Rio Arriba County (unincorporated area).	Rio Chama	Approximately 3,000 feet downstream of County Road 343.	None	*7,640
			Approximately 5,300 feet upstream of State Highway 17.	None	*7,925
		Rio Chama	At confluence with Rio Chama	None	*7,878
			Approximately 8,800 feet upstream of Escondido Road.	None	*7,912

Maps are available for inspection at 610 North Riverside Drive, Espanola, New Mexico.

Send comments to Mr. Lorenzo Valdez, County Manager, Rio Arriba County, P.O. Box 1256, Espanola, New Mexico 87532.

New Mexico	Silver City (town) Grant County	San Vicente Arroyo	Approximately 400 feet downstream of State Route 90.	*5,824	*5,822
			At confluence with Silva and Pinos Altos Creeks.	*5,894	*5,880
		Pinos Altos Creek	At confluence with San Vicente Arroyo	*5,894	*5,880
			At 32nd Street	*6,028	*6,035
			Approximately 1,300 feet upstream of 32nd Street.	*6,047	*6,047
		Tributary 7 to Pinos Altos Creek.	At confluence with Pinos Altos Creek	*5,951	*5,951
			Approximately 700 feet upstream of confluence with Pinos Altos Creek.	*5,960	*5,961
		Silva Creek	At confluence with San Vicente Arroyo	*5,885	*5,880
			Approximately 2,500 feet upstream of U.S. Route 180.	*5,943	*5,939
			Approximately 7,000 feet upstream of U.S. Route 180.	*5,990	*5,990

Maps are available for inspection at Town Hall, Broadway Street, Silver City, New Mexico.

Send comments to The Honorable John Paul Jones, Mayor, Town of Silver City, P.O. Box 1188, Silver City, New Mexico 88002.

Texas	College Station (city) and Brazos County.	Bee Creek	At confluence with Carters Creek	*234	*234
			Approximately 300 feet upstream of confluence of Bee Creek Tributary A.	*247	*248
		Foxfire Creek	Approximately 3,800 feet downstream of Frost Drive Bridge.	None	*236
			Approximately 1,000 feet upstream of Foxfire Drive.	None	*268

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps are available for inspection at College Station City Hall, 1101 South Texas Avenue, College Station, Texas.

Send comments to The Honorable Larry Ringer, Mayor, City of College Station, P.O. Box 9980, College Station, Texas 77842.

Maps are available for inspection at the Brazos County Engineer's Office, 2617 Highway 21 West, Bryan, Texas.

Send comments to The Honorable Alvin Jones, Brazos County Judge, 203 West 29th Street, Bryan, Texas 77803.

Texas	Eastland (city) Eastland County.	North Fork Leon River	At confluence with Tributary 1	N/A	*1,434
			Approximately 800 feet upstream of confluence with Tributary 3.	N/A	*1,440
		Tributary 1	At confluence with North Fork Leon River	N/A	*1,434
			Approximately 1,400 feet upstream of U.S. Highway 80.	N/A	*1,435
		Tributary 2	At confluence with North Fork Leon River	N/A	*1,435
			Approximately 5,200 feet upstream of Missouri Pacific Railroad.	N/A	*1,461
		Tributary 3	At confluence with North Fork Leon River	N/A	*1,439
			Approximately 200 feet upstream of FM Road 3101.	N/A	*1,400
		South Fork Leon River	Approximately 100 feet downstream of Bassett Street.	N/A	*1,442
			Approximately 3,200 feet upstream of Bassett Street.	N/A	*1,443

Maps are available for inspection at 416 South Seaman Street, Eastland, Texas.

Send comments to The Honorable Don Griffin, Mayor, City of Eastland, P.O. Box 749, Eastland, Texas 76448.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 18, 1996.

Craig S. Wings,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 96-30167 Filed 11-25-96; 8:45 am]

BILLING CODE 6715-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96-227; RM-8810]

Radio Broadcasting Services; Glenrock, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Vixon Valley Broadcasting proposing the allotment of Channel 252A at Glenrock, Wyoming, as the community's first local aural transmission service. Channel 252A can be allotted to Glenrock in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 252A at Glenrock are North Latitude 42-51-30 and West Longitude 105-52-24.

DATES: Comments must be filed on or before December 30, 1996 and reply comments on or before January 14, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Vixon Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96-227, adopted November 1, 1996, and released November 8, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, N.W., Suite 140; Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karoussos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-30129 Filed 11-25-96; 8:45 am]

BILLING CODE 6715-01-P

47 CFR Part 73

[MM Docket No. 96-224; RM-8805]

Radio Broadcasting Services; Clear Lake, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lac Qui Parle Broadcasting Company, Inc., proposing the allotment of Channel

296C3 at Clear Lake, South Dakota, as the community's first local aural transmission service. Channel 296C3 can be allotted to Clear Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.6 miles) southwest to avoid a short-spacing to the licensed site of Station KMGK(FM) Channel 296A, Glenwood, Minnesota. The coordinates for Channel 296C3 at Clear Lake are North Latitude 44-44-21 and West Longitude 96-42-38.

DATES: Comments must be filed on or before December 30, 1996, and reply comments on or before January 14, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Maynard R. Moyer, Vice President, Lac Qui Parle Broadcasting Co., Inc., 623 W. 3rd Street, P.O. Box 70, Madison, Minnesota 56256 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96-224, adopted November 1, 1996, and released November 8, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A. Karoussos,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 96-30130 Filed 11-25-96; 8:45 am]
BILLING CODE 6712-01-P

47 CFR Part 73

[MM Docket No. 96-225; RM-8864]

Radio Broadcasting Services; Canton and Normal, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WSHY, Inc., proposing the allotment of Channel 252A at Canton, Illinois, as the community's third local FM transmission service. Petitioner also proposes the allotment of Channel 250A at Normal, Illinois, as the community's second local commercial FM transmission service. Channel 252A can be allotted to Canton in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) west to avoid a short-spacing to the licensed site of Station WIVR(FM), Channel 253A, Eureka, Illinois. The coordinates for Channel 252A at Canton are North Latitude 40-32-46 and West Longitude 90-04-59. Additionally, Channel 250A can be allotted to Normal in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.4 miles) northwest to accommodate petitioner's requested site. The coordinates for Channel 250A at Normal are North Latitude 40-30-51 and West Longitude 88-59-26.

DATES: Comments must be filed on or before December 30, 1996 and reply comments on or before January 14, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, D.C. 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96-225, adopted November 1, 1996, and released November 8, 1996. The full text

of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission
John A. Karoussos,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 96-30131 Filed 11-25-96; 8:45 am]
BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

48 CFR Ch. 13

[Docket No. 950826231-6231-01]

FEN 0890-AA26

Streamlining of Commerce Acquisition Process

AGENCY: Department of Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Commerce has reengineered its acquisition processes and is planning to implement these new processes department-wide. The Department is also testing the effectiveness of the new processes at two Pilot sites within the agency. The new processes are described in the Acquisition Process Case for Change, Concept of Operations (CONOPS). The new processes were developed by a team of departmental representatives who extensively reviewed private and public sector acquisition practices and recommendations. The intended effect is to create a more customer-friendly acquisition process that is less complex,

less time consuming and less expensive for the Department as well as the vendor community, and is more responsive to meeting the Department's program objectives. The new processes are also designed to be fair, to increase the public's insight into the Government's mission objectives and acquisition processes and to increase the range of potential approaches and capabilities which may compete to meet a particular Department need.

In order to implement the new processes on a department-wide basis, a class deviation to applicable provisions of the Federal Acquisition Regulations (FAR) would be required. The Department is inviting public comment on the proposed streamlined acquisition processes and proposed FAR deviations.

DATES: Comments must be submitted on or before January 10, 1997.

ADDRESSES: Comments may be mailed to Joe Gray, Office of Procurement Policy and Programs, U.S. Department of Commerce, 14th and Constitution N.W., Room 6422, Washington, D.C. 20230. Comments may also be submitted electronically via the following Internet site: <http://www.conops.doc.gov>.

FOR FURTHER INFORMATION CONTACT: Joe Gray at 301 258-4505, ext. 25; E-mail: JLGray@rdc.noaa.gov.

SUPPLEMENTARY INFORMATION: The Department of Commerce (DOC) Office of Acquisition Management has sponsored a business process reengineering effort to create a more customer-friendly, cost-effective acquisition process that is less complex and time consuming and is more responsive to meeting the agency's program objectives. The effort was facilitated by the PTO Office of Business Process Reengineering. The reengineered process is described in the Acquisition Process Case for Change, Concept of Operations (CONOPS).

The CONOPS is the product of a cross-functional team of departmental representatives who extensively reviewed private and public sector acquisition practices and recommendations. The reengineered practices will streamline the Department's acquisition processes and provide significant benefits to the agency and the vendor community by reducing the time and effort required to complete the acquisition cycle and by providing an opportunity for substantially increasing the value and quality of acquisition products.

The Department of Commerce is testing the effectiveness of the new processes on several projects at two Pilot sites within the agency. The results of these pilots will be used to validate

and refine the CONOPS for future implementation on a department-wide basis.

In order to implement the reengineered processes on a department-wide basis a class deviation to the Federal Acquisition Regulations (FAR) provisions is required in accordance with FAR 1.404. Since the reengineered processes will substantially affect the way in which the Department will conduct its acquisitions, public comment on the new processes and proposed FAR deviations is invited. Public comment will be taken into account in refining the CONOPS and in preparation and issuance of the FAR deviations which facilitate implementation of the CONOPS.

Part 1. Reengineered Acquisition Process

The Concept of Operations (CONOPS) may be obtained by submitting a written request to Joe Gray, U.S. Department of Commerce, 14th and Constitution N.W., Room 6422, Washington, D.C. 20230, or fax to 202-482-1711. The CONOPS is also available at the following Internet site: <http://www.conops.doc.gov>.

Part 2. Class Deviation

Class Definition

The class of procurements to which the proposed FAR deviation will apply is "all acquisitions conducted within the Department of Commerce in accordance with the CONOPS".

Proposed FAR Deviations

In order to implement the reengineered acquisition processes the following deviations from the Federal Acquisition Regulations (FAR) are required.

1. FAR Subparts 10 and 11. Minimum Needs.

Discussion: One of the premises of the BPR CONOPS is to seek early involvement of the private sector in the acquisition process, and to maximize competition and promote innovative solutions wherever practicable by stating requirements in the form of a statement of need in terms of mission/project objectives rather than a detailed statement of work. While the recommended practice appears to be consistent with the intent of the FAR, the use of the term "minimum needs" (FAR 10.004(a)(1)) as well as the numerous references to requirements, specifications, and purchase descriptions, found in Subparts 10 and 11 create ambiguity and are interpreted by some to preclude adoption of the recommended approach.

Proposed FAR Deviation: Nothing in FAR Subparts 10 or 11 will be construed to prohibit the expression of requirements in terms of mission or project needs and objectives (rather than detailed statements of work) together with appropriate guidance to potential sources, as a basis for soliciting and evaluating proposed approaches, capabilities and proposals, for the purpose of down-selecting for negotiation, as needed, and award.

2. FAR Subparts 5, 6, 10 and 15. Publicizing, market research, competition, solicitation, proposal and competitive range requirements.

Discussion: The BPR CONOPS is based on a two-phased approach to meeting mission/project needs which combines market research and solicitation into a single process. The initial phase involves issuance of a procurement opportunity notice in the Commerce Business Daily, and release of a description of the project objectives and ground rules for receipt and down-selection, including evaluation factors such as approach, capability, past performance and cost. Upon conclusion of the initial phase, only those sources considered likely candidates for award will be invited to participate in the second phase during which more detailed proposals and discussions will occur. The intent is to meet requirements for full and open competition while limiting the extent of solicitation and proposal preparation, evaluation and negotiation to that which contributes significantly to the achievement of project objectives and the opportunity for private sector sources to participate in those objectives.

Negotiations will be concluded when the Project Team is satisfied that it has reached agreement on contract terms and conditions with a source which has been determined, in accordance with the evaluation factors, to be the source most likely to provide the best value performance in relation to the Government's needs, with due consideration to fairness in providing sources the opportunity to present their offers. Additional streamlining is sought through the elimination of announcement of the close of negotiations and the use of best and final offers. Offerors will be expected to make their best proposals available at appropriate times during the process without a need for a final call.

Proposed FAR Deviation: A deviation from the provisions of FAR Subparts 5, 6, 10 and 15 is requested which will allow the Department of Commerce to combine publicizing, market research and solicitation into a single two-phased

process as outlined above and described more fully in the CONOPS. Pursuant to this deviation the agency may meet publicizing requirements by publishing the Project Agreement or a notice of its availability in the CBD, and meet the requirement for full and open competition by inviting all responsible sources to submit information regarding their qualifications and approach to meeting the agencies objectives as described in the Project Agreement.

Features specifically permitted include, but are not limited to, the ability of the Department of Commerce Project Teams:

(1) during the initial phase to down-select among sources on the basis of capabilities, approach, past performance and other criteria as specified in the published Project Agreement and Ground Rules, without the necessity of receiving or reviewing detailed technical proposals;

(2) to continue market research and initiate solicitation by issuance of the Project Agreement during the initial phase of the acquisition process;

(3) to invite only those sources to participate during the second phase who were found to have a reasonable likelihood of receiving a contract award as a result of their participation during phase one;

(4) to conclude negotiations at any time after receipt of vendor information during phase two, in accordance with published ground rules and criteria, and to conduct and conclude discussions without the need to notify the sources in advance of the date and time for conclusion of discussions, or to request best and final offers; and

(5) to deviate from the Uniform Contract Format and to deviate from or omit solicitation and contract terms and conditions prescribed by the FAR as necessary and appropriate to reflect the streamlined processes upon which this deviation is based, except where and to the extent required by statute.

(6) to down-select among proposals and sources and eliminate sources where there is significant doubt as to whether a proposal has a reasonable chance of being selected for award.

3. FAR Subparts 15, 16 and 42. Contract Type and Required Audit Sources.

Discussion: Current regulations have a preference for use of fixed price and cost-based contracts over labor-hour and time and materials contracts and require use of Government audit agencies to conduct contractor cost audits. It is our intent to reduce the need for pre- and post-award cost audits by utilizing cost-based contracting only as a last resort and utilizing fixed-price and labor hour

or time and materials types for task order and incremental development process (IDP) contracts, as described in the CONOPS, instead. When audits are needed these would be obtained utilizing commercial auditing capabilities, e.g., reputable private sector Certified Public Accountants (CPAs), instead of Government audit agencies. This will be less expensive and administratively less burdensome for both the agency and the contractor.

Proposed FAR Deviation: A deviation from FAR provisions is requested to permit use of appropriate contract type without necessity of preparing a determination and findings that no other type is more suitable. Also a deviation is requested which will permit the use of private sector CPAs to perform audits instead of Government audit agencies.

Authority: The Federal Property and Administrative Services Act of 1946, as amended, and other applicable laws and regulations.

Dated: August 30, 1996.

Kenneth J. Back,

Acting Director, Office of Acquisition Management, U.S. Department of Commerce.

[FR Doc. 96-30060 Filed 11-25-96; 8:45 am]

BILLING CODE 3010-06-01

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies petitions for rulemaking submitted by the Automobile Safety Foundation (ASF). ASF believes that steering locks installed on some vehicles to comply with Federal Motor Vehicle Safety Standard No. 114, *Theft Protection*, are ineffective in preventing theft and also dangerous because they lock up while the vehicle is in motion. Among other things, the petitions requested that NHTSA either revise the standard to prohibit any form of steering locks and allow for alternative designs, or require another design. They also asked that NHTSA require manufacturers to affix warning stickers about the steering locks on new vehicles or send warning

stickers to all registered owners of previously sold vehicles. NHTSA denies these petitions because: Available crash data do not demonstrate a safety problem with the steering lock; steering locks continue to serve an anti-theft purpose; and vehicles with automatic transmissions, which account for about 80 percent of vehicles sold, are required to have a transmission lock and to be designed so that the ignition key cannot be removed unless the transmission is in the "park" position.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Atelask, Office of the Chief Counsel, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Atelask's telephone number is (202) 368-2932. His facsimile number is (202) 368-3820.

SUPPLEMENTARY INFORMATION:

Background on Existing Requirements

Federal Motor Vehicle Safety Standard No. 114, *Theft Protection*, requires that new trucks, multipurpose passenger vehicles, and passenger cars have a key locking system. S4.2 of the standard states that "[e]ach vehicle shall have a key-locking system which, whenever the key is removed, prevents: (a) The normal activation of the vehicle's engine or motor; and (b) Either steering or forward self-mobility of the vehicle or both." Vehicle manufacturers could comply by installing either a steering lock or transmission lock. Most vehicle manufacturers have chosen to install a "steering lock," a device that locks the steering column when the key has been removed.

Although not required by the Standard, the key-locking systems of many vehicles are designed to prevent or reduce the likelihood of unintentional activation of the steering lock while the vehicle is in motion (for the sake of convenience, NHTSA refers below to this situation as "inadvertent lockup"). This is accomplished by the incorporation of a button, lever, or other mechanism that must be activated before the key can be removed. Some of these mechanisms require two hands (one to operate the mechanism and one to turn the key), while others are operable with one hand (i.e., the hand turning the key). Some vehicles may not be equipped with such mechanisms. Unless those vehicles are equipped with some other device to prevent inadvertent lockup, it would be possible to remove the key from the lock and activate the steering lock while the vehicle is in motion.

NHTSA briefly adopted a requirement that key-locking systems provide protection against inadvertent lockup

(45 FR 85450, December 29, 1980). However, in response to petitions for reconsideration, NHTSA reexamined the data and determined that, while there was a safety problem with vehicles that allowed the key to be removed by the action of one hand, the magnitude of the safety problem was insufficient to justify requiring this protection (See 46 FR 32252-53, June 22, 1981).

In 1990, NHTSA amended Standard No. 114 to mandate transmission locks on all vehicles with automatic transmissions (55 FR 21868, May 30, 1990). Transmission locks prevent the removal of the key unless the vehicle is in the "Park" position. Since the vehicle must be stopped in order to put the transmission in "Park," transmission locks also prevent activation of the steering lock while the vehicle is in motion. Therefore, inadvertent lockup remains a concern only for manual transmission vehicles which are not equipped with a transmission lock. As discussed later in this document, the majority of new manual transmission vehicles appear to include some type of device to prevent inadvertent lockup.

The Petitions for Rulemaking

In its first petition, ASF requested that NHTSA either revise the standard to prohibit any form of steering locks and allow for alternative designs, or require another design. It gave two main reasons for this request. The first reason was that the steering lock is innately unsafe. As evidence of this, ASF cited NHTSA's statement in an earlier Federal Register

notice that it continued to receive reports of "property damage, serious injuries, and fatalities" from inadvertent lockup. It also cited the warning notice about inadvertent lockup in the Driver Handbook issued by California's Department of Motor Vehicles, "voluminous" consumer reports of accidents, and locksmith reports of the jammed locks.

The second reason advanced by ASF in its first petition was that steering locks are a failure as theft protection. As evidence of this, ASF stated that the number of vehicle thefts increased from one half million to two million vehicles in the nearly 20 years since steering locks were added in 1969. As additional reasons not to allow steering locks, it also asserted that there are safe and more effective anti-theft devices available (citing the Rolls Royce and Saab transmission locks), that a few organizations have stated that new theft standards are needed, and that the National Traffic Motor Vehicle Safety Act requires NHTSA to prohibit steering locks in future auto production.

The second petition from ASF requested that NHTSA require manufacturers to affix warning stickers about the steering locks on new vehicles or send warning stickers to all registered owners of previously sold vehicles. As evidence of the need for the stickers, the petition stated that unspecified "ASF research" showed that most drivers do not understand steering lock operation.

The third petition requested that NHTSA both abolish Standard No. 114

as being unconstitutional ("since they are spring loaded; and do not allow freedom of choice to lock, or not to lock) and require that all Americans lock their vehicles. The third petition provided no supporting data.

Agency Analysis

As the following discussion shows, NHTSA believes that it cannot justify adoption of the petitioner's requests.

A. Size of the Safety Problem

NHTSA investigated the petitioner's claims that the steering lock is unsafe and "kills daily." There are two sources available for data on this issue. The first is NHTSA's Office of Defects Investigation consumer complaint files. These are searchable files that contain summaries of the complaints that people report to the consumer hotline. The second source of data is NHTSA's National Accident Sampling System (NASS) database, which contains more detailed investigations of a sample of towaway crashes.

In the consumer complaint files, NHTSA searched a combined total of 220,000 complaints lodged from 1987 to 1996. It looked for complaints containing the words "steering wheel" or "steering column" and some indication of steering wheel/column lockup. The agency excluded complaints alleging more ambiguous steering problems such as an inability to steer or the failure of steering. The results of this search are shown in the table below:

Transmission type	Number of crashes	Number of injuries	Number of fatalities
Automatic	36	38	1
Manual	11	15	1
Unknown	32	21	2
Total	79	74	4

As shown, NHTSA identified a total of 79 crashes, accounting for 4 fatalities and 74 injuries. The complaints are widely distributed over vehicle makes and models. No crash was found in which the steering column of a manual-transmission vehicle was reported to have locked up as the result of a vehicle occupant removing the ignition key from the ignition.

Similarly, the NASS data for the period 1988-1995 did not show a significant number of incidents. NHTSA identified 455 cases with the variable "critical precrash event" coded as "other cause of control loss" (which might include steering lockups). NHTSA conducted a laborious hand-

search of all 384 cases that were available for inspection at the NASS hard-copy storage facility. This search revealed only one case of inadvertent lockup caused by someone removing the key from the ignition.

The number of vehicles conceivably susceptible to inadvertent lockup has declined in recent years to a small fraction of the fleet of new passenger cars and light trucks (those under 10,000 pounds gross vehicle weight rating). The biggest reason for this is the adoption of transmission locks on vehicles with automatic transmissions, required by NHTSA since 1990. Because the transmission lock prevents removal of the key except when the vehicle is in

"park" (i.e., stopped), inadvertent steering lockup is no longer a danger for vehicles with automatic transmissions. Those vehicles accounted for 81.6 percent of all new 1995 cars and light trucks. This means that if inadvertent lockup is still a problem, it is limited to the approximately 18.4 percent of vehicles that have manual transmissions.

It appears the inadvertent lockup is also not possible on most manual transmission vehicles. The Petitioner stated that all domestic manufacturers employ either transmission locks or other safety devices that prevent inadvertent lockup on their vehicles. NHTSA has confirmed that the

Petitioners' statement about domestic vehicles is correct, with the exception of some Jeep vehicles. This includes vehicles with manual transmissions as well as those with automatic transmissions. Of the 18.4 percent of new vehicles that have manual transmissions, 47 percent of them are foreign. Thus, only 8.7 percent of all new vehicles (1.3 million vehicles annually) fall into the group of foreign vehicles with manual transmissions.

There is also reason to believe that some, perhaps many imported foreign vehicles with manual transmissions are designed to prevent inadvertent lockup. Vehicles sold in most of Europe must comply with ECE Regulation No. 18, *Uniform provisions concerning the approval of power-driven vehicles with regard to their protection against unauthorized use*, Rev.1/Add.17/Rev.1, GE.80-25060, 8 December, 1980, promulgated by the United Nations Economic Commission for Europe. Section 5.9 of that regulation deals with the possibility of inadvertent activation of the steering lock by stating "[p]rotective devices [including steering locks] shall be such as to exclude any risk, while the vehicle is in motion, of accidental [locking] likely to compromise safety in particular." Therefore, vehicles produced for the European market, even those with manual transmissions, must have some kind of safety device that precludes inadvertent lockup. Nearly all European countries have adopted ECE 18.

NHTSA has observed three types of protective devices for manual transmission vehicles: (1) ignition locks that require the key to be pushed in to enable rotation from the "off" position to the steering lock position, (2) ignition locks with a release lever or button which must be actuated to enable key rotation to the steering lock position, and (3) devices which prevent steering locking unless the transmission is in reverse.

NHTSA believes that ECE 18 has influenced the design of many foreign vehicles with manual transmissions. Based on the examination of owners manuals and some vehicles, NHTSA has determined that high-volume vehicles such as Toyotas, Hondas, Nissans, Mitsubishi's, and Mazdas currently have protective devices, usually of the first type listed above. At least some Audis, Volkswagens, BMWs, Volvos, and Isuzus with manual transmissions appear to lack the protective devices. Assuming that all manual transmission vehicles from these manufacturers lack protective devices, they comprise only about 120,000 vehicles, representing

less than one percent of the annual vehicle sales in the U.S.

This leaves only a small percentage of new vehicles without the likelihood of being equipped with safety devices preventing inadvertent lockup. Even for these vehicles, the safety concern is minimal, since it pertains only to the unusual act of an occupant withdrawing the ignition key while the vehicle is in motion. This may account for the low level of steering lockup crashes reflected in the data.

B. Theft Prevention

The petitioner has repeatedly alleged that the steering lock is a failure for anti-theft purposes. However, it did not provide any support for this view, other than to say that the numbers of vehicles stolen were rising. The petitioner stated that in 1989, when steering locks were introduced, approximately one half million vehicles were stolen annually. The petitioner alleged that about two million vehicles were stolen annually in the 1990's.

The increase or decrease of the total number of vehicles stolen annually since the implementation of the standard is not the benchmark against which the value of the standard should be measured. The total number of vehicles has increased dramatically in the last 25 years, as has the national crime rate. No anti-theft device is absolutely effective. Therefore, the number of vehicles stolen should be expected to rise.

A better benchmark would be the theft rate. When NHTSA investigated theft rates, it found no increase. The Bureau of Justice Statistics (BJS) of the U.S. Department of Justice data shows no rate increase over the past 20 years. The theft rate per 100,000 vehicles for 1973 is about the same as the rate for 1992. The rate is highly variable, with a spike in the mid-1980's (BJS). However, over the most recent three years of data, the rate has been declining (BJS, Highway Loss Data Institute).

Assessing the effectiveness of the steering lock as a theft countermeasure necessitates determining whether fewer vehicles are stolen because the steering lock is present than would be otherwise. Unfortunately, "hard" data relevant to making that determination are not available. Ideally, the agency should compare theft data for vehicle models that have steering locks, against similar vehicle models that do not. Even after a diligent search, NHTSA knows of no database or study that could be used to assess the effectiveness of the steering lock. The U.S. Department of Justice, insurance companies, and other sources that NHTSA contacted have no data on

the issue. Therefore, there are no data indicating that steering locks are not effective.

The agency believes that it is a matter of common sense that steering locks help discourage theft. Police recommend a layered anti-theft system, because each layer or device takes some time to defeat. Therefore, even on a vehicle with an automatic transmission, the steering lock adds to the deterrent effect of the transmission lock or any other anti-theft device. Even if steering locks are generally easy for experienced thieves to defeat, steering locks must thwart some attempted thefts by others, e.g., inexperienced thieves and joyriders. They must also deter thefts before they even start in an unknown number of other cases.

NHTSA believes the petitioner is correct in stating that there are more effective, and safer (on manual transmission vehicles), alternatives to the steering lock, but this does not mean that NHTSA should require such devices. Steering locks are relatively cheap, and therefore widely used. The more effective anti-theft devices that the petitioner urges ("modern technology also has new devices that cut electrical systems and such") are far more expensive and would not be cost-beneficial to require.

Conclusions

The consumer complaint data do not demonstrate a significant safety problem. The agency cannot determine the extent to which steering wheel/column lockup actually occurred in the cases identified. To the extent that it did occur, the cause may have been a part or system failure instead of any design defect. For example, the steering could have locked as the result of power steering failure, linkage failure, or as a result of damage during the reported collision or previous crashes. Similarly, the NASS data did not reveal a significant safety problem. These data refute the general assertion that steering lockup is a significant safety problem for manual or automatic transmission vehicles. They also refute the specific assertion that steering lockup resulting from removal of the ignition key from the ignition in moving vehicles with manual transmissions is a significant safety concern.

The provisions of the theft standard were not intended to eliminate all thefts. Indeed, no single measure or combination of measures can eliminate theft. However, thefts become less likely to occur as the time required to steal the vehicle increases. Steering column locks require time to circumvent; thus, they are a deterrent to thieves and help to

reduce motor vehicle thefts. Therefore, NHTSA believes that the steering lock has value as a theft deterrent and preventative measure.

The miscellaneous requests in the petitioner's second and third petitions are denied. Because there is no significant safety problem, NHTSA denies the petitioner's request that NHTSA initiate rulemaking to require manufacturers to affix warning stickers near the ignition switches of new vehicles and send warning stickers to owners of used vehicles. No education is needed because the data indicate that nearly all Americans are aware of the consequences of removing the key from the vehicle ignition while the vehicle is moving. The agency does not see any reason that Standard No. 114 would be considered unconstitutional. There is no judicially-recognized constitutional right of choice on whether to lock the steering. As to requiring all Americans to lock their vehicles, that action is clearly beyond NHTSA's statutory authority.

In addition to examining the merits, the agency takes into account other factors when deciding whether to grant or deny a petition, such as the relationship of the request to agency priorities and the allocation of resources. Even in the absence of such additional considerations, the agency would deny the petitions from ASF. However, the agency notes that it has experienced personnel reductions and is facing more budgetary and personnel reductions in the future. Therefore, NHTSA must conserve its rulemaking resources for accomplishing its mission and established priorities, as outlined in its Strategic Execution Plan. Petitions for rulemaking, such as this one, that do not align with these priorities face a significant challenge in having agency resources allotted to them. In NHTSA's judgement, a rulemaking pursuant to this petition would consume significant agency resources that could be better spent on other actions.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded both that there is no reasonable possibility that the actions requested by the petitioner would be taken at the conclusion of a rulemaking proceeding and that the problem alleged by ASF does not warrant the expenditure of agency resources to conduct a rulemaking proceeding. Accordingly, it denies ASF's petitions.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 15, 1996.
Ricardo Martinez,
Administrator.
[FR Doc. 96-30056 Filed 11-25-96; 8:45 am]
BILLING CODE 4910-02-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Initiation of 12-month Status Review for Petition to List the Santa Ana Sucker as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: On July 9, 1996, the U.S. Fish and Wildlife Service (Service) announced its 90-day finding on a petition to list three fish as endangered, pursuant to the Endangered Species Act of 1973, as amended. The Service found the petition did not present substantial scientific or commercial information indicating the petitioned action may be warranted for two of the three fish, but the Service determined that substantial information exists to support a decision that listing may be warranted for the Santa Ana sucker. Though the Service was compelled by the United States District Court for the Northern District of California to issue the 90-day finding, the Service indicated that a status review of the Santa Ana sucker would be commenced in accordance with the final listing priority guidance (61 FR 36021). Because the processing of petitions is a tier 3 listing action according to the existing listing priority guidance (61 FR 24722) and proposed extended guidance (61 FR 48962), the status review and 12-month finding typically should be delayed until other higher priority or tier 2 actions (i.e., final rules) are completed. However, the district court ordered the Service on October 10, 1996, to complete its review of the petition by March 28, 1997. With the commencement of the status review, the Service is taking the first step to comply with the court order.

DATES: Any comments and materials received by December 26, 1996 will be considered in the 12-month finding.
ADDRESSES: Data, information, comments, or questions concerning the status review should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. The petition, 90-day finding, and

supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul J. Barrett, at the address listed above (telephone 619/431-9440, facsimile 619/431-9618).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.) requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the Service determines that substantial scientific or commercial information indicating that the petitioned action may be warranted exists, the Service will commence a review of the status of the species. However, because of a shortfall in funds needed to eliminate the existing backlog of proposed listings and other listing actions required by the Act in FY 1997, the Service proposed to extend the existing listing priority guidance on September 17, 1996 (61 FR 48962). According to the existing guidance and proposed guidance, the processing of petitions (tier 3 listing action), including the initiation of status reviews, would be delayed until other higher priority (tier 2 actions or final rules) are completed.

On September 6, 1994, the Service received a petition dated September 2, 1994, to list the Santa Ana speckled dace (*Rhinichthys osculus* sp.), Santa Ana sucker (*Catostomus santaanae*), and the Shay Creek threespine stickleback (*Gasterosteus aculeatus* sp.) as endangered species. The petition was submitted by the Sierra Club Legal Defense Fund, Inc., on behalf of seven groups. The seven groups are the California-Nevada Chapter of the American Fisheries Society, The Nature School, The California Sportfishing Protection Alliance, Friends of the River, Izaak Walton League of America, California Trout, and Trout Unlimited. The Service found the petition did not present substantial scientific or commercial information indicating the petitioned action may be warranted for two of the speckled dace and threespine stickleback, but the Service determined that substantial information exists to support a decision that listing may be

warranted for the Santa Ana sucker. Though the Service was compelled by the United States District Court for the Northern District of California to issue the 90-day finding, the Service indicated that a status review of the Santa Ana sucker would be commenced in accordance with the final listing priority guidance (61 FR 24722). Because the processing of petitions is a tier 3 listing action according to the recently extended guidance (61 FR 49962), the status review and 12-month finding typically should be delayed until other higher priority or tier 2 actions (i.e., final rules) are completed. However, the district court ordered the Service on October 10, 1996, to complete its review of the petition by March 28, 1997. As a result, the Service is initiating a status review of the Santa Ana sucker as the first step to comply with the court order.

The Santa Ana sucker (*Catostomus santaanae*) is a member of the sucker family (Catostomidae). The Santa Ana sucker was originally described as *Pantosteus santa-anae* by Snyder (1908, as in Moyle 1976). The genus *Pantosteus* was reduced to a subgenus of *Catostomus* and the hyphen omitted from the specific name in a subsequent revision of the nomenclature (Smith 1986). The American Fisheries Society recognizes the Santa Ana sucker as a full species, *C. santaanae* (Robins et al. 1991).

The historical range of the Santa Ana sucker includes the Los Angeles, San Gabriel, and Santa Ana River drainage systems located in southern California (Smith 1986). An introduced population also occurs in the Santa Clara River drainage system in southern California (Moyle 1976). Moyle and Yoshiyama (1992) stated that only the San Gabriel River population can be considered relatively viable and self-sustaining within the native range.

Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976), the species has experienced dramatic declines throughout most of its range (Moyle and Yoshiyama 1992). Santa Ana suckers have adaptations such as short generation time, high fecundity, and a relatively prolonged spawning period that presumably allows them to rapidly repopulate streams after severe flooding events (Greenfield et al. 1970). Nevertheless, they are intolerant of polluted or highly modified streams (Moyle and Yoshiyama 1992). Urbanization, water diversions, dams, pollution, heavy recreational use, gold mining wastes, gravel extraction, and introduced competitors and or predators may have contributed in the decline of

the species (Moyle and Yoshiyama 1992, Swift et al. 1993).

Swift (in Moyle and Yoshiyama 1992) summarized the status and threats facing each of the populations in their native range.

- Los Angeles River (Big Tujunga Creek below Big Tujunga Dam)—Fluctuations in water quality pose problems for all fishes in this reach. The Santa Ana sucker is rare and may already be lost here.

- San Gabriel River (contiguous West, North, and East forks about 40 km below Cogswell Dam)—The West Fork is threatened by accidental high flows from Cogswell Reservoir that have devastated this reach in the past. The Cattle Canyon tributary of the East Fork is impacted by increased gold mining (suction dredging) and the population has been much reduced or may be absent in Cattle Canyon.

- Santa Ana River—Several hundred fish were observed below Prado Dam in 1986 and 1987, although sampling above the dam in 1987 yielded only five Santa Ana suckers. Water quality is threatened by many and various local inputs, such as runoff from light industry and surrounding farmed lands (T. Haglund, in Sierra Club Legal Defense Fund 1994).

Subsequent to the receipt of the petition, a general fish survey of the Santa Ana River below Prado Dam yielded only 5 suckers from a total of approximately 150 fishes captured (Mike Guisti, California Game and Fish Department, pers. comm.). A survey of the East Fork of the San Gabriel River above the confluence with Cattle Canyon found the sucker to be relatively common, 198 of 553 fish captured (R. Ally, California Department of Fish and Game, pers. Comm.). The present status of the Santa Ana sucker in the Los Angeles River is unknown.

Written comments and materials submitted to the Service office in the ADDRESSES section and received by December 28, 1996 will be considered in the 12-month finding.

Reference Cited

- Greenfield, D. W., S. T. Ross, and G. D. Dockert. 1970. Some aspects of the life history of the Santa Ana sucker, *Catostomus (Pantosteus) santaanae* (Snyder). California Fish and Game 56:166-176.
- Moyle, P. B. 1976. Inland Fishes of California. University of California Press, 405 pp.
- Moyle, P. B. and R. M. Yoshiyama. 1992. Fishes, aquatic diversity management areas, and endangered species: Plan to protect California's native aquatic biota. The California Policy Seminar, University of California.

Robins, C. R., R. M. Bailey, C. E. Bond, J. R. Brooks, E. A. Lachner, R. N. Lea, and W. B. Scott. 1991. Common and scientific names of fishes of the United States and Canada. American Fisheries Society Special Publication 20. Bethesda, Maryland.

Sierra Club Legal Defense Fund. 1994.

Petition to designate the Santa Ana sucker, Santa Ana speckled dace, and Shay Creek threespine stickleback as endangered species pursuant to the Endangered Species Act of 1973, as amended.

Smith, G. R. 1986. Distribution and evolution of the North American *Pantosteus*, genus *Catostomus*. Miscellaneous Publication Museum Zoology, University of Michigan, No. 129:1-132.

Swift, C. G., T. R. Haglund, M. Ruiz, and R. N. Fisher. 1993. The status and distribution of the freshwater fishes of southern California. Bulletin of the Southern California Academy of Sciences, 92:1-67.

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 19, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 96-30123 Filed 11-25-96; 8:45 am]

BILLING CODE 4710-56-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961114317-6317-01; LD, 1025868]

RIN 0648-XX70

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1997 fishing quotas for surf clams and ocean quahogs; request for comments.

SUMMARY: NMFS issues proposed quotas for the Atlantic surf clam and ocean quahog fisheries for 1997. These quotas were selected from a range defined as optimum yield (OY) for each fishery. The intent of this action is to establish

allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1997.

DATES: Public comments must be received on or before December 26, 1996.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790.

Send comments to: Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments—1996 Surf Clam and Ocean Quahog Quotas."

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 508-281-9280.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the OY for each species. For surf clams, the quota must fall within the OY range of 1.85 million bushels to 3.40 million bushels. For ocean quahogs, the quota must fall within the OY range of 4.00 million bushels to 6.00 million bushels. Further, it is the policy of the Council that the harvest levels selected should allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within these constraints, the quotas are also to be set at a level that would meet the estimated annual demand.

During its discussions of the 1996 quota recommendations, the Council was advised by NMFS to revise the overfishing definitions specified in the FMP. Subsequently, the Council revised the definitions and submitted them to NMFS as Amendment 9 to the FMP. Overfishing was previously defined for both species in terms of actual yield levels. That is, overfishing was defined as harvests in excess of the quota levels specified. However, that definition did not incorporate biological considerations to protect against overfishing. The overfishing definitions contained in Amendment 9 (61 FR 50807, September 27, 1996), which were recently approved by NMFS on behalf of the Secretary, are fishing mortality rates of $F_{20\%}$ (20 percent of Maximum

Spawning Potential (MSP)) for surf clams and $F_{25\%}$ (25 percent of MSP) for ocean quahogs. These levels equate to annual exploitation rates of 15.3 percent for surf clams and 4.3 percent for ocean quahogs.

In proposing the quotas set forth herein, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council. The proposed quotas for the 1997 Atlantic surf clam and ocean quahog fisheries are shown below. The surf clam quota would be unchanged from the 1996 level, and the ocean quahog quota would be reduced by approximately 3 percent.

PROPOSED 1997 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	1997 final quotas (bu)	1997 final quotas (HL)
Surf clam	2,565,000	1,382,000
Ocean quahog	4,317,000	2,292,000

Surf Clams

Amendment 9 defines overfishing for surf clams as $F_{20\%}$. This translates roughly to $F = 0.18$ for surf clams. The proposed 1997 quota for surf clams of 2,565 million bushels was recommended by the Science and Statistical Committee (SSC) of the Council and adopted by the Council at its September 1996 meeting. This quota yields an approximate $F = 0.12$ for all areas. Therefore, the proposed quota is below the threshold definition for overfishing.

This proposed quota meets the 1996 Stock Assessment Workshop (SAW)-22 Advisory Report recommendation "that the current (i.e., 1996) surf clam quota be maintained until a new stock assessment is available with abundance estimates based on fishery catch rate and research survey data." A research survey is scheduled to be conducted in 1997. This quota is within the OY range of 1.85 to 3.4 million bushels required by the FMP. The Council assumed that none of the Georges Bank resources (approximately one quarter of the total resource) would be available during the next 10 years for harvesting, because implementation of a protocol for testing paralytic shellfish poisoning (PSP) is unlikely to happen within 10 years. Both the SSC and the Council Surf Clam and Ocean Quahog Committee believed

that the reopening of the Georges Bank area was uncertain and too speculative to base quota recommendations upon. The Industry Advisory Group concurred.

Ocean Quahogs

Amendment 9 defines overfishing for ocean quahogs as $F_{25\%}$. This translates to $F = 0.04$ for ocean quahogs. The proposed 1997 quota for ocean quahogs of 4,317 million bushels, a reduction of 3 percent from 1996, was recommended by the Council staff and adopted by the Council at its September meeting. The proposed quota yields an $F = 0.032$. Therefore, the proposed quota is below the threshold definition for overfishing. The proposed quota still assumes that all of the Georges Bank biomass may become available to the fishery over the course of the 30-year harvest period. The Council assumes that the PSP testing protocol will be implemented within 30 years. However, the Council stated that additional quota reductions would be necessary in the future, if demonstrable progress is not made toward implementing the protocol and reopening Georges Bank in the near future. In addition, the 1996 SAW-22 Advisory Report did not provide any forecast for ocean quahogs and only provided the management advice that a 30-year supply is possible only if areas off southern New England and Long Island, generally too deep to be harvested with current technology, and PSP-contaminated biomass on Georges Bank become available for harvest.

Classification

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that

these proposed specifications issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. These proposed specifications would establish the same annual quota for surf clams in 1997 (2,565 million bushels), as in 1996, and an annual quota for ocean quahogs of 4,317 million bushels in 1997, which is only a 3-percent reduction in the quota for that species in 1996.

It is not expected that any vessels would cease operations if the proposed specifications for 1997 are implemented, and compliance costs should not increase by 10 percent or more for 20 percent of the vessels or processors in any of these fisheries. Also, 20 percent or more of the vessels or processors in the fishery should not experience a gain or loss of revenues of 5 percent or more.

Authority: 16 U.S.C. 1601 et seq.

Dated: November 19, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 96-30074 Filed 11-25-96; 8:45 am]

BILLING CODE 3010-22-W

50 CFR Part 679

[Docket No. 961107312-6312-01; L.D.
1022985]

RIN 0648-JX09

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands; Proposed 1997 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1997 initial harvest specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 1997 initial harvest specifications, prohibited species bycatch allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 1997 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in the annual groundfish specification process.

DATES: Comments must be received by December 23, 1996.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21868, Juneau, AK 99802-1668, Attn: Lori Gravel.

The preliminary 1997 Stock Assessment and Fishery Evaluation (SAFE) report, dated September 1996, is available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 308, Anchorage, AK 99510-2252 (907-271-2809).

FOR FURTHER INFORMATION CONTACT: Susan J. Salvason, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the

Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total annual catch (TAC) for each target species and the "other species" category, the sum of which must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (\$ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to publish annually and solicit public comment on proposed annual TACs, prohibited species catch (PSC) allowances, seasonal allowances of the pollock TAC, and amounts for the pollock and sablefish Community Development Quota (CDQ) reserve. The proposed specifications set forth in Tables 1-3 of this action satisfy these requirements. For 1997, the sum of proposed TAC amounts is 1,943,190 mt. Under § 679.20(c)(3), NMFS will publish the final annual specifications for 1997 after considering: (1) Comments received within the comment period (see DATES), and (2) consultations with the Council at its December 1996 meeting.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each PSC allowance established under § 679.21, and the first seasonal allowances of pollock become effective 0001 hours, Alaska local time (A.L.T.), January 1, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the Federal Register.

NMFS is publishing, in the Rules and Regulations section of this issue of the Federal Register, interim TAC specifications and apportionments thereof for the 1997 fishing year, which will become available 0001 hours, A.L.T. January 1, 1997, and remain in effect until superseded by the final 1997 harvest specifications.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species are based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the

BSAI at their September 1996 meeting. This information was compiled by the Council's BSAI Groundfish Plan Team (Plan Team) and is presented in the preliminary 1997 SAFE report for the BSAI groundfish fisheries, dated September 1996. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The preliminary 1997 SAFE report will be updated to include information collected during 1996 resource assessment surveys. Revised stock assessments will be made available by the Plan Team in November 1996 and included in the final 1997 SAFE report.

The proposed ABC amounts adopted by the Council for the 1997 fishing year are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The proposed ABCs also are based upon proposed new definitions for ABC and overfishing levels, which were adopted by the Council at its June 1996 meeting under Amendment 44 to the FMP. A notice of availability of Amendment 44 was published in the Federal Register October 17, 1996 (61 FR 54145), that describes the proposed new definitions. In general, these proposed definitions involve sophisticated statistical analyses of fish populations and are based on a successive series of six levels, or tiers, of reliable information available to fishery scientists. ABC and overfishing levels are determined according to the tier that best characterizes the available information. Although Amendment 44 has yet to be approved by NMFS, the Plan Team adopted preliminary ABCs based on the proposed definitions to: (1) Compensate for uncertainty in status of stocks by establishing fishing mortality rates more conservatively as biological parameters become more imprecise, (2) relate fishing mortality rates directly to biomass for stocks below target abundance levels, and (3) maintain a buffer between ABC and the overfishing level. The revised definitions result in lower exploitation rates and ABCs for most species, although biomass estimates generally are unchanged. Details of the Plan Team's

recommendations for preliminary 1997 overfishing and ABC amounts for each species are provided in the preliminary 1997 SAFE report. This report is available from the Council (see ADDRESSES). At its September 1996 meeting, the Council's SSC reviewed the Plan Team's preliminary recommendations for 1997 ABC amounts. The SSC concurred in the Plan Team's recommendations except for pollock, Greenland turbot, and Atka mackerel. The SSC's revisions to the ABC amounts for these three species are discussed below.

Bering Sea pollock. The Plan Team had recommended an ABC equal to 1.29 million mt. However, the SSC expressed concern regarding the projected recruitment used to derive this ABC and instead proposed an ABC based on a lower recruitment. The resulting ABC of 1.19 million mt is based on the Plan Team's estimated biomass of 7.36 million mt and an $F_{40\%}$ exploitation rate (16.2 percent).

Bogoslof pollock. The 1996 Bogoslof pollock survey estimated a biomass of 680,000 mt compared to the 1995 biomass estimate of 1.1 million mt. The Plan Team had recommended an ABC of 150,000 mt based on an $F_{40\%}$ exploitation rate (22 percent). Given the apparent decline in biomass, however, the SSC recommended the Bogoslof ABC be reduced by the ratio of the current biomass to target biomass (assumed to be 2 million mt). The resulting ABC (150,000 mt)/(.68/2) is 51,000 mt.

Aleutian Islands pollock. The SSC revised the preliminary 1997 Aleutian Islands pollock biomass to 142,505 mt from the Plan Team's 87,200 mt. This increase was based on the SSC's recommendation that biomass estimated for the eastern Aleutian Islands (Unalaska-Unimak area) be included in the Aleutian Islands biomass estimate, as done in previous years. The SSC's 1997 preliminary ABC is calculated using the expanded biomass and the 28

percent exploitation rate recommended by the Plan Team. The resulting ABC of 39,900 mt is an increase from the 24,400 mt ABC recommended by the Plan Team.

Greenland turbot. The SSC endorsed the Plan Team's ABC for Greenland turbot (17,000 mt). Last year, however, the SSC recommended that this ABC amount be phased in over a 3-year period to allow the possibility of conducting joint industry/NMFS assessment surveys of the Bering Sea slope and Aleutian Islands. Results of these surveys would allow for a refinement of the stock abundance estimates prior to fully increasing the ABC to 17,000 mt. Given that 1997 is the second year in the 3-year phase-in period, the SSC recommended a 1997 ABC of 13,700 mt based on the estimated biomass of 67,000 mt and an exploitation rate of 0.204. The SSC concurred in the Plan Team's recommendation that the ABC be split so that two-thirds of the TAC is apportioned to the eastern Bering Sea and one-third is apportioned to the Aleutian Islands.

Atka mackerel. The SSC recommended that an ABC range of 66,700 mt-90,600 mt be proposed for Atka mackerel, with the Plan Team's recommended ABC being the lower end of the range. The upper end of the range is calculated as the 1996 ABC (116,000 mt) discounted by the estimated 78 percent relative decrease in exploitable biomass from 1996 to 1997. The upper end of the range is consistent with the use of spawning biomass calculated at the beginning of the year, rather than using the Plan Team's spawning biomass estimated during the month of peak spawning (August). Prior to accepting the Plan Team's approach, the SSC recommended that the Plan Team further assess the advantages and disadvantages of using estimated spawning biomass at these two times of the year in deriving $F_{40\%}$ rates, given the

apparent disparity between the resulting ABCs.

The Council adopted the proposed overfishing and ABC amounts recommended by the SSC (Table 1).

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 1997 BSAI TAC amounts. For each species, this amount equals the lesser of either the 1996 TAC or the SSC's recommended 1997 ABC. NMFS finds that the recommended proposed TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 1.4-2.0 million mt.

Except for the hook-and-line and pot gear allocation of sablefish, each species' TAC initially is reduced by 15 percent to establish the ITAC for each species (§ 679.20(b)(1)(i)). The sum of the 15-percent amounts is the reserve. One half of the pollock TACs placed in reserve is designated as a CDQ reserve for use by CDQ participants (§ 679.31(a)(1)). The remainder of the reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

Table 1 lists the proposed 1997 ABC, TAC, and ITAC amounts, overfishing levels, and initial apportionments of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below. These proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, and new information regarding the fishery, and consultation with the Council at its December meeting.

TABLE 1.—PROPOSED 1997 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA¹

Species	ABC	TAC	ITAC ^{2,3}	Over-fishing level
Pollock:				
Bering Sea (BS)	1,190,000	1,190,000	1,011,500	1,466,000
Aleutian Islands (AI)	39,900	39,900	30,260	47,000
Bogoslof District	51,000	1,000	850	121,000
Pacific cod	255,000	255,000	216,750	347,000
Sablefish Total:				
BS	790	790	336	1,170
AI	890	890	189	1,320
Atka mackerel TOTAL	66,700-90,600	66,700	56,895	81,600-109,300
Western AI		32,200	27,370	
Central AI		19,500	16,575	
Eastern AI/BS		15,000	12,750	

TABLE 1.—PROPOSED 1997 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA¹—Continued

Species	ABC	TAC	ITAC ^{2,3}	Over-fishing level
Yellowfin sole	235,000	200,000	170,000	342,000
Rock sole	295,000	70,000	59,500	433,000
Greenland turbot TOTAL	13,700	7,000	5,850	25,100
BS	9,180	4,890	3,987	
AI	4,520	2,310	1,863	
Arrowtooth flounder	105,000	9,000	7,650	162,000
Flathead sole	97,100	30,000	25,500	140,000
Other flatfish ⁴	84,000	35,000	29,750	120,000
Pacific ocean perch				
BS	1,550	1,550	1,318	2,380
AI Total	12,200	12,100	10,285	27,300
Western AI	6,100	6,050	5,143	
Central AI	3,050	3,025	2,571	
Eastern AI	3,050	3,025	2,571	
Other red rockfish ⁵				
BS	1,050	1,050	893	1,400
Sharpchin/Northern:				
AI	4,360	4,360	3,705	5,810
Shortraker/Roughye:				
AI	938	938	797	1,250
Other rockfish ⁶				
BS	373	373	317	487
AI	714	714	607	952
Squid	1,970	1,000	850	2,820
Other Species ⁷	25,800	20,125	17,106	137,000
TOTALS	2,484,035–2,507,935	1,943,190	1,650,809	

¹ Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

² Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. One-half of the amount of the pollock TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (See § 679.31(a)(1)).

³ Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (See § 679.31(c)). Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only.

⁴ "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

⁵ "Other red rockfish" includes shortraker, roughye, sharpchin, and northern.

⁶ "Other rockfish" includes all Sebastes and Sebastomus species except for Pacific ocean perch, sharpchin, northern, shortraker, and roughye.

⁷ "Other species" includes sculpin, sharks, skates, eulachon, smelts, capelin, and octopus.

Seasonal Allowances of Pollock TACs

Under § 679.20(a)(5)(i)(A), the pollock TAC for each subarea or district of the BSAI is divided, after subtraction of reserves (§ 679.20(b)(1)), into two seasonal allowances. The first allowance is available for directed fishing from January 1 to April 15 (roe season) and the second allowance is available from September 1 until November 1 (non-roe season).

The Council proposed that the seasonal allowances for the Bering Sea pollock roe and non-roe seasons be specified at 45 percent and 55 percent of the ITAC amounts, respectively

(Table 2). These percentages are unchanged since 1993. As in past years, the pollock TAC amounts specified for the Aleutian Islands subarea and the Bogoslof District would not be seasonally apportioned. When specifying seasonal allowances of the pollock TAC, the Council and NMFS considered the factors specified in section 14.4.10 of the FMP. A discussion of these factors relative to the roe and non-roe seasonal allowances was presented in the proposed 1995 specifications for BSAI groundfish (59 FR 64393, December 14, 1994). At this time, the Council's findings are unchanged from those set forth for 1995,

given that the relative seasonal allowances are the same.

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 679.20(a)(6)(i) require that the proposed pollock ITAC amounts specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. Definitions of these components are found at § 679.2. The proposed 1997 ITAC specifications are consistent with these requirements (Table 2).

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS^{1,2}

Subarea	TAC	ITAC ³	Roe season ⁴	Non-roe season ⁵
Bering Sea:				
Inshore		354,025	159,311	194,714

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS^{1,2}—Continued

Subarea	TAC	ITAC ³	Roe season ⁴	Non-roe season ⁵
Offshore		657,475	295,864	361,611
Aleutian Islands:	1,190,000	1,011,500	455,175	556,325
Inshore		10,591	10,591	(C)
Offshore		19,668	19,668	(C)
Bogoslof:	35,600	30,260	30,260	(C)
Inshore		298	298	(C)
Offshore		552	552	(C)
	1,000	850	850	(C)

¹ TAC=total allowable catch.

² Based on an offshore component allocation of 0.65(ITAC) and an inshore component allocation of 0.35(ITAC).

³ ITAC=initial TAC=0.85 of TAC.

⁴ January 1 through April 15—based on a 45/55 split (roe=45 percent).

⁵ September 1 until November 1—based on a 45/55 split (non-roe=55 percent).

⁶ Reminder.

Apportionment of the Pollock TAC to the Western Alaska Community Development Quota

Regulations at § 679.31(a)(1) require one-half of the pollock TAC placed in the reserve for each subarea or district, or 7.5 percent of each TAC, be assigned to a CDQ reserve for each subarea or district. The proposed 1997 CDQ reserve amounts for each subarea are as follows:

BSAI subarea	Pollock CDQ
Bering Sea	89,250 mt
Aleutian Islands	2,670 mt
Bogoslof	75 mt
Total	91,995 mt

Under regulations governing the CDQ program at subpart C of part 679, NMFS may allocate the 1997 pollock CDQ

reserves to eligible Western Alaska communities or groups of communities that have an approved community development plan (CDP). NMFS has approved six CDPs and associated percentages of the CDQ reserve for each CDP recipient for 1996–98 (60 FR 66516, December 22, 1995). Table 3 lists the approved CDP recipients and each recipient's allocation of the proposed 1997 pollock CDQ reserve for each subarea.

TABLE 3.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE PROPOSED 1997 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS, AND THE BOGOSLOF DISTRICT (BD) AMONG APPROVED CDP RECIPIENTS

CDP recipient	Percent	Area	Allocation	Roe-season allowance ¹
Aleutian Pribilof Island Community Development Assn	16	BS AI BD	14,280 427 12	5,426 427 12
Bristol Bay Economic Development Corp	20	BS AI BD	17,850 534 15	8,035 534 15
Total			18,399	8,582
Central Bering Sea Fishermen's Assn	4	BS AI BD	3,570 107 3	1,607 107 3
Total			3,680	1,717
Coastal Villages Fishing Co-op	25	BS AI BD	22,312 668 19	10,040 668 19
Total			22,999	10,727
Norton Sound Fisheries Development Corp	22	BS AI BD	19,635 587 16	8,836 587 16
Total			20,238	9,439
Yukon Delta Fisheries Development Corp	13	BS AI BD	11,603 347 10	5,221 347 10
Total			11,960	5,578

TABLE 3.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE PROPOSED 1997 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS, AND THE BOGOSLOF DISTRICT (BD) AMONG APPROVED CDP RECIPIENTS—Continued

CDP recipient	Percent	Area	Allocation	Roe-season allowance ¹
Total	100		91,995	42,908

¹ No more than 45 percent of a CDP recipient's 1997 Bering Sea pollock allocation may be harvested during the pollock roe season, January 1 through April 15. Up to 100 percent of a recipient's 1997 Aleutian Islands or Bogoslof District pollock allocation may be harvested during this time period.

Allocation of the Pacific Cod TAC

Regulations at § 679.20(a)(7) provide for the allocation of the Pacific cod TAC among vessels using jig gear, hook-and-line or pot gear, and trawl gear. These regulations expire at the end of 1996. At its June 1996 meeting, the Council adopted Amendment 46 to the FMP that would authorize the continued allocation of Pacific cod TAC among vessels using different gear types. Amendment 46 also would authorize the further allocation of the portion of the Pacific cod TAC allocated to vessels using trawl gear between catcher vessels and catcher/processor vessels. A proposed rule to implement Amendment 46 was published in the Federal Register on August 22, 1996 (61

FR 43325). On November 7, 1996, NMFS determined that Amendment 46 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The final rule implementing Amendment 46 was published in the Federal Register on November 20, 1996 (61 FR 59029). The final rule is effective January 1, 1997. Consequently, these proposed specifications provide for the allocation of the Pacific cod TAC among vessel gear types.

The Council also proposed to roll over the 1996 seasonal allowances of the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal allowances are intended to provide for the harvest of Pacific cod when flesh quality and

market conditions are optimum and Pacific halibut bycatch rates are low. The Council's recommendations for seasonal apportionments are based on: (1) Seasonal distribution of Pacific cod relative to prohibited species distributions, (2) variations in prohibited species bycatch rates in the Pacific cod fisheries throughout the year, and (3) economic effects of seasonal allowances of Pacific cod on the hook-and-line and pot gear fisheries. The Council also proposed that any portion of the first seasonal allowance that is not harvested by the end of the first season would become available on September 1, the beginning of the third season. Table 4 lists the proposed 1997 allocations and seasonal apportionments of the Pacific cod ITAC.

TABLE 4.—1997 GEAR SHARES OF THE BSAI PACIFIC COD INITIAL TAC, PENDING APPROVAL OF AMENDMENT 46 TO THE FMP

Gear (mt)	Percent TAC	Share ITAC (mt)	Seasonal Apportionment		
			Date	%	Amount
Jig	2	4,335	Jan 1-Dec 31	100	4,335
Hook-and-line/pot gear	51	110,541	Jan 1-Apr 30	80	88,433
			May 1-Aug 31	18	19,897
			Sep 1-Dec 31	2	2,211
Trawl gear ¹					
Total	47	101,874	Jan 1-Dec 31	100	101,873
Catcher vessel		(50,937)			
Catcher/processor		(50,937)			
TOTAL	100	216,750			

¹ The portion of the Pacific cod TAC allocated to trawl gear is apportioned 50 percent to catcher vessels and 50 percent to catcher/processors under § 679.20(a)(7)(i)(B).

Sablefish Gear Allocation and CDQ Allocations for Sablefish

Regulations at § 679.20(a)(4) require that sablefish TACs for the BSAI subareas be divided between trawl and hook-and-line/pot gear types. Gear

allocations of TACs are established in the following proportions: Bering Sea subarea: Trawl gear—50 percent; hook-and-line/pot gear—50 percent; and Aleutian Islands subarea: Trawl gear—25 percent; hook-and-line/pot gear—75 percent. In addition, regulations under

§ 679.31(c) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as sablefish CDQ reserve. Gear allocations of the proposed sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—1997 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea	Gear	Percent of TAC (mt)	Share of TAC (mt)	Initial TAC (mt) ¹	CDQ reserve
Bering Sea	Trawl	50	395	335	N/A
	Hook-and-line/pot gear ²	50	395	N/A	79

TABLE 5.—1997 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS—Continued

Subarea	Gear	Percent of TAC (mt)	Share of TAC (mt)	Initial TAC (mt) ¹	CDQ reserve
Total Aleutian Islands	Trawl	25	790	335	79
	Hook-and-line/pot gear ²	75	222	189	N/A
Total			850	189	134

¹ Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

² For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Under regulations governing the sablefish CDQ program at subpart C of part 679, NMFS may allocate the 1997 sablefish CDQ reserve to eligible Western Alaska communities or groups

of communities that have an approved CDP. NMFS has approved seven CDPs and associated percentages of the sablefish CDQ reserve for each CDP recipient for 1995-97 (59 FR 61877,

December 2, 1994). Table 6 lists the approved CDP recipients and each recipient's allocation of the 1997 sablefish CDQ reserve for each subarea.

TABLE 6.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS (MT) OF THE 1997 SABLEFISH CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS AMONG APPROVED CDP RECIPIENTS

Sablefish CDP recipient	Area	Percent	Allocation (mt)
Alutia Fishermen's Association	BS	0	0
	AI	0	0
Bristol Bay Economic Development Corp	BS	0	0
	AI	25	34
Coastal Villages	BS	0	0
Fishing Cooperative	AI	25	34
Norton Sound Economic Development Corporation	BS	25	20
	AI	30	40
Pribilof Island Fishermen	BS	0	0
	AI	0	0
Yukon Delta Fisheries Development Association	BS	75	50
	AI	10	13
Aleutian Pribilof Islands Community Development Association	BS	0	0
	AI	10	13
Total	BS	100	79
	AI	100	134

Allocation of Prohibited Species Catch (PSC) Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 679.2) of the Bering Sea subarea and for Pacific halibut throughout the BSAI are established under § 679.21(e). The PSC limits are:

- Zone 1 trawl fisheries, 200,000 red king crabs.
- Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs.
- Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs.
- BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut.
- BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut.
- BSAI trawl fisheries, 1,697 mt Pacific herring.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. At this time, the best estimate of 1997 herring biomass is 169,700 mt. This amount was derived using 1995 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 1997 is 1,697 mt. This value is subject to change, pending an updated forecast analysis of 1996 herring survey data that will be presented to the Council by the ADF&G during the Council's December 1996 meeting.

The red king crab and *C. bairdi* PSC limits currently established in regulations are subject to change pending the approval of two FMP

amendments adopted by the Council. Amendment 37 was adopted by the Council at its June 1996 meeting and would authorize the annual specification of the red king crab bycatch limit based on the abundance of Bristol Bay red king crab. A proposed rule to implement Amendment 37 was published in the Federal Register on September 12, 1996 (61 FR 48113). Based on the proposed rule and pending approval of Amendment 37 by NMFS, the 1997 red king crab in Zone 1 would be adjusted downward from 200,000 crab to 100,000 crab. NMFS' review and approval/disapproval/partial approval of Amendment 37 is scheduled to occur prior to the Council's December 1996 meeting. Therefore, pending approval of the amendment, the final 1997 groundfish specifications would include the adjusted red king crab PSC limit. If

Amendment 37 is not approved, the red king PSC limit will remain unchanged.

The Council adopted Amendment 41 to the FMP at its September 1996 meeting, which, if approved by NMFS, would authorize the annual specification of *C. bairdi* PSC limits in Zones 1 and 2 based on abundance of crab estimated from data collected during the annual NMFS trawl survey. Based on 1996 abundance, (185 million crab), the PSC limit for *C. bairdi* in 1997 would be 750,000 crab in Zone 1 and 2,100,000 crab in Zone 2. A proposed rule to implement Amendment 41 likely will be published in the Federal Register for public review and comment by late 1996 and will include proposed specifications of the adjusted 1997 *C. bairdi* PSC limits and associated bycatch allowances. If approved by NMFS, Amendment 41 likely would be implemented by April 1997. If Amendment 41 is not approved, the *C. bairdi* PSC limits will remain as established in 1989 (54 FR 32642; August 9, 1989).

Regulations under § 679.21(e)(3) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Regulations at § 679.21(e)(3)(iv) specify seven trawl fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/flathead sole/other

flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/ "other species"). Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the nontrawl halibut PSC limit among five fishery categories (Pacific cod hook-and-line, sablefish hook-and-line, groundfish pot gear, groundfish jig gear, and other non-trawl fishery categories). The fishery bycatch allowances for the trawl and nontrawl fisheries are listed in Table 7.

The fishery bycatch allowances listed in Table 7 reflect the recommendations made to the Council by its AP. These recommendations are unchanged from those specified for 1996. The justification for these allowances is discussed in the February 5, 1996, publication of the final 1996 specifications (61 FR 4311). As mentioned above, if NMFS approves Amendment 37 to the FMP, the proposed red king crab bycatch allowances listed in Table 7 would be reduced by 50 percent.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. As in 1995 and 1996, the Council proposes to exempt the 1997 pot gear, jig gear, and sablefish hook-and-line gear fishery categories from halibut bycatch restrictions.

The Council proposed that the pot and jig gear fisheries be exempt from

halibut bycatch restrictions because these fisheries use selective gear types that experience low halibut bycatch mortality. In 1996 through September, total groundfish catch for the pot gear fishery in the BSAI was approximately 30,585 mt with an associated halibut bycatch mortality of about 18 mt. The 1996 groundfish jig gear fishery harvested about 200 mt of groundfish. The jig gear fleet is made up of vessels less than 60 ft (18.3 m) length overall that are exempt from observer coverage requirements. As a result, no observer data are available on halibut bycatch in the BSAI jig gear fishery. Nonetheless, the selective nature of this gear type and the relatively small amount of groundfish harvested with jig gear will likely result in a negligible amount of halibut bycatch mortality.

As in 1995 and 1996, the Council recommended that the sablefish Individual Fishing Quota (IFQ) fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for the 1996 fishery has yet to be calculated.

TABLE 7.—PROPOSED 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
Red king crab, number of animals:			
Yellowfin sole	50,000		
Rckso/flatso/othfl ¹	110,000		
Turb/arrow/sab ²	0		
Rockfish	0		
Pacific cod	10,000		
Pick/Atka/otr ³	30,000		
Total	200,000		
<i>C. bairdi</i> Tanner crab, number of animals:			
Yellowfin sole	250,000	1,530,000	
Rckso/flatso/othfl ¹	425,000	510,000	
Turb/arrow/sab	0	0	
Rockfish	0	10,000	
Pacific cod	250,000	260,000	
Pick/Atka/otr	75,000	690,000	
Total	1,000,000	3,000,000	
Pacific halibut, mortality (mt):			
Yellowfin sole			820
Rckso/flatso/othfl ¹			730
Turb/arrow/sab			0
Rockfish			110
Pacific cod			1,855
Pick/Atka/otr			430
Total			3,775
Pacific herring (mt):			
Midwater pollock			1,227
Yellowfin sole			287

TABLE 7.—PROPOSED 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
Rckso/flatso/othfl ¹			0
Turb/arrow/sab			0
Rockfish			7
Pacific cod			22
Pick/Atka/otr ⁴			154
Total			1,887
Pacific halibut, mortality (mt):			
Pacific cod hook-and-line			500
Sablefish hook-and-line			(⁵)
Groundfish pot gear			(⁵)
Groundfish jig gear			(⁵)
Other non-trawl			100
Total			500

¹ Rock sole, flathead sole, and other flatfish fishery category.

² Greenland turbot, arrowtooth flounder, and sablefish fishery category.

³ Pollock, Atka mackerel, and "other species" fishery category.

⁴ Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.

⁵ Exempt.

Seasonal Apportionments of PSC limits

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances. At its September 1996 meeting, the Council adopted the AP's recommendation not to propose seasonal apportionments of the trawl bycatch allowances at this time. Nonetheless, NMFS anticipates the Council will consider seasonal apportionments during its December 1996 meeting.

The Council proposed to roll over the 1996 seasonal apportionment scheme of the halibut bycatch allowance specified for the Pacific cod hook-and-line fishery. The intent of this proposal was to provide amounts of halibut necessary to support the harvest of the seasonal apportionments of Pacific cod TAC listed in Table 4, as well as limit a hook-and-line fishery for Pacific cod during summer months when halibut bycatch rates are high. As authorized under § 679.21(e)(5)(iv), the Council further recommended that any unused portion of the first seasonal halibut bycatch allowance specified for the Pacific cod hook-and-line fishery be reapportioned to the third seasonal allowance to avoid opportunity for additional fishing for Pacific cod during summer months. Any overage of a halibut bycatch allowance would be deducted from the remaining seasonal bycatch allowances specified for 1997 in amounts proportional to those remaining seasonal bycatch allowances.

TABLE 8.—PROPOSED SEASONAL AP-PORTIONMENTS OF THE 1997 PRO- HIBITED SPECIES BYCATCH ALLOW- ANCES FOR THE BSAI NON-TRAWL FISHERIES

Fishery	Sea-sonal bycatch allow-ance
Pacific cod hook-and-line: ¹	
Jan. 01–Apr. 30	475
May 01–Aug. 31	40
Sep. 01–Dec. 31	285
Total	800
Other non-trawl:	
Jan. 01–Dec. 31	100

¹ Any unused portion of the first seasonal halibut bycatch allowance specified for the Pacific cod hook-and-line fishery will be reapportioned to the third seasonal allowance. Any overage of a seasonal halibut bycatch allowance would be deducted from the remaining seasonal bycatch allowances specified for 1997 in amounts proportional to those remaining seasonal bycatch allowances.

For purposes of monitoring the fishery halibut bycatch mortality allowances and apportionments, the Administrator, NMFS, Alaska Region (Regional Administrator) (formerly Regional Director) will use observed halibut bycatch rates and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors the fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

The Council proposed that the assumed halibut mortality rates developed by staff of the International Pacific Halibut Commission (IPHC) for the 1996 BSAI groundfish fisheries be rolled over for purposes of monitoring halibut bycatch allowances established for the 1997 groundfish fisheries. The justification for these mortality rates is discussed in the February 5, 1996, publication of the 1996 final specifications. The proposed mortality rates listed in Table 9 are subject to change pending the results of an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff are scheduled to present to the Council at its Council's December 1996 meeting.

TABLE 9.—PROPOSED ASSUMED PA- CIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1997

Fishery	Assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	24
Pacific cod	11.5
Greenland turbot	22
Sablefish	17
Trawl gear fisheries:	
Midwater pollock	68
Non-pelagic pollock	78
Yellowfin sole	73
Rock sole, flathead sole, other flatfish	73
Rockfish	75
Pacific cod	63
Atka mackerel	63
Arrowtooth flounder	49
Greenland turbot	49
Sablefish	49

TABLE 9.—PROPOSED ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1997—Continued

Fishery	Assumed mortality (percent)
Other species	82
Pot gear fisheries	
Pacific cod	7

Classification

This action is authorized under 50 CFR part 679 and is exempt from review under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed specification, if issued as proposed, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed specifications would establish TAC and ABC amounts for the 1997 fishing year. In addition, the proposed specifications would establish overfishing levels, prohibited species catch allowances, seasonal allowances of the pollock TAC, and amounts for the pollock and sablefish Community Development Quota reserve.

The proposed 1997 TAC is 57,000 metric tons or 2.85 percent less than the 1996 final TAC. The difference reflects reduced abundance of several species based on NMFS biological surveys and industry catch reports. The number of fixed gear and trawl catcher vessels expected to be operating as small entities in the Bering Sea and Aleutian Islands groundfish fishery is 356, excluding catcher/processor vessels. All these small entities will be affected by the harvest limits established in the 1997 specifications but changes from 1996 are relatively minor and are expected to be shared proportionally among participants. For this reason, the expected effects will not likely cause a reduction in gross revenues of more than 5 percent, increase compliance costs by more than 10 percent, or force small entities out of business.

The Alaska commercial fishing industry is accustomed to shifting effort among alternative species and management areas in

response to changes in TAC between years and inseason closures. Such mobility is necessary to survive in the open access fishery. Therefore, the annual specification process for Alaska groundfish for 1997 would not have significant economic impact on a significant number of small entities.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1997 SAFE Report will be available for public review at the December 1996 Council meeting. After the December meeting, a final EA will be prepared on the final TAC amounts recommended by the Council.

Consultation pursuant to section 7 of the Endangered Species Act has been initiated for the 1997 initial specifications.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

Dated: November 19, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96-30045 Filed 11-22-96; 8:45 am]

BILLING CODE 3010-20-W

Notices

Federal Register

Vol. 61, No. 229

Tuesday, November 20, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE**Secretary of Agriculture's Special Cotton Import Quota Announcement Number 20**

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,983,440 kilograms (99,171,591 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 20, effective January 11, 1997, and is set forth in subheading 9903.52.20, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of January 11, 1997, and applies to upland cotton purchased not later than April 10, 1997 (90 days from the date the quota is established), and entered into the United States not later than July 9, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmunt, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013-2415 or call (202) 720-8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1-3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents

per pound. This condition was met during the consecutive 10-week period that ended October 17, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 20, effective January 11, 1997, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.20 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 20, effective July 15, 1996, through January 10, 1997. Therefore, the special import quota described in this notice opens on January 11, 1997, the day after the previous special import quota 20 ends.

The quota amount, 44,983,440 kilograms (99,171,591 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—June 1996 through August 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104-127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on November 18, 1996.

DAN GLICKMAN,
Secretary.

[FR Doc. 96-30166 Filed 11-25-96; 8:45 am]
BILLING CODE 3410-05-P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 19

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,983,440 kilograms (99,171,591 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 19, effective January 4, 1997, and is set forth in subheading 9903.52.19, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of January 4, 1997, and applies to upland cotton purchased not later than April 3, 1997 (90 days from the date the quota is established), and entered into the United States not later than July 2, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmunt, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013-2415 or call (202) 720-8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1-3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended October 10, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 19, effective January 4, 1997, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during

a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.19 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 19, effective July 8, 1996, through January 3, 1997. Therefore, the special import quota described in this notice opens on January 4, 1997, the day after the previous special import quota 19 ends.

The quota amount, 44,983,440 kilograms (99,171,591 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—June 1996 through August 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104-127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on November 18, 1996.

Dan Glickman,
Secretary.

[FR Doc. 96-30169 Filed 11-25-96; 8:45 am]
BILLING CODE 3410-06-P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 18

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,983,440 kilograms (99,171,591 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 18, effective December 28, 1996, and is set forth in subheading 9903.52.18, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of December 28, 1996, and applies to upland cotton purchased not later than March 27, 1997 (90 days from the date the quota is established), and entered into the United States not later than

June 25, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmunt, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013-2415 or call (202) 720-8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 $\frac{1}{2}$ inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended October 3, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 18, effective December 28, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.18 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 17, effective July 1, 1996, through December 27, 1996. Therefore, the special import quota described in this notice opens on December 28, 1996, the day after the previous special import quota 17 ends.

The quota amount, 44,983,440 kilograms (99,171,591 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—June 1996 through August 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104-127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on November 18, 1996.

Dan Glickman,
Secretary.

[FR Doc. 96-30170 Filed 11-25-96; 8:45 am]
BILLING CODE 3410-06-P

Office of the Secretary

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 17

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,983,440 kilograms (99,171,591 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 17, effective December 21, 1996, and is set forth in subheading 9903.52.17, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of December 21, 1996, and applies to upland cotton purchased not later than March 20, 1997 (90 days from the date the quota is established), and entered into the United States not later than June 18, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmunt, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013-2415, or call (202) 720-8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 $\frac{1}{2}$ inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended September 26, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement

Number 17, effective December 21, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.17 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 16, effective June 24, 1996, through December 20, 1996. Therefore, the special import quota described in this notice opens on December 21, 1996, the day after the previous special import quota 16 ends.

The quota amount, 44,983,440 kilograms (99,171,591 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—June 1996 through August 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104-127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on November 18, 1996.

Dan Glickman,
Secretary.

[FR Doc. 96-30171 Filed 11-25-96; 8:45 am]
BILLING CODE 3410-06-P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 16

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,403,388 kilograms (97,892,793 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import

Quota Announcement Number 16, effective December 14, 1996, and is set forth in subheading 9903.52.16, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of December 14, 1996, and applies to upland cotton purchased not later than March 13, 1997 (90 days from the date the quota is established), and entered into the United States not later than June 11, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmunt, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013-2415 or call (202) 720-8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 $\frac{1}{2}$ inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended September 19, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 16, effective December 14, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.16 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 15, effective June 17, 1996, through December 13, 1996. Therefore, the special import quota described in this notice opens on December 14, 1996, the day after the previous special import quota 15 ends.

The quota amount, 44,403,388 kilograms (97,892,793 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the

seasonally-adjusted average rate of the most recent 3 months for which data are available—May 1996 through July 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub. L. 104-127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on November 18, 1996.

Dan Glickman,
Secretary.

[FR Doc. 96-30172 Filed 11-25-96; 8:45 am]
BILLING CODE 3410-06-P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 15

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,403,388 kilograms (97,892,793 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 15, effective December 7, 1996, and is set forth in subheading 9903.52.15, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of December 7, 1996, and applies to upland cotton purchased not later than March 6, 1997 (90 days from the date the quota is established), and entered into the United States not later than June 4, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmunt, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013-2415 or call (202) 720-8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 $\frac{1}{2}$ inch

inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended September 12, 1996.

Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 15, effective December 7, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.15 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 15, effective June 10, 1996, through December 6, 1996. Therefore, the special import quota described in this notice opens on December 7, 1996, the day after the previous special import quota 15 ends.

The quota amount, 44,403,388 kilograms (97,892,793 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—May 1996 through July 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub. L. 104-127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on November 18, 1996.

Don Glickman,

Secretary.

[FR Doc. 96-30173 Filed 11-25-96; 8:45 am]

BILLING CODE 3410-26-P

Kootenai National Forest, Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plan

(Forest Plan) for the Kootenai National Forest.

SUMMARY: This notice announces the beginning of the efforts to revise the Land and Resource Management Plan (Forest Plan) for the Kootenai National Forest. This is not the Notice of Intent (NOI) for the Environmental Impact Statement (EIS) that will accompany the Revised Forest Plan. That NOI will be issued at a later date.

The beginning efforts are to prepare the "Analysis of the Management Situation" (AMS) per 36 CFR 219.12(e). This includes analysis of local conditions and consideration of broad scale information from the Interior Columbia Basin Ecosystem Management Project (ICBEMP) EIS. The AMS and ICBEMP EIS will be used to determine the Kootenai National Forest's Need for Change. This information will then provide a basis for the NOI to prepare the EIS, which will begin the National Environmental Policy Act (NEPA) process associated with Forest Plan revision.

Public involvement is critical and will be requested throughout this effort. The forest is developing a communication strategy to document how the public and government entities may participate in the AMS and revision of the forest Plan. Formal public involvement, associated with the Forest Plan revision, will also be conducted through scoping following the issuance of the EIS Notice of Intent.

DATE: A supplemental notice will be placed in the Federal Register announcing the beginning of formal scoping for the Forest Plan revision DEIS. The notice will provide an opportunity to comment and the expected completion dates. This notice is anticipated to be issued in the winter/spring of 1998.

ADDRESSES: Send written comments concerning this notice, communication strategy and requests to be added to the Forest Plan revision mailing list to Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 Highway 2 West, Libby, Montana 59923.

FOR FURTHER INFORMATION CONTACT: Joan Dickerson, Forest Planner, Kootenai National Forest, phone (406) 293-4211.

SUPPLEMENTARY INFORMATION: The Forest Plan for the Kootenai National Forest was completed in September, 1987 and has guided the management of the Forest since then. Forest Plans are revised on a 10-year cycle or at least every 15 years. It also may be revised whenever the Forest Supervisor determines that conditions or demands

in the area have significantly changed (36 CFR 219.10(g)).

On November 20, 1995 the Chief of the Forest Service issued a decision on an appeal by the Cabinet Resource Group and Montana Wilderness Association regarding the Kootenai Forest Plan. The Chief directed the Regional Forester to:

(a) Incorporate through Forest Plan amendment or revision the terms and conditions of the U.S. Fish and Wildlife Service's (USFWS) July 27, 1995 amended Biological Opinion on the Forest Plan relating to road management;

(b) Incorporate through Forest Plan amendment or revision the terms and conditions of the amended Biological Opinion relating to grizzly bear management and incorporate the Interagency Grizzly Bear Guidelines in their entirety;

(c) Amend or revise the Forest Plan if a review determines that it is not in compliance with new regulations for oil and gas resources.

(d) Amend or revise the Forest Plan to correct the ASQ calculation, based on a more accurate method of summarizing the timber inventory data, to bring the analysis into technical compliance.

In addition to the Chief's direction, monitoring and evaluation of the Forest Plan has shown that many factors affecting land management have changed since the time the Forest Plan was prepared. Therefore, the agency has chosen to revise, rather than amend the Kootenai Forest Plan. Revision will provide opportunity to update the Plan to more adequately account for such changing factors. The Forest's annual monitoring reports describe these factors.

The Forest Plan, as approved September 14, 1987 and amended through project specific or programmatic amendments, will remain in effect and continue to be implemented as modified by the Chief's November 27, 1995 decision (to limit average annual program sales to 150 MMBF).

(1) Preparation of the ICBEMP

In addition, another planning effort is currently ongoing that involves the Kootenai National Forest. This effort is the Interior Columbia Basin Ecosystem Management Project (ICBEMP) EIS, which will address issues relevant to the Kootenai National Forest and likely result in changes in the Forest Plan. Notice of this effort and supporting information was previously published in the Federal Register on December 4, 1994. The purpose of the ICBEMP is to develop and analyze a

scientifically sound, ecosystem-based strategy for management of lands administered by the United States Department of Agriculture (USDA) Forest Service. * * * The strategy will modify existing Forest Plans and will focus on forest, rangeland, and aquatic/riparian ecosystem health and the sustainability of threatened, endangered, and sensitive species."

Direction from the Record of Decision for the ICBEMP EIS is assumed to be in place for 10 years. Forest Plan direction that is specific to the Kootenai National Forest (such as standards applicable to particular areas) will be revisited at the time of Forest Plan revision. Direction that applies to multiple units (such as broad scale objectives) will remain in place to guide forest plan revision. It is the intent that the Kootenai Forest Plan revision will be designed to achieve this ICBEMP broad scale direction.

Therefore, the revision schedule for the Kootenai National Forest Plan will be coordinated with the information and decisions produced by the ICBEMP EIS.

(2) Beginning of the Forest Plan Revision Effort

This notice announces that the Kootenai National Forest is beginning the effort to revise the Land and Resource Management Plan. The forest is in the process of preparing the AMS, one of the first steps in the revision process. This step includes defining the current situation, reviewing new information, reviewing monitoring and evaluation results, estimating supply capabilities and resource demands, and determining the Need for Change (36 CFR 219.12(e)(5)).

As part of the AMS a communication strategy is being developed. The purpose of this strategy is to document how the public and government entities may participate in the AMS and revision of the Forest Plan on an ongoing basis. Suggestions on the formation of the communication strategy are welcome. In addition, the Forest Plan mailing list is being updated. Send a letter to the address above to add your name to the mailing list.

Another critical element in describing the need for change is determining the concerns and expectations of National Forest constituents and getting public input on how well the current forest plan is working. A social assessment for the Kootenai Forest was completed in July 1995. The assessment provides the initial information about how people in surrounding communities perceive the resources of the Kootenai Forest and their management. This assessment is one information source for describing

the need for change. Additional information will be requested as portions of the AMS are assessed.

(3) Relationship Between the AMS and the Notice of Intent to Prepare the Environmental Impact Statement

In the past, a "Notice of Intent to Prepare an Environmental Impact Statement" was issued at the beginning of the forest planning process, and before the development of the AMS. This time, we are first defining the current situation and an initial need for change in a Draft AMS, and will issue a NOI to prepare an EIS prior to developing alternatives. The draft AMS is scheduled to be completed in the fall of 1998. The NOI to prepare an EIS would be issued after this date. The NOI to prepare an EIS will include (1) a proposed action and purpose and need; (2) preliminary issues and; (3) preliminary alternatives. Scoping to receive public comments on the proposed action and alternatives will follow the publication of the NOI. These public comments will be used to further refine the proposed action and the alternatives, to possibly identify additional alternatives, and to finalize the AMS and the need for change. It will also start the formal NEPA process of preparing the EIS that will accompany the Revised Land and Resource Management Plan.

(4) The Responsible Official

The responsible official is Richard M. Bacon, Deputy Regional Forester, Northern Region, 200 East Broadway, PO Box 7669, Missoula, Montana 59807.

Dated: November 20, 1996.

Richard M. Bacon,

Deputy Regional Forester.

[FR Doc. 96-30271 Filed 11-25-96; 8:45 am]

BILLING CODE 3410-11-31

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 2:00 p.m. on Saturday, December 14, 1996, at the Holiday Inn at Union Square, 480 Sutter Street, San Francisco, California 94108. The purpose of the meeting is to discuss the status of on-going projects and plan future activities.

Persons desiring additional information, or planning a presentation

to the Committee, should contact Committee Chairperson Fernando Hernandez, 310-696-0104, or Philip Montez, Director of the Western Regional Office, 213-694-3437 (TDD 213-694-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 96-30188 Filed 11-25-96; 8:45 am]
BILLING CODE 6225-01-P

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on Monday, December 16, 1996, at the Hall of Justice, 65 Exchange Boulevard, Rochester, New York 14614. The purpose of the meeting is to convene a factfinding meeting for the purpose of gathering information on equal housing opportunities in section 8 housing in Rochester.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson M. D. Taracido, 212-645-8999, or Ki-Taeek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 96-30189 Filed 11-25-96; 8:45 am]
BILLING CODE 6225-01-P

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on Tuesday, December 17, 1996, at the T.J. Dulski Community Center, 129 Lewis Street, Buffalo, New York 14208. The purpose of the meeting is to convene a factfinding meeting for the purpose of gathering information on equal housing opportunities in section 8 housing in Buffalo.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson M.D. Taracido, 212-645-8999, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96-30190 Filed 11-25-96; 8:45 am]

BILLING CODE 6998-01-P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 961107314-6313-01]

FIN 0807-XX24

American Community Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182 and 225, I have determined that data from the American Community Survey are needed to evaluate a design to collect timely data for small areas and small subpopulations on a continual basis rather than every ten years. Government agencies use these data to distribute funding for various programs. The American Community Survey will also provide data for agencies to evaluate the performance of programs. The general

public uses the data to examine information like housing quality, commuting patterns, and regional age distributions for planning purposes. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Lawrence S. McGinn, Assistant Division Chief for Continuous Measurement, Demographic Statistical Methods Division, on (301) 763-8327.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major census authorized by Title 13, United States Code. The data from this survey will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade for small areas and small subpopulations. Currently, the decennial census is the only source of data available for small area levels and, therefore, these data are collected only once every ten years. A continuous measurement system also would provide a mechanism for identifying and sampling subpopulation groups for future surveys which will be of great benefit to the Federal Statistical System and provide data needed by other agencies.

This survey will be a full-scale implementation of continuous measurement in eight test sites. The survey will also include a national sample to test and evaluate questionnaire designs. We will also test follow-up for nonresponse cases for which we have a telephone number. The data collected in this survey will be within the general scope and nature of those inquiries covered in the decennial census every ten years.

The Census Bureau will select the housing units for the survey from a sample of eight sites selected to test full continuous measurement operations and a sample from designated areas around the country to obtain mail response rates. The Bureau will mail questionnaires to the households covered by this survey and require the submission as soon as possible after receipt. Participation of the selected households will be mandatory in accordance with the provisions of Title 13, United States Code.

This survey was approved by the Office of Management and Budget (OMB) for public use under OMB control number 0607-0810 in accordance with the Paperwork Reduction Act, Public Law 104-13. We will provide copies of the forms upon

written request to the Director, Bureau of the Census, Washington, D.C. 20233. Based upon the foregoing, I have directed that the American Community Survey be conducted for the purpose of collecting these data for evaluation of the procedures related to a continuous measurement operation.

Dated: November 13, 1996.

Martha Farnsworth Riche,
Director, Bureau of the Census.

[FR Doc. 96-30179 Filed 11-25-96; 8:45 am]

BILLING CODE 3010-07-P

[Docket No. 961107313-6313-01]

FIN 0807-XX23

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases, and accounts receivable to provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, year-end inventories, purchases, and accounts receivable balances for 1995 and 1996. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Plencykowski or Dorothy Engleking, Services Division, on (301) 457-2713.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1996 Annual Retail Trade Survey. We

will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey was submitted to the Office of Management and Budget (OMB), and approved under OMB control number 0607-0013 in accordance with the Paperwork Reduction Act, Public Law 104-13. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based upon the foregoing, I have directed that the Annual Retail Trade Survey be conducted for the purpose of collecting these data.

Dated: November 7, 1996.

Martha Farnsworth Riche,
Director, Bureau of the Census.

[FR Doc. 96-30178 Filed 11-25-96; 8:45 am]

BILLING CODE 3010-07-P

Economic Development Administration

Notice of Intent to Prepare a Draft Environmental Impact Statement for Development of a New Business Park to be Located in Lackawanna County, Pennsylvania

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement.

SUMMARY: The Economic Development Administration (EDA) is issuing this notice to advise the public that a draft Environmental Impact Statement (EIS) will be prepared and considered in EDA's decision whether to provide federal financial assistance for the development of a new business park to be located in Lackawanna County, Pennsylvania.

SUPPLEMENTARY INFORMATION: EDA received an application from the Scranton Lackawanna County Industrial Building Company (SLIBCO) for financial assistance from EDA to develop a new business park, located in Lackawanna County, Pennsylvania. EDA initially made the award, but suspended the grant to undertake further review of the impacts of developing such a business park at the selected location. SLIBCO studied several alternative sites before selecting the proposed site located in the Borough of Jessup, approximately eight miles northeast of the City of Scranton, along SR 247, referred to as Moosic Mountain. Additionally, the Federal Bureau of

Prisons (Bureau), U.S. Department of Justice, is considering locating a federal correctional facility in the area, and is considering a portion of the Moosic Mountain site as a location for that facility. The Bureau plans to cooperate with EDA as necessary during the process and to distribute for public review documentation if applicable, which further discusses the Bureau's proposal.

Whether, and upon what conditions, EDA should award financial assistance to develop the Moosic Mountain site in the manner proposed by SLIBCO will be the subject of a detailed study in the form of a draft EIS. The topics to be studied as part of the draft EIS include, but are not limited to: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, hazardous materials, air and noise quality, and secondary and cumulative impacts, among others.

PUBLIC SCOPING MEETING: To ensure that the full range of issues related to the proposed action are addressed and all potential significant issues are identified and considered, comments and suggestions are being solicited to facilitate receipt of comments, representatives of EDA will conduct a Scoping Meeting to which all interested persons are invited to attend. The Scoping Meeting will be held at a location convenient to the citizens of Lackawanna County. Both written and oral comments will be accepted at the meeting.

DRAFT EIS PREPARATION: Public notice will be given concerning the availability of the draft EIS for public review and comment.

FOR FURTHER INFORMATION CONTACT: Edward Hummel, Regional Environmental Officer, U.S. Department of Commerce, Economic Development Administration, The Curtis Center—Suite 140 South, 600 Walnut Street, Philadelphia, Pennsylvania 19106, Telephone 215.597.6767.

Dated: November 15, 1996.

Edward Hummel,

Regional Environmental Officer.

[FR Doc. 96-30083 Filed 11-25-96; 8:45 am]

BILLING CODE 3010-04-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review no. 92-00006.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to McChris International. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to McChris International.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on July 2, 1992 to McChris International.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation. [Sections 325.10(a) and 325.14(c) of the Regulations.]

The Department of Commerce sent to McChris International on June 21, 1996, a letter containing annual report questions with a reminder that its annual report was due on August 16, 1996. Additional reminders were sent on August 26, 1996, and on October 10, 1996. The Department has received no written response to any of these letters.

On November 20, 1996, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify McChris International that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the

Federal Register. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the *Federal Register* of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the *Federal Register* (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 20, 1996.

W. Dawn Busby,
Director, Office of Export Trading Company Affairs.

[FR Doc. 96-30059 Filed 11-25-96; 8:45 am]
BILLING CODE 3510-08-P

International Trade Administration.

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 89-7A016.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Geothermal Energy Association ("GEA") on February 5, 1990. Notice of issuance of the Certificate was published in the *Federal Register* on February 9, 1990 (55 FR 4647).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export

Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1995).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the *Federal Register*. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89-00016, was issued to GEA on February 5, 1990 (55 FR 4647, February 9, 1990) and previously amended on November 7, 1990 (55 FR 47784, November 15, 1990); April 17, 1991 (56 FR 16328, April 22, 1991); September 11, 1991 (56 FR 47068, September 17, 1991); October 25, 1993 (58 FR 58325, November 1, 1993); September 26, 1994 (59 FR 50575, October 4, 1994); and March 6, 1996 (61 FR 11189).

GEA's Export Trade Certificate of Review has been amended to:

1. Add the following controlling entity as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Ormat Technologies, Inc. as the controlling entity of the GEA Certificate Member Ormat International, Inc.

2. Delete the following companies as "Members" of the Certificate: University of Utah Research Institute; and Big Bear Mud & Engineering Company; and

3. Change the listing of the company names for the current members: "Calpine Corporation" d.b.a. "Santa Rosa Geothermal Company, L.P." to the new listing "Calpine Corporation"; and "UNOCAL Geothermal Division and its controlling entity, "UNOCAL Corporation" to "Union Oil of California", d.b.a. "UNOCAL and/or UNOCAL Corporation".

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 20, 1996.

W. Dawn Busby,
Director, Office of Export Trading Company Affairs.

[FR Doc. 96-30146 Filed 11-25-96; 8:45 am]
BILLING CODE 3510-08-P

Minority Business Development Agency

Nationwide Capital Development Center

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the competitive solicitation for operation of the Nationwide Capital Development Center. The solicitation was originally published in the *Federal Register*, Tuesday, July 18, 1996, Vol. 61, No. 137, Page 37047.

Dated: November 20, 1996.

Donald L. Powers,
Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96-30119 Filed 11-25-96; 8:45 am]
BILLING CODE 3510-01-P

National Oceanic and Atmospheric Administration

[I.D. 102592E]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Addition to meeting agenda.

SUMMARY: A draft agenda for the meeting of the North Pacific Fishery Management Council (Council) which is scheduled for December 11-15, 1996, in Anchorage, AK, was published on November 5, 1996. One item has been added to that draft agenda. See **SUPPLEMENTARY INFORMATION** for the addition to the meeting agenda.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907-271-2809.

SUPPLEMENTARY INFORMATION: The initial agenda published on November 5, 1996 (61 FR 56944). The following addition is

to be included in the agenda for the Council meeting:

The draft agenda for the meeting has been amended to include the subject of seabird protection, with possible emergency action to protect short-tailed albatrosses in the waters off Alaska.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907-271-2809, at least 5 working days prior to the meeting date.

Dated: November 19, 1996.

Gary C. Matlock,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 96-30076 Filed 11-25-96; 8:45 am]
BILLING CODE 3510-02-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 26, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see *Federal Register* notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62399, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
November 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on November 26, 1996, you are directed to amend the directive dated November 29, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month Level ¹
314	5,004,962 square meters.
338/339	4,021,215 dozen.
340/640	1,975,408 dozen.
363	41,672,683 numbers.
369-D ²	1,216,548 kilograms.
647/648	472,536 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1995.

² Category 369-D: Only HTS numbers 6302.60.0010, 6302.91.0005, and 6302.91.0045

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-30176 Filed 11-25-96; 8:45 am]
BILLING CODE 3510-08-P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, December 3, 1996, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

Matter to be Considered:

Crib Slats

The staff will brief the Commission on options to address hazards related to the structural integrity of side rail slats on cribs.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: November 21, 1996.

Sadye E. Dunn,
Secretary.
[FR Doc. 96-30322 Filed 11-22-96; 1:01 pm]
BILLING CODE 1555-01-M

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, December 5, 1996, 10:30 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter to be Considered:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: November 21, 1996.

Sadye E. Dunn,
Secretary.
[FR Doc. 96-30323 Filed 11-22-96; 1:01 pm]
BILLING CODE 1555-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

(OMB Control No. 9000-0111)

Proposed Collection; Comment
Request Entitled Organizational and
Consultant Conflicts of InterestAGENCIES: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).ACTION: Notice of request for public
comments regarding an extension to an
existing OMB clearance (9000-0111).SUMMARY: Under the provisions of the
Paperwork Reduction Act of 1995 (44
U.S.C. Chapter 35), the Federal
Acquisition Regulation (FAR)
Secretariat will be submitting to the
Office of Management and Budget
(OMB) a request to review and approve
an extension of a currently approved
information collection requirement
concerning Organizational and
Consultant Conflicts of Interest. This
OMB clearance currently expires on
January 31, 1997.DATES: Comment Due Date: January 27,
1997.ADDRESSES: Comments regarding this
burden estimate or any other aspect of
this collection of information, including
suggestions for reducing this burden, or
obtaining a copy of the justification,
should be submitted to: General
Services Administration, FAR
Secretariat (MVR5), 18th & F Streets,
NW, Room 4037, Washington, DC
20405. Please cite OMB Control No.
9000-0111, Organizational and
Consultant Conflicts of Interest, in all
correspondence.FOR FURTHER INFORMATION CONTACT: Paul
Linfield, Federal Acquisition Policy
Division, GSA (202) 501-1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

Organizational and Consultant
Conflicts of Interest is a regulation
which establishes policies and
procedures relating to Conflicts of
Interest Standards for Government
contractors who provide advisory and
assistance services and persons who
provide marketing consulting services to
Government contractors. The regulation
also promotes compliance with the
standards. The regulation enables the
Government to identify the number of
marketing consultants employed bysuccessful offerors for large dollar
contracts. It also provides the
Government with information to
identify, evaluate, and resolve
organizational conflicts of interest.The information gathered is used by
the Government in determining the
number of consultants employed by
contractors as marketing consultants
and to identify, evaluate, and resolve
potential conflicts of interest under
advisory and assistance service
contracts. Without this information,
identification of these individuals, and
identification, evaluation, and
resolution of conflicts of interest
situations would not be possible.

B. Annual Reporting Burden

Public reporting burden for this
collection of information is estimated to
average 2 hours per response, including
the time for reviewing instructions,
searching existing data sources,
gathering and maintaining the data
needed, and completing and reviewing
the collection of information.The annual reporting burden is
estimated as follows: Respondents,
4,000; responses per respondent, 1.5;
total annual responses, 6,000;
preparation hours per response, 2; and
total response burden hours, 12,000.

Dated: November 21, 1996.

Sharon A. Kiser,
FAR Secretariat.(FR Doc. 96-30194 Filed 11-25-96; 8:45 am)
BILLING CODE 9000-01-0Preparation of the Theater Missile
Defense Extended Test Range
Supplemental Environmental Impact
Statement—Eglin Gulf Test RangeAGENCY: Ballistic Missile Defense
Organization (BMDO).

ACTION: Notice of Intent (NOI).

SUMMARY: This notifies the public that
BMDO intends to prepare a
Supplemental Environmental Impact
Statement (SEIS) for the Eglin Gulf Test
Range (EGTR). It will support BMDO
developmental and operational flight
testing of Theater Missile Defense
(TMD) systems. The proposed action
would allow for the development and
testing of TMD systems to protect U.S.
forces, friends, and allies around the
world from attacks by ballistic missiles.
The Departments of the Air Force,
Army, and Navy, along with the Federal
Aviation Administration, Department of
Interior, and U.S. Coast Guard will be
Cooperating Agencies in this effort. As
the Executing Agent, the Air Force
Development Test Center (AFDTC),
Eglin Air Force Base (AFB), Florida, willmanage the SEIS for BMDO. The U.S.
Army Space and Strategic Defense
Command (USASSDC), Huntsville,
Alabama, will prepare the SEIS
documentation for the AFDTC. The
SEIS would analyze additional missile
launch and support locations, facility
construction, launch preparation
activities, missile flight tests, radar and
optical tracking operations, and
intercept tests not analyzed in the TMD
Extended Test Range Final
Environmental Impact Statement,
November 1994.The Record of Decision on the TMD
Extended Test Range Final
Environmental Impact Statement, March
21, 1995, documented only the selection
of U.S. Army Kwajalein Atoll, Republic
of the Marshall Islands, and the White
Sands Missile Range, New Mexico, for
TMD tests. However, additional
interceptor and target missile launch
options have been identified for the
EGTR alternative which are within
treaty and technology limitations. The
EGTR options would provide greater
flexibility in test scenarios than is
possible using other ranges, and permits
more realistic testing of TMD
interceptor systems. Copies of the TMD
Extended Test Range Final
Environmental Impact Statement should
be available at various locations within
the affected communities. The exact
locations will be available by the
beginning of public scoping meetings
and by contacting the point of contact
listed below.The purpose of expanding the EGTR's
missile defense testing capability is to
realistically test TMD systems to
validate their capability to intercept
enemy missiles with the capability of
ranges up to 1,200-kilometers (746
miles). Testing with both target and
interceptor launch facilities within the
continental United States and its
adjacent waters would provide a cost-
effective, flexible, long-term means of
meeting current and future TMD
requirements.Environmental issues to be analyzed
in the TMD Extended Test Range SEIS
for the EGTR include: Air quality;
airspace control; biological resources
(such as threatened or endangered
species and wetlands); cultural
resources; geology and soils; hazardous
materials and waste; health and safety;
land use; noise; socio-economic;
transportation; utilities; visual and
aesthetics; water resources; and other
environmental issues identified during
the scoping process.PROPOSED ACTION: The BMDO proposes
to establish the capability to conduct
missile defense testing against targetssimulating threat systems having the
capability of ranges up to 1,200-
kilometers (746 miles) with defensive
missile intercepts over the Gulf of
Mexico. The three main types of TMD
activities that will be evaluated in the
SEIS are: (1) Target launches from land
at Eglin AFB or in the Florida Keys and/
or from aircraft from the Gulf of Mexico;
(2) interceptor (defensive missile)
launches from Eglin AFB and/or ships;
and (3) intercept of the target missile by
the interceptor over the Gulf of Mexico.The ground-launch locations to be
evaluated at Eglin AFB are the Santa
Rosa Island and Cape San Blas
properties, and in the Florida Keys,
Department of Defense controlled areas
at Saddlebunch and Cudjoe Keys. These
locations, along with Boca Chica,
Dredger, Sugarloaf, and Fleming Keys,
will also be evaluated to support missile
tracking and sensor activities. The air
launched locations to be evaluated
include the airspace within the EGTR
and other locations in the Gulf of
Mexico within U.S. controlled airspace.
In addition to the No Action
Alternative, other alternatives brought
forth by the public would be considered
for evaluation in the SEIS.SCOPING PROCESS: Comments received
during the scoping process will be used
to assist the BMDO in identifying
potential impacts to the environment.
Individuals or organizations may
participate in the scoping process by:
calling toll free 1-800-831-5586 (for
information only); using E-Mail to
submit questions and concerns,
tmd_egtr@ro.com; or sending written
questions and comments to Ms. Linda
Ninh, U.S. Army Space and Strategic
Defense Command, ATTN: CSSD-EN-
V, Post Office Box 1500, Huntsville,
Alabama 35807-3801. In addition,
individuals or organizations may offer
verbal or written comments at scoping
meetings to be held between 3 p.m. and
9 p.m. in the following Florida
locations:Port Walton Beach, Holiday Inn, 1110
Santa Rosa Boulevard—21 Jan. 97
Key West, Holiday Inn, 3841 N.
Roosevelt Boulevard—27 Jan. 97
Tampa Bay, Holiday Inn—State Fair,
2708 North 50th Street—3 Feb. 97
and between 5 p.m. and 9 p.m. in the
following locations:
Port St. Joe, Port St. Joe High School,
100 Sharp Drive—23 Jan. 97
Marathon, Marathon High School, 350
Gombroer Beach Road—28 Jan. 97
Tavernier, Coral Shores High School,
00901 Old Highway—30 Jan. 97Interested citizens and public officials
will be able to receive pertinent
information regarding the developmentof the Draft SEIS at these meetings. The
AFDTC is also required to hold future
public meetings after the Draft SEIS is
prepared. The locations and dates of
these meetings will also be published in
a Federal Register notice announcing
the availability of the Draft SEIS. The
AFDTC intends to issue the Draft SEIS
in autumn 1997 for public comment and
to issue the Final SEIS in spring 1998.

Lester L. Lyles,

Lieutenant General, USAF, Director.

Dated: November 20, 1996.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

(FR Doc. 96-30089 Filed 11-25-96; 8:45 am)

BILLING CODE 9000-04-0

Department of the Army

Committee Meeting Notice

AGENCY: School of the Americas,
Training and Doctrine Command.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section
10(a)(2) of the Federal Advisory
Committee Act (P.L. 82-463),
announcement is made of the following
committee meeting:NAME OF COMMITTEE: School of the
Americas (SOA) Subcommittee of the
Army Education Advisory Committee.
DATE OF MEETING: 11 and 12 December
1996.
PLACE OF MEETING: School of the
Americas, Building 35, Fort Benning,
Georgia.TIME OF MEETING: 0900-1630 on 11
December 1996; 0900-1800 on 12
December 1996.PROPOSED AGENDA: Orientation briefings
on current SOA Subcommittee issues.1. Purpose of Meeting: This is the
second SOA Subcommittee meeting.
The subcommittee will receive a series
of briefings they requested as a result of
the first subcommittee meeting.2. Meeting of the Advisory Committee
is open to the public. Due to space
limitations, attendance may be limited
to those persons who have notified the
Committee Management Office in
writing at least 5 days prior to the
meeting date of their intent to attend.3. Any member of the public may file
a written statement with the committee
before, during, or after the meeting. To
the extent that time permits, the
subcommittee chairman may allow
public presentations of oral statements
at the meeting.FOR FURTHER INFORMATION CONTACT: All
communications regarding this
subcommittee should be addressed toLieutenant Colonel Franklin Mitalvo,
Designated Federal Official, U.S. Army
School of the Americas, ATTN: ATZB-
SAZ-CS, Fort Benning, Georgia, 31905-
6245.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

(FR Doc. 96-30126 Filed 11-25-96; 8:45 am)

BILLING CODE 3710-06-0

Intent to Grant an Exclusive License to
SciClone PharmaceuticalsAGENCY: Office of The Judge Advocate
General, Defense.

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR
§ 404 et seq., the Department of the
Army hereby gives notice of its intent to
grant to SciClone Pharmaceuticals, a
corporation having its principal place of
business at 90 Mariner's Island Blvd.,
San Mateo, CA 94404, an exclusive
license under U.S. Patent Applications
Serial Numbers 07/878,372 filed 4 May
1992 and 08/145,660 filed 4 November
1993 respectively, and all continuations,
continuations-in-part, divisionals, and
reissues of the same, and all
corresponding foreign patent
applications which have been or will be
filed. These applications relate to a
composition for and a method of
treating hepatitis C. Objections along
with supporting evidence, if any, should
be filed within 60 days from the date of
this notice.FOR FURTHER INFORMATION CONTACT:
Earl T. Reichert, Intellectual Property
Law Division, Office of The Judge
Advocate General, DA ATTN: JALS-IP,
901 North Stuart Street Arlington, VA
22203-1837.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

(FR Doc. 96-30125 Filed 11-25-96; 8:45 am)

BILLING CODE 3710-06-0

Intent to Grant an Exclusive or Partially
Exclusive License to Superconducting
Core TechnologiesAGENCY: U.S. Army Research
Laboratory.

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR
404 et seq., the Department of the Army
hereby gives notice of its intent to grant
to Superconducting Core Technologies,
a corporation having its principal place
of business at 720 Corporate Circle,
Golden, Colorado, 80401, an exclusive
or partially exclusive license under
U.S. Patents 5,486,491, issued 23 Jan

1996, entitled "Ceramic Ferroelectric Composite Material—BSTO—ZRO₂," 5,312,790, issued 17 May 1994, entitled "Ceramic Ferroelectric Material"; and 5,427,988, issued 27 Jun 1995, entitled "Ceramic Ferroelectric Composite Material—BSTO—MGO". Anyone wishing to object to the granting of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rauss, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL-CS-TT/Bldg. 450, Aberdeen Proving Ground, Maryland 21005-5425, phone (410) 278-5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer,
[FR Doc. 96-30081 Filed 11-25-96; 8:45 am]
BILLING CODE 3710-06-01

Corps of Engineers

Dredged Material Management Plan for the Port of New York/New Jersey

AGENCY: U.S. Army Corps of Engineers, New York District.

ACTION: Notice of Intent.

SUMMARY: The action being taken is the evaluation of the dredged material management alternatives for the Port of New York/New Jersey. The purpose of the CEIS is to produce a series of alternatives and preferred plan(s) for the disposal of dredged material. The selection(s) will be based on extensive scientific data including information currently being collected.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Kurtz, or for the Interim Report Mr. Jeffery Fry at (212) 264-1275, Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278-0090.

SUPPLEMENTARY INFORMATION: The proposed action is the promulgation of a draft CEIS that will evaluate the proposed course(s) of action to dispose of sediment removed from Federal channels within the Port of New York/New Jersey. The authority for this draft CEIS is under existing Operations and Maintenance authority of the New York Harbor Navigation Project in accordance with EC 1165-2-200 (National Harbor Program: Dredged Material Management Plans).

Alternatives including the no-action alternative, will be considered in addition to the following: containment disposal facilities (contiguous to land, and as islands in the ocean and the

Atlantic Bight Apex); sub-aqueous borrow pits (both existing and new), upland disposal, beneficial uses (e.g. wetlands creation); and management options such as sediment decontamination, and sediment reduction.

The scoping process for the Dredged Material Management Plan for the Port of New York/New Jersey has been ongoing and has included public involvement in the form of meetings, forums, and workshops to address the needs and concerns of the public. This process will continue through the current phase of planning and will also include close coordination for the draft CEIS. A public notice will be issued to inform all interested parties of any upcoming meetings.

Significant issues have been identified and include: contaminated sediment concerns and its adverse effects to the marine biota including fisheries, the food chain, endangered and threatened species, and marine mammals, as well as potential adverse effects on human health, such as the relationship of bioaccumulation and food supply, and loss of commercial and recreational fishing areas. Concern has also been expressed regarding the potential effects on tidal ranges, salinity currents, shoreline erosion, flooding, sediment transport, and other physical/chemical features of the system, as well as, groundwater, wetlands, aesthetic values and cultural resources. Further analysis will include adverse effects associated with a failure to act causing the Port of New York/New Jersey to be lost as a viable place to import and export cargo, and for contaminated sediments that accumulate in these areas.

The United States Army Corps of Engineers is the lead agency and has conducted a substantial number of studies performed in conjunction with previous EIS' on the management of dredged material for the Port of New York/New Jersey, and more are presently being conducted in concert with this draft CEIS. These studies include: sediment profile imagery, fishery data collection, hydrodynamic modeling, bathymetric, and side-scan sonar surveys, core sampling, cultural resources, and sediment contaminant investigations. Agencies including the United States Environmental Protection Agency (USEPA), National Marine Fisheries Service (NMFS), and the U.S. Geological Service (USGS) are cooperating to provide data and input to the draft CEIS.

The Dredged Material Management Integrated Working Group (DMMIWG) which is composed of Federal, New

York and New Jersey State agencies, the interested public, and environmental groups, have been reviewing the studies and alternatives during the formulation process and will continue to advise during the draft CEIS promulgation. Section 7 consultation will be conducted with the U.S. Fish and Wildlife Service and NMFS. Further, both the New York and New Jersey Natural Heritage Program offices will be consulted. Additionally, environmental review of Cultural Resources will be conducted by the State Historic Preservation Offices of New York and New Jersey.

A more detailed identification and preliminary assessment of impacts is contained in the Interim Report of the DMMP. Copies of the report are available from the point of contact identified at the beginning of this notice.

The time(s), date(s), and location(s) of scoping sessions are to be determined. The draft CEIS is currently estimated to be available for public review during July 1998.

Gregory D. Showalter,
Army Federal Register Liaison Officer,
[FR Doc. 96-30124 Filed 11-25-96; 8:45 am]
BILLING CODE 3710-06-01

DEPARTMENT OF ENERGY

Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy.

ACTION: Solicitation of applications for grant awards for High-Energy-Density and Laser-Matter Interaction Studies.

SUMMARY: Pursuant to 10 CFR Subpart 600.8, the U.S. DOE announces that it plans to conduct a technically competitive solicitation for basic research experiments in high-energy-density and laser-matter interaction studies at the National Laser Users' Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics (UR/LLE).

Grant Solicitation No. DE-P903-97SF21293

Universities or other higher education institution, private not-for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the Fiscal Year 1998 (FY98) program cycle is \$700,000. Multiple awards are anticipated.

FOR FURTHER INFORMATION CONTACT: James Solomon, Contracting Officer, DOE Oakland Operations Office, 1301 Clay Street, Room 700N, Oakland, CA 94612-5208. Telephone No.: (510) 837-

1985, Facsimile No.: (510) 837-2074, E Mail: james.solomon@oak.doe.gov.

SUPPLEMENTARY INFORMATION: The solicitation document contains all the information relative to this action for prospective applicants. The solicitation is targeted for release on or about January 7, 1997. The actual work to be accomplished will be determined by the experiments and diagnostic techniques that are selected for award. Proposed experiments and diagnostic techniques will be evaluated through scientific peer review against predetermined, published and available criteria. Final selection will be made by the DOE. It is anticipated that multiple grants will be awarded within the available funding. The unique resources of the NLUF are available, on a no-fee basis, to scientists for state-of-the-art experiments primarily in the area of inertial confinement fusion (ICF) and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, materials science and biology and chemistry will be considered on a secondary basis.

The LLE was established in 1970 to investigate the interaction of high-power lasers with matter. Available at the LLE for NLUF researchers is the upgraded Omega Laser, a 30-40 kJ UV, 60 beam laser system (at 0.35um) suitable for direct-drive ICF implosions and other experimental configurations. This system is suitable for a variety of experiments including laser-plasma interactions and atomic spectroscopy.

The NLUF program for FY92 will support experiments that can be done with the Omega Laser at the University of Rochester and development of diagnostic techniques suitable for the Omega Laser system. Measurements of the laser coupling, laser-plasma interactions, core temperature, and core density are needed to determine the characteristics of target implosions. Diagnostic techniques could include either new instrumentation, development of analysis tools, or development targets that are applicable for 30-40 kJ implosions. Additional technical information about the available facilities and potential collaboration at the NLUF can be obtained from: Dr. John M. Soures, Manager, National Laser Users' Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623-1299.

Dated: November 19, 1996.

Joan Macrusky,
Chief, Financial Assistance Branch, Program Acquisition and Assistance Division.

[FR Doc. 96-30141 Filed 11-25-96; 8:45 am]
BILLING CODE 5400-01-P-01

Environmental Management Site-Specific Advisory Board, Nevada Test Site; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 88 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATE: Wednesday, December 4, 1996: 5:30 p.m.—9:00 p.m.

ADDRESS: Community College of Southern Nevada (Cheyenne Avenue Campus), High Desert Conference and Training Center, Room 1422, 3200 East Cheyenne Avenue, North Las Vegas, Nevada 89030-4296. 702-651-4294.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193-8513, phone: 702-295-0197.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

December Agenda

5:30 pm—Call to Order
5:40 pm—Presentations
7:00 pm—Public Comment/Questions
7:30 pm—Break
7:45 pm—Review Action Items
8:00 pm—Approve Meeting Minutes
8:10 pm—Committee Reports
8:45 pm—Public Comment
9:00 pm—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue,

SW, Washington, DC 20585, between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on November 20, 1996.

Rachel M. Seimel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96-30142 Filed 11-25-96; 8:45 am]
BILLING CODE 5400-01-P

Certification of the Radiological Condition of the Alba Craft Site in Oxford, Ohio, 1995

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed remedial actions to decontaminate properties in Oxford, Ohio. Formerly, the properties were found to contain quantities of residual radioactive material resulting from activities conducted by contractors for DOE or its predecessors at the former Alba Craft Laboratory, Inc. Radiological surveys show that the properties now meet applicable requirements for use without radiological restrictions, and the docket related to cleanup activities is now available.

ADDRESSES: The docket is available from:

Public Reading Room, Room 1E-190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.
Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831.
Lane Public Library, Oxford Branch, 15 S. College Avenue, Oxford, Ohio 45055.

FOR FURTHER INFORMATION CONTACT: William E. Murphy, Acting Director, Office of Eastern Area Programs, Office of Environmental Restoration (EM-42), U.S. Department of Energy, Germantown, Maryland 20874. (301) 903-2328 Fax: (301) 903-2385.

SUPPLEMENTARY INFORMATION: DOE, Office of Eastern Area Programs, Formerly Utilized Sites Remedial Action Program (FUSRAP) Team, has conducted remedial action at the Alba Craft site in Oxford, Ohio, as part of FUSRAP. The objective of the program is to identify and remediate or otherwise control sites where residual radioactive contamination remains from activities carried out under contract with the Department's statutory predecessors

(e.g., the Manhattan Engineer District (MED) or the Atomic Energy Commission (AEC)) during the early years of the nation's atomic energy program or from commercial operations causing conditions that Congress has authorized DOE to remedy. In 1992, the Alba Craft site was designated for cleanup under FUSRAP.

Alba Craft Laboratory, Inc., under subcontract to National Lead of Ohio (NLO), a primary contractor for AEC from October 1952 to February 1957, provided a variety of machine-shop services on natural uranium metal (i.e., uranium metal that was neither enriched nor depleted but contained the uranium isotopes in natural abundance). Operations at the site consisted of hollow drilling and turning of uranium metal slugs. Production was discontinued at the site in 1957, and Alba Craft personnel decontaminated the building and equipment in accordance with NLO Industrial Hygiene Department specifications.

In 1992, DOE's Oak Ridge National Laboratory performed a radiological survey in and around the Alba Craft Laboratory building and adjacent properties suspected to have become contaminated as a result of activities conducted at the laboratory. The survey identified radioactive contamination exceeding current DOE guidelines for release of properties for use without radiological restrictions and four properties including the Alba Craft Laboratory building, and three radioactively contaminated "vicinity properties" were designated for remedial action by FUSRAP.

In addition to the laboratory property, residual radioactive contamination was found on exterior areas of vicinity properties at 525 South Main Street, 550 South Main Street, and West Rose Avenue near the Alba Craft building. The property at 525 South Main Street, where the former owner of the Alba Craft Laboratory lived, was the only vicinity property at which interior contamination was found.

Remedial action was performed at the former Alba Craft Laboratory and vicinity properties from August 1994 to January 1995. Post-remedial action surveys have demonstrated, and DOE has certified, that the subject properties are in compliance with DOE radiological decontamination criteria and standards. The standards are established to protect members of the general public and occupants of the properties and to ensure that future use of the properties will result in no radiological exposure above applicable health-based guidelines. Accordingly,

these properties are released from FUSRAP.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays) in the DOE Public Reading Room located in Room 1E-190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee 37831, and in the Lane Public Library, Oxford Branch, 15 S. College Avenue, Oxford, Ohio 45056.

DOE, through the Oak Ridge Operations Office, Former Sites Restoration Division, has issued the following statement:

Statement of Certification: Alba Craft Laboratory, Inc. and Vicinity Properties Site in Oxford, Ohio

DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the former Alba Craft Laboratory site and vicinity properties in Oxford, Ohio. Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination on the Laboratory site and vicinity properties falls within current guidelines for use of land without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the properties will result in no radiological exposure above current radiological guidelines established to protect members of the general public, as well as occupants of the site.

Property owned by Gilbert and Vicki Pacey, 10-14 West Rose Avenue, Oxford, Ohio

Property owned by James H. and Darlene S. Bureh, 550 South Main Street, Oxford, Ohio

Property owned by Wayne and Marilyn Elzey, 525 South Main Street, Oxford, Ohio Municipal Property, West Rose Avenue, Oxford, Ohio.

Issued in Washington, D.C., on November 15, 1996.

James M. Owendoff,

Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 96-30140 Filed 11-25-96; 8:45 am]

BILLING CODE 5498-21-2

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-00202; FRL-5575-9]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The four projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public, who are encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meeting is structured to provide maximum opportunity for state, tribal, and EPA invited participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accommodate participation by observers attending the proceedings.

DATES: The four projects will meet December 9, 1996, from 8 a.m. to 5 p.m. and on December 10, 1996, from 8 a.m. to noon.

ADDRESSES: The meetings will be held at The Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA, in Old Town.

FOR FURTHER INFORMATION CONTACT:

Darlene Harrod, Designated Federal Official (DFO), Office of Pollution Prevention and Toxics (7408), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone (202) 260-6904. E-mail: Harrod.darlene@epamail.epa.gov. Any observer wishing to speak should advise the DFO at telephone number or E-mail address listed above no later than 4 p.m. on December 6, 1996.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program enforcement information among the states/tribes and between the states/tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific projects. The projects are: (1) The Toxics Release Inventory Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: November 22, 1996.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96-30372 Filed 11-22-96; 2:50 pm]

BILLING CODE 5500-00-2

[OPP-00459; FRL-5574-1]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on Monday, December 2, 1996, and ending on Tuesday, December 3, 1996. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, December 2, 1996, from 8:30 a.m. to 5:00 p.m., and Tuesday, December 3, 1996, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: The Doubletree Hotel, National Airport - Crystal City, 300 Army-Navy Drive, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5306; (fax): (703) 308-3259; (e-mail): Lyon.elaine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG includes the following:

1. Committee and Regional reports and Introduction of New Issue Papers.
2. Status Report on SFIREG Issue Papers.
3. Update on the Office of Enforcement and Compliance Assurance (OECA) - 1997, 1998 OECA priorities.
4. The Food Quality Protection Act (HR1627) - Implementation Plans and Progress.
5. Section 18 Workshop - Outcomes.
6. Worker Protection - Update on implementation efforts.
7. Labeling Issues.
8. OPP plans for 1997 workshop on Environmental Indicators.
9. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: November 20, 1996.

Anne E. Lindsay,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 96-30373 Filed 11-22-96; 2:50 pm]

BILLING CODE 5500-00-2

[FRL-5555-5]

Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. § 9622(g), Doepke Holliday Superfund Site, Johnson County, KS

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9622(g), Koepke Holliday Superfund Site, Johnson County, Kansas.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). This settlement is intended to resolve the liability of Batliner Paper Stock Company for the response costs incurred and to be incurred at the Doepke Holliday Superfund Site, Johnson County, Kansas. The proposed settlement consent order was signed by the Environmental Protection Agency (EPA) on September 12, 1996, and approved by the United States Department of Justice on September 26, 1996.

DATES: Written comments must be provided on or before December 26, 1996.

ADDRESSES: Comments should be addressed to Daniel J. Shiel, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: *In the matter of Batliner Paper Stock Company*, EPA Docket No. VII-96-F-0027.

The proposed administrative consent order may be examined in person at the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. To request a copy by mail please refer to the matter name and docket number set

forth above and enclose a check in the amount of \$6.50 (25 cents per page for reproduction costs), payable at the United States Environmental Protection Agency.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns the Doepke Holliday Superfund Site (Site) in Johnson County, Kansas. The Site encompasses approximately 80 acres and is located at the intersection of Interstate 435 and Holliday Drive. In the 1950s and early 1960s, various parties conducted residential and commercial trash disposal operations on the Site. From approximately 1963 until late 1970, Doepke Disposal Service (DDS) operated a commercial and industrial waste disposal business on the Site. DDS disposed of a wide variety of wastes on the Site, including, *inter alia*, fiberglass and fiberglass resins, paint sludge, waste solvents, metal tailings, petroleum refinery wastes, chemical and pesticide manufacturing wastes, and wastes from commercial operations, including, appliance repair, automobile, truck and trailer repair, packaging materials and printing operations. Hazardous substances, including, but not limited to, the following have been found in soils and/or groundwater at the Site: benzene, 1,2-dichloroethene, ethyl benzene, toluene, vinyl chloride, xylene, naphthalene, chromium, iron, lead, manganese.

EPA placed the Site on the National Priorities List, set forth at 40 CFR Part 300, Appendix B, by publication in the *Federal Register* on September 8, 1983, 48 Fed. Reg. 40674. A Remedial Investigation and Feasibility Study ("RI/FS") was conducted for the Site pursuant to 40 CFR § 300.430, and the RI/FS Report was completed in July 1989. The decision by EPA on the remedial action to be implemented at the Site was embodied in a final Record of Decision ("ROD"), executed on September 21, 1989.

On May 24, 1996, the United States District Court for the District of Kansas entered a consent decree in the case styled *United States v. Waste Disposal, Inc., et al.*, Civil Action No. 96-2124/JWL. In the consent decree the current owner of the Site, past owners and operators, and a number of waste generators, including de minimis generators, agreed to construct, operate and maintain the remedial action, perform monitoring, and reimburse the United States' outstanding response costs. Under the proposed settlement

Batliner Paper Stock Company will pay the United States \$15,000 in exchange for the same settlement terms received by other similar de minimis parties in the Consent Decree.

Dated: October 17, 1996.

Dennis Grama,

Regional Administrator.

[FR Doc. 96-30158 Filed 11-25-96; 8:45 am]

BILLING CODE 2220-30-P-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended:

Celebrity Cruises Inc. and Esker Marine Shipping Inc., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: GALAXY

Royal Caribbean Cruises, Ltd. and Grandeur of the Seas Inc., 1050 Caribbean Way, Miami, Florida 33132-2096.

Vessel: GRANDEUR OF THE SEAS

Dated: November 21, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96-30137 Filed 11-25-96; 8:45 am]

BILLING CODE 2720-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended:

Princess Cruises, Inc., Princess Cruise Lines, Inc. and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Los Angeles, California 90067-4189

Vessel: GRAND PRINCESS
Holland America Line-Westours Inc. (d/b/a Holland America Line) and HAL Cruises Limited, 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: ROTTERDAM VI

Dated: November 21, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96-30138 Filed 11-25-96; 8:45 am]

BILLING CODE 2720-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 10, 1996.

A. Federal Reserve Bank of Atlanta
(Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. **Employee Stock Ownership Plan of American City Bancorp, Inc.,** Tullahoma, Tennessee; to retain 13.30 percent, and to acquire an additional 11.68 percent, for a total of 24.98 percent, of the voting shares of American City Bancorp, Inc., Tullahoma, Tennessee, and thereby indirectly acquire American City Bank of Tullahoma, Tullahoma, Tennessee.

Board of Governors of the Federal Reserve System, November 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-30091 Filed 11-25-96; 8:45 am]

BILLING CODE 2510-01-F

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1996.

A. Federal Reserve Bank of Chicago
(James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Willard G. Pierce, Hastings,** Michigan; to acquire an additional 8.69 percent, for a total of 17.39 percent, of the voting shares of Community Central Bank Corporation, Mount Clemens, Michigan, and thereby indirectly acquire Community Central Bank, Mount Clemens, Michigan.

B. Federal Reserve Bank of Kansas City
(John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **J. Christopher Cook,** Sioux City, Iowa; to acquire an additional 13.7 percent, for a total of 27.15 percent, and Cathryn Cook Jensen Revocable Trust, and Cathryn Jensen, Trustee, Lexington, Nebraska; to acquire an additional 13.7 percent, for a total of 27.15 percent, of the voting shares of First Gothenburg Bancshares, Inc., Gothenburg, Nebraska, and thereby indirectly acquire First State Bank, Gothenburg, Nebraska.

Board of Governors of the Federal Reserve System, November 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-30199 Filed 11-25-96; 8:45 am]

BILLING CODE 2510-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 1996.

A. Federal Reserve Bank of Chicago
(James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Associated Banc-Corp,** Green Bay, Wisconsin; to merge with Centra Financial, Inc., West Allis, Wisconsin, and thereby indirectly acquire Central Bank, West Allis, Wisconsin.

2. **AmeriMark Financial Corporation,** Oak Brook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Duco Bancshares, Inc., Villa Park, Illinois, and thereby indirectly acquire Bank of Illinois in DuPage, Villa Park, Illinois.

In connection with this application, Applicant also has applied to acquire Banill Corporation, Villa Park, Illinois, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-30092 Filed 11-25-96; 8:45 am]

BILLING CODE 2510-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than December 20, 1996.

A. Federal Reserve Bank of Boston
(Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. **BostonFed Bancorp, Inc.,** Burlington, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Broadway Capital Corp., Chelsea, Massachusetts, and thereby indirectly acquire The Broadway National Bank of Chelsea, Chelsea, Massachusetts, a *de novo* bank.

In connection with this application, Applicant also has applied to acquire Boston Federal Savings Bank, Burlington, Massachusetts, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted in the Boston, Massachusetts metropolitan area.

B. Federal Reserve Bank of Chicago
(James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Old Kent Financial Corporation,** Grand Rapids, Michigan; to acquire 100 percent of the voting shares of Old Kent Bank, National Association, Jonesville, Michigan.

C. Federal Reserve Bank of Kansas City
(John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Front Range Bancshares, Inc.,** Lakewood, Colorado; to become a bank holding company by acquiring at least 80 percent of the voting shares of Front Range Bank, Lakewood, Colorado, a *de novo* bank.

D. Federal Reserve Bank of Dallas
(Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. **Central Texas Bankshare Holdings, Inc.,** Columbus, Texas, and Colorado County Investment Holdings, Inc., Wilmington, Delaware; both to acquire 30 percent of the voting shares of Hill Bancshares Holdings, Inc., Weimar, Texas, and thereby indirectly acquire Hill Bancshares, Wilmington, Delaware, and Hill Bank & Trust Company, Weimar, Texas.

Board of Governors of the Federal Reserve System, November 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-30198 Filed 11-25-96; 8:45 am]

BILLING CODE 2510-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Fuji Bank, Limited*, Tokyo, Japan; to engage *de novo* through its subsidiary, *Heller Financial, Inc.*, Chicago, Illinois, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96-30093 Filed 11-25-96; 8:45 am]
BILLING CODE 6210-01-F

Federal Open Market Committee; Domestic Policy Directive of September 24, 1996.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 24, 1996. The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that growth in economic activity has moderated appreciably from an elevated second-quarter pace. Private nonfarm payroll employment grew less rapidly over July and August than in the second quarter, while the civilian unemployment rate declined to 5.1 percent in August. Industrial production increased somewhat less rapidly on average in July and August than in the prior few months. Total retail sales rose slightly over July and August after having declined substantially in June. Housing starts in July and August were unchanged on average from their second-quarter level. Demand for business equipment has remained strong, while spending on nonresidential structures has changed little on balance in recent months. The nominal deficit on U.S. trade in goods and services widened substantially in July from its average in the second quarter. Increases in labor compensation have been somewhat larger this year, but consumer price inflation, excluding its food and energy components, has edged lower.

Most market interest rates have risen somewhat on balance since the Committee meeting on August 20, 1996. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has appreciated slightly over the intermeeting period.

Growth of M2 and M3 picked up in August, but they continued to expand at rates below those in the first half of the

year. For the year through August, both aggregates are estimated to have grown at rates in the upper portions of their respective ranges for the year. Expansion in total domestic nonfinancial debt has been moderate on balance over recent months and has remained in the middle portion of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in January for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The monitoring range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1997 the Committee agreed on a tentative basis to set the same ranges as in 1996 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1996 to the fourth quarter of 1997. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, November 20, 1996.

Donald L. Kohn,
Secretary, Federal Open Market Committee.
[FR Doc. 96-30200 Filed 11-25-96; 8:45 am]
BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, December 2, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

¹ Copies of the Minutes of the Federal Open Market Committee meeting of September 24, 1996, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

STATUS: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 22, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96-30395 Filed 11-22-96; 3:35 am]
BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a revised system of records subject to the Privacy Act of 1974.

SUMMARY: GSA proposes to revise a system of records, Employee-related files, GSA/Agency-1, to reflect that it plans to include long-distance telephone call detail records among the types of records in the system and to reflect a new routine use that GSA may disclose information from the system to the Federal Parent Locator Service to assist in locating a noncustodial parent to establish and enforce child-support obligations against the delinquent parent. A revised system report has been filed with the Chairman of the House Committee on Government Reform and Oversight, the Chairman of the Senate Committee on Governmental Affairs, and the Office of Management and Budget.

DATES: Any interested person may submit written comments about this change in the system. GSA must receive the comments on or before the 40th day after it publishes this notice. The system becomes effective without further notice on the 40th day after GSA publishes the notice, unless the comments received cause the agency to change its decision.

ADDRESS: Address comments to Elaine P. Dade, Records Officer, General Services Administration (CAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William M. McHugh, Privacy Act Liaison, at (202) 501-2983.

SUPPLEMENTARY INFORMATION: The purpose of maintaining telephone call-detail records is to learn whether a Federal employee has placed unauthorized long-distance telephone calls. Disclosing information to the Federal Parent Locator Service is done to facilitate establishing and enforcing child support from a delinquent parent. The procedures used would require routinely matching Federal personnel records with State records to learn if there are any Federal employees who are delinquent in meeting child-support payments.

Dated: October 29, 1996.
Kenneth S. Stacey,
Director, Information and Organization Management Division (CAI).

GSA/Agency-1

SYSTEM NAME:

Employee-related files.

SYSTEM LOCATION:

The system of records may be located at the supervisory or administrative office level at all GSA facilities and at commissions, committees, and small agencies serviced by GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered are present and former employees of GSA and of commissions, committees, and small agencies serviced by GSA; applicants or potential applicants for positions in GSA, persons employed by other agencies for employee relief bills, volunteer workers, and uncompensated workers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system records contain the individual's name; social security number; birth date; home and emergency addresses and telephone numbers; personnel actions; professional registration; qualifications; training; employment history; awards; counseling; reprimands; grievances; appeals; leave; pay attendance; work assignments; performance ratings; injuries; permit and pass applications; unpaid debt complaints, including nonpayment of child support; travel; outside employment; congressional employee relief bills; and telephone call details. The system does not include official personnel files covered by OPM/GOVT-1.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the system comes from the Federal Property and Administrative

Services Act of 1949 (63 Stat. 377); Title 5 U.S.C. and Title 31 U.S.C., generally; and Executive Order (E.O.) 12953, February 27, 1995.

PURPOSE(S):

To maintain a personnel record system covering employees and uncompensated workers. The system is used to initiate personnel actions, schedule training, counsel employees on their performance, propose disciplinary action, and manage personnel in general.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing or carrying out a statute, rule, regulation, or order where GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.
- b. To disclose information to another Federal agency or a court when the Government is a party to a judicial proceeding.
- c. To disclose requested information to a Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency when the information is needed for a decision.
- d. To disclose information to the Merit Systems Protection Board, including its Office of Special Counsel; the Federal Labor Relations Authority and its general counsel; or the Equal Employment Opportunity Commission in performing their duties.
- e. To disclose information to the Federal Parent Locator Service to assist in locating an absent parent and enforce child support obligations against a delinquent parent. This includes routinely cross-matching Federal personnel records with State records of persons who owe child support to learn if there are any Federal employees delinquent in supporting a dependent child.
- f. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; union representative; or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.
- g. To disclose information to the Office of Personnel Management (OPM) under the agency's responsibility for evaluating Federal personnel

management. When personnel records in the custody of GSA are covered in a record system published by OPM as a Governmentwide record system, they are considered part of that system. Other personnel record systems covered by notices published by GSA as separate systems may also be transferred to OPM as a routine use.

h. To disclose information to a Member of Congress or to a congressional staff member in response to a request from the person who is the subject of the records.

i. To disclose information to an expert, consultant, or contractor of GSA in performing a Federal duty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper records are kept in file folders and card files. Computer tapes and disks are kept in cabinets.

RETRIEVABILITY:

Records are retrieved at each location by name or social security number.

SAFEGUARDS:

When not in use, records are stored in a locked file cabinet, locked desk drawer, or in a secured room. Computer data is protected by a password system.

RETENTION AND DISPOSAL:

Record disposal is controlled by the handbook, GSA Records Maintenance and Disposition System, OAD P 1820.2A. The records are reviewed and updated yearly, and irrelevant documents are destroyed. Once originals and copies are purged from the official personnel folder, no other paper copies are kept. When the employee transfers or separates from the agency, records are promptly sent to the office that is to maintain the official personnel folder. The records are screened to ensure that nothing is missing. Personnel history files in the PIRS computer data base are written off to tape every 2 years for indefinite storage.

SYSTEM MANAGER(S) AND ADDRESS:

The agency official with overall responsibility within his or her jurisdiction is the head of service or staff for Central Office employees and the regional administrator for regional employees. The official responsible for a field office record system is the senior official at the facility or the supervisor of current and former employees or volunteers. The addresses of Central Office and regional offices are listed at the end of this notice.

NOTIFICATION PROCEDURE:

An individual who wishes to be notified whether the system contains a record related to him- or herself should address an inquiry to the supervisor or team leader where the employee worked. If that is unknown, general requests can be addressed to the head of the service or staff office for Central Office employees, or to the regional administrator for regional office employees at the address listed in the appendix.

RECORD ACCESS PROCEDURES:

An individual request to review a record can be addressed to the supervisor, team leader, or official at the address where the employee worked. If that is unknown, a general request can be addressed to the head of the service or staff office for Central Office employees, or to the regional administrator at the address given in the appendix to this notice. For the identification required, see 41 CFR part 105-64 published in the Federal Register.

CONTESTING RECORD PROCEDURES:

The GSA procedures for contesting the content of a record and appealing an initial denial of a request to access or amend a record may be found in 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

The sources for the information are individuals themselves, other employees, personnel records, and persons who have complained of unpaid debts, including nonpayment of child support.

RECORD SYSTEM LOCATIONS:

Central Office: GS Building, 1800 F Street NW., Washington, DC 20405.
New England Region: GSA, John W. McCormack Post Office and Court House, Boston, MA 02109.

Northeast and Caribbean Region: GSA, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278.

Mid-Atlantic Region: GSA, John Wanamaker Building, 100 Market Square East, Philadelphia, PA 19107.

Southeast-Sunbelt Region: GSA, Summit Building, 401 West Peachtree Street, Atlanta, GA 30365-2550.

Great Lakes Region: GSA, John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, IL 60604.

The Heartland Region: General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.

Greater Southwest Region: GSA, Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

Rocky Mountain Region: GSA, Denver Federal Center, Building 41, Denver, CO 80225.

Pacific Rim Region: General Services Administration, 450 Golden Gate Avenue, 5th Floor, San Francisco, CA 94102-3400.

Northwest/Arctic Region: GSA Center, 400 Fifteenth Street SW., Auburn, WA 98001.

National Capital Region: General Services Administration, 400 Seventh Street SW., Washington, DC 20407.

[FR Doc. 96-30071 Filed 11-25-96; 8:45 am]
BILLING CODE 9999-99-0

Performance Review Board: Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gail T. Lovelace, Director of Human Resources, General Services Administration, 18th & F Streets, NW., Washington, DC 20405, (202) 501-0398.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Review Board are:

1. Thurman M. Davis, (Chairperson) Deputy Administrator
2. William C. Burke, Regional Administrator, Great Lakes Region (Chicago)
3. Paul E. Chistolini, Regional Administrator, Mid-Atlantic Region (Philadelphia)
4. Dennis J. Fischer, Chief Financial Officer
5. Martha N. Johnson, Associate Administrator for Management Services and Human Resources
6. Robert A. Peck, Commissioner, Public Buildings Service
7. Frank P. Pugliese, Commissioner, Federal Supply Service
8. Joe M. Thompson, Chief Information Officer and Commissioner, Information Technology Service
9. Robert J. Woods, Commissioner, Federal Telecommunications Service

Dated: November 14, 1996.

Gail T. Lovelace,

Director of Human Resources.

[FR Doc. 96-30070 Filed 11-25-96; 8:45 am]

BILLING CODE 9999-99-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry [ATSDR-115]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice, prepared by ATSDR for the Department of Defense, announces for review and comment the availability of five new draft toxicological profiles on unregulated hazardous substances. All profiles issued as "Drafts for Public Comment" represent the agency's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before January 27, 1997. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles

should be sent to the attention of Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30353.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the profiled hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-115. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at ATSDR, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8:00 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Public Law 99-499) amended the

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). Section 211 of SARA also amended Title 10 of the U.S. Code, creating the Defense Environmental Restoration Program. Section 2704(a) of Title 10 of the U.S. Code directs the Secretary of Defense to notify the Secretary of Health and Human Services (HHS) of not less than 25 of the most commonly found unregulated hazardous substances at defense facilities. The Secretary of HHS is to prepare toxicological profiles of these substances. Each profile includes an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information is used to ascertain the level of significant human exposure for the substance and the associated health effects. The profiles include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), may plan a program of research designed to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this Federal Register notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles were made available to the public on October 27, 1996.

Docu- ment	Hazardous substance	CAS No.
1	2-BUTOXYETHANOL AND 2-BUTOXYETHANOL ACETATE	111-76-2
2	DIISOPROPYL METHYLPHOSPHONATE	112-07-2
3	HEXAMETHYLENE DIISOCYANATE	1445-75-6
4	JET FUEL (JP-5)	822-06-0
5	JET FUEL (JP-8)	8008-20-6
6	METHYLENEDIANILINE	70892-10-3
		101-77-9

Dated: November 19, 1996.

Georgi Jones,

Director, Office of Policy and External Affairs,
Agency for Toxic Substances and Disease
Registry.

[FR Doc. 96-30098 Filed 11-25-96; 8:45 am]

BILLING CODE 4193-70-P

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Family and Child Experiences Survey (FACES).

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting Office of Management and Budget (OMB) clearance for interview instruments to be used in the Head Start Family and Child Experiences Survey (FACES). This study is being conducted under contracts with Abt Associates Inc.

(with The CDM Group, Inc. as their subcontractor (#105-86-1930)) to collect descriptive information on Head Start families, and Westat, Inc. (with Ellsworth Associates as their subcontractor (#105-96-1912)) to collect information on Head Start performance measures. The design calls for three rounds of data collection. A nationally representative group of 2,400 families with children enrolled in approximately 160 centers in 40 Head Start programs will be identified in Spring, 1997. At that time, Head Start staff and parents will be interviewed, classroom observations will be completed, and children will be assessed. The second data collection period will occur in Fall, 1997. Again, staff and parents will be interviewed, and children will be assessed and observed in their

classrooms. At that time children from the Spring, 1997 sample that left Head Start to enter kindergarten following the 1996-97 Head Start year will be replaced by a representative sample of children just entering Head Start. All families, including those whose children entered kindergarten in Fall, 1997 will be tracked through the school year. The final data collection effort will occur in Spring, 1998 and involve all families and children identified in the earlier two data collection periods.

A subgroup of 120 families will be identified from the Spring and Fall, 1997 samples for participation in the Validation Substudy. The Validation Substudy data collection will require home visits to participating families at each major data collection point and a series of monthly contacts between data

collections periods. The monthly contacts will begin with the Spring, 1997 data collection and continue through December, 1998.

This schedule of data collection is necessitated by the mandates of the Government Performance and Results Act (GPRA) of 1993 (Public Law 103-62), which requires that the Head Start Bureau move expeditiously toward development and testing of Head Start Performance Measures, and by the 1994 reauthorization of Head Start (Head Start Act, as amended, May 18, 1994, Section 649 (d)), which requires assessment of Head Start's quality and effectiveness.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Spring, 1997	7,840	1	0.652	5,110
Fall, 1997	8,400	1	0.648	5,440
Spring, 1998	11,460	1	0.654	7,500

Estimated Total Annual Burden Hours: 9,025.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 20, 1996.
Bob Sargis,
 Acting Reports Clearance Officer.
 [FR Doc. 96-30145 Filed 11-25-96; 8:45 am]
 BILLING CODE 4184-01-M

Food and Drug Administration [Docket No. 96E-0315]

Determination of Regulatory Review Period for Purposes of Patent Extension; Nuflor®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Nuflor® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-

305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval

phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product Nuflor® (florfenicol). Nuflor® is indicated for treatment of bovine respiratory disease (BRD), associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Nuflor® (U.S. Patent No. 4,235,892) from Schering Corp. and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 17, 1996, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of Nuflor® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Nuflor® is 4,209 days. Of this time, 4,205 days occurred during the testing phase of the regulatory review period, while 4 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective: November 23, 1984. FDA has verified the applicant's claim that November 23, 1984, was the date that the investigational new animal drug application became effective.

2. The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act: May 28, 1996. FDA has verified the applicant's claim that May 28, 1996, was the date that the new animal drug application (NADA) for Nuflor® (NADA 141-063) was initially submitted.

3. The date the animal drug was approved: May 31, 1996. FDA has verified the applicant's claim that NADA 141-063 was approved on May 31, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,096 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 27, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 27, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 18, 1996.
Stuart L. Nightingale,
 Associate Commissioner for Health Affairs.
 [FR Doc. 96-30196 Filed 11-25-96; 8:45 am]
 BILLING CODE 4180-01-F

[Docket No. 96E-0253]

Determination of Regulatory Review Period for Purposes of Patent Extension; Buphenyl Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Buphenyl Powder and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and

Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Buphenyl Powder (sodium phenylbutyrate). Buphenyl Powder is indicated for adjunctive therapy in the chronic management of patients with urea cycle disorders involving deficiencies of carbamylphosphate synthetase, ornithine transcarbamylase, or argininosuccinic acid synthetase. Subsequent to this approval, the Patent and Trademark office received a patent term restoration application for

Buphenyl Powder (U.S. Patent No. 4,437,942) from Ucclyd Pharma, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 17, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Buphenyl Powder represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Buphenyl Powder is 4,528 days. Of this time, 4,089 days occurred during the testing phase of the regulatory review period, while 439 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective: December 9, 1983. The applicant claims July 23, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 9, 1983.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: February 17, 1995. The applicant claims February 15, 1995, as the date the new drug application (NDA) for Buphenyl Powder (NDA 20-573) was initially submitted. However, FDA records indicate that NDA 20-573 was submitted on February 17, 1995.

3. The date the application was approved: April 30, 1996. FDA has verified the applicant's claim that NDA 20-573 was approved on April 30, 1996. This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 27, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 27, 1997, for a

determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 96th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 18, 1996.
Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 96-30195 Filed 11-25-96; 8:45 am]
BILLING CODE 4160-01-2

National Institutes of Health Notice of Open Meeting

Notice is hereby given of the fifth meeting of the Task Force on Genetic Testing of the National Institutes of Health-Department of Energy Joint Working Group on Ethical, Legal, and Social Implications of Human Genome Research (ELSI Working Group) on Monday, December 2, 1996, 1:00 p.m. to recess; Tuesday, December 3, 1996, 8:00 a.m. to adjournment, at the Doubletree Inn at the Colonnade, 4 West University Parkway, Baltimore, Maryland, (410) 235-5400.

Contact Person: Neil Holtzman, M.D., M.P.H., Genetics and Public Policy Studies, The Johns Hopkins Medical Institutions, 550 North Broadway, Suite 511, Baltimore, Maryland 21205, (410) 955-7894.

The Task Force has developed Interim Principles primarily regarding scientific validation of new genetic tests; laboratory quality; and education, counseling, and delivery. At this meeting, the Task Force will consider recommendations to implement key Principles. The Interim Principles are available on the World Wide Web at: <http://infonet.welch.jhu.edu/policy/genetics/>

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Holtzman in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: November 19, 1996.

Paula N. Hayes,
Acting Committee Management Officer, NIH.
[FR Doc. 96-30100 Filed 11-25-96; 8:45 am]
BILLING CODE 4160-01-2

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP):

Name of SEP: Operation of Registry of Tumors in Lower Animals.

Date: December 9, 1996.

Time: 1:00 p.m. to 4:00 p.m.

Place: Executive Plaza North Conference Room F, 6130 Executive Boulevard, Rockville, MD 20857.

Contact Person: Lalita D. Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, 6130 Executive Blvd. MSC-7405, Bethesda, MD 20892, (301) 496-7575.

Purpose/Agenda: To evaluate and review responses to RFP NCI-CB-77021-34.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 7 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 19, 1996.

Paula N. Hayes,
Acting Committee Management Officer, NIH.
[FR Doc. 96-30104 Filed 11-25-96; 8:45 am]
BILLING CODE 4160-01-2

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Committee Name: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: November 26, 1996.

Time: 12:00 p.m.

Place: Natcher Building, Room 6AS-25S, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600.

Contact Person: Ned Feder, M.D., Scientific Review Administrator, Natcher Building, Room 6AS-25S, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600, Phone 301-594-8890.

Agenda Purpose: To review and evaluate a research grant application.

Committee Name: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: December 9, 1996.

Time: 2:00 p.m.

Place: Natcher Building, Room 6AS-37B, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600.

Contact Person: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS-37B, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600, Phone 301-594-8894.

Agenda Purpose: To review and evaluate a research grant application.

These notices are being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: December 18, 1996.

Time: 9:30 a.m.

Place: Natcher Building, Room 6AS-37F, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600.

Contact Person: Ann A. Hagan, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS-37F, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600, Phone 301-594-8896.

Agenda Purpose: To review and evaluate a research grant application.

Committee Name: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: December 19, 1996.

Time: 3:00 p.m.

Place: Natcher Building, Room 6AS-25F, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600.

Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS-25F, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600, Phone 301-594-7799.

Agenda Purpose: To review and evaluate a research grant application.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: November 19, 1996.

Paula N. Hayes,
Acting Committee Management Officer, NIH.
[FR Doc. 96-30102 Filed 11-25-96; 8:45 am]
BILLING CODE 4160-01-2

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Motor Learning in Individuals Post Stroke (Teleconference).

Date: December 12, 1996.

Time: 12:30 p.m. (EST)—adjournment.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Edgar Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100

Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301-496-1485.

Name of SEP: Evaluation of Long-term Rehabilitation Outcomes (Teleconference).

Date: December 12, 1996.

Time: 1:00 p.m. (EST)—adjournment.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20892, Telephone: 301-496-1485.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: November 19, 1996.

Paula N. Hayes,
Acting Committee Management Officer, NIH.
[FR Doc. 96-30103 Filed 11-25-96; 8:45 am]
BILLING CODE 4160-01-2

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 10, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435-1215.

Name of SEP: Chemistry and Related Sciences.

Date: December 11, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4172, Telephone Conference.

Contact Person: Dr. John Beisler, Scientific Review Administrator, 6701

Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435-1727.

Name of SEP: Biological and Physiological Sciences.

Date: December 11, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 5202, Telephone Conference.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435-1260.

Name of SEP: Clinical Sciences.

Date: December 12, 1996.

Time: 11:30 a.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435-1215.

Name of SEP: Biological and Physiological Sciences.

Date: December 12, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5202, Telephone Conference.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435-1260.

Name of SEP: Clinical Sciences.

Date: December 12, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4100, Telephone Conference.

Contact Person: Dr. Jeanne N. Kotley, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435-1789.

Name of SEP: Clinical Sciences.

Date: December 16, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4100, Telephone Conference.

Contact Person: Dr. Jeanne N. Kotley, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435-1789.

Name of SEP: Biological and Physiological Sciences.

Date: December 16, 1996.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435-1257.

Name of SEP: Biological and Physiological Sciences.

Date: December 16, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4202, Telephone Conference.

Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701

Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435-1221.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.876, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 18, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH. (FR Doc. 96-30101 Filed 11-25-96; 8:45 am)

BILLING CODE 4148-01-M

Notice of a Cooperative Agreement With the ASPIRA Association, Inc.

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will enter into an umbrella cooperative agreement with The ASPIRA Association, Inc., National Office (ASPIRA). This cooperative agreement will establish the broad programmatic framework within which specific projects can be funded as they are identified during the project period.

The purpose of this cooperative agreement is to assist the national association in expanding and enhancing its activities relevant to education, health promotion and disease prevention, and family and youth violence prevention with the ultimate goal of improving the health status of minorities and disadvantaged people. The OMH will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. The OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange current information, opinions, and research findings.

Authorizing Legislation

This cooperative agreement is authorized under Title XVII, Section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101-527.

Background

Assistance will be provided only to ASPIRA. No other applications are solicited. ASPIRA is the only organization capable of administering this cooperative agreement because it has:

1. Developed, expanded, and managed an infrastructure to coordinate and implement various educational programs within local communities and organizations that deal extensively with Hispanic issues. The association established national initiatives—i.e., National Health Careers Program, Community Mobilization for Educational Excellence, MAS Academy, and Public Policy Leadership Program—that provide a foundation upon which to develop, promote, and manage education and health-related programs aimed at preventing and reducing unnecessary morbidity and mortality rates among Hispanic populations.

2. Established itself and its members as a national association with professionals who serve as leaders and experts in planning, developing, implementing, and promoting educational and policy campaigns (locally and nationally) aimed at reducing adverse health behaviors and improving the Hispanic community's overall educational and social well being.

3. Assessed and evaluated data, through its Institute for Policy Research and its National Health Careers Program, on the current education, violence and health-related findings relevant to Hispanics and other populations for dissemination to its associate members, collaborators, funders, and the general public.

4. Developed a national association whose members consist of professionals with excellent performance records and established linkages to the Hispanic population at the national and local level.

5. Developed a base of critical knowledge, skills, and abilities related to serving Hispanic clients with a range of health and social problems. Through the collective efforts of its associate members, community-based organizations, volunteers, and former "Aspirantes," ASPIRA has demonstrated (1) the ability to work with academic institutions and health groups on mutual education, research, and health endeavors relating to the goal of health promotion and disease prevention of Hispanics, (2) the leadership necessary to attract minority students into public service and health careers, and (3) the leadership needed to assist health care professionals to work

more effectively with Hispanic clients and communities.

6. Developed an information management system to track programmatic outcomes and evaluate best practices for future dissemination.

This cooperative agreement will be awarded in FY 1997 for a 12-month budget period within a project period of 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594-0769.

Dated: November 6, 1996.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

(FR Doc. 96-30061 Filed 11-25-96; 8:45 am)

BILLING CODE 4146-17-M

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in November.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857. Telephone: (301) 443-4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: November 22, 1996 2:15 p.m. to 4:30 p.m.

Place: Parklawn Building, Room 17-89—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: November 22, 1996, 2:15 p.m. to 4:30 p.m.

Panel: FEMA—Crisis Counseling—North Carolina.

Contact: Stanley Kusnetz, Review Administrator, Room 17-89, Parklawn Building, Telephone: (301) 443-3042 and FAX: (301) 443-3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: November 20, 1996.

Jeri Lipov,

Committee Management Officer, SAMHSA.

(FR Doc. 96-30136 Filed 11-25-96; 8:45 am)

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of an Application, and Availability of an Environmental Assessment and Finding of No Significant Impact for an Incidental Take Permit by Mr. Glenn Michalski for Construction of a Residential Project on the Fort Morgan Peninsula, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. Glenn Michalski (Applicant) seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), (Act) as amended. The ITP would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse, *Peromyscus polionotus ammobates*, known to occupy the 0.43-acre tract of land owned by the Applicant on the Fort Morgan Peninsula, Baldwin County, Alabama. The project is a single family home, which includes a driveway, parking pad and dune walkover.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for this incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see ADDRESSES). This notice also advises the public that the Service has made a preliminary determination that issuing this ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, (NEPA) as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days

from the date of this notice. This notice is provided pursuant to Section 10 of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the applications, EAs and HCPs should be sent to the Service's Regional Office (see ADDRESSES) and should be received on or before December 26, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Daphne Field Office, PO Drawer 1190, Daphne East Office Plaza, Suite A, 2001 Highway 98, Daphne, Alabama 36526. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit number PRT-821992 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Dell, Regional Permit Biologist, Atlanta, Georgia (see ADDRESSES above), telephone: 404/679-7313; or Ms. Celeste South at the Daphne, Alabama, Field Office (see ADDRESSES above), telephone: 334/441-5181, extension 32.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse, *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of the Alabama beach mouse extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit of the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer Alabama beach mice inhabit scrub dunes, these

high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. Alabama beach mouse tracking surveys on the Applicant's property reveal habitat occupied by Alabama beach mice. The Applicant's property contains designated critical habitat for the Alabama beach mouse. Construction of the project may result in the death of, or injury to, Alabama beach mice. Habitat alterations due to house construction and subsequent human habitation of the project may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of alternatives for each project. One action proposed for each project is the issuance of the ITP based upon submittal of the HCP as proposed. This alternative provides for restrictions that include placing no habitable structures seaward of the designated Alabama beach mouse critical habitat, establishment of walkover structures across designated critical habitat, a prohibition against housing or keeping pet cats, Alabama beach mouse competitor control and monitoring measures, scavenger-proof garbage containers, and the minimization and control of outdoor lighting. The HCP provides adequate funding for these mitigation measures. Another alternative is no-action, or deny the request for authorization to incidentally take the Alabama beach mouse.

As stated above, the Service has made a preliminary determination that the issuance of this ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.
2. The proposed take is incidental to an otherwise lawful activity.
3. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCPs.
4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITPs are addressed by

other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of his permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of the Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 15, 1996.
Jerome M. Butler,
Acting Regional Director.
[FR Doc. 96-30097 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-55-P

Availability of an Environmental Assessment and Receipt of an Application Submitted by the On Top of the World, Incorporated for an Incidental Take Permit for Red-cockaded Woodpeckers in Association With Land Development Activities on Their Property in Marion County, FL

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice.

SUMMARY: On Top of the World, Incorporated (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The proposed ITP would authorize the incidental take of a federally endangered species, the red-cockaded woodpecker *Picoides borealis* (RCW) known to occur on property owned by the Applicant in Marion County, Florida. The Applicant is requesting an ITP in order to conduct land development activities for economic reasons. The Applicant's Habitat Conservation Plan (HCP) was submitted for a portion of the 5,690 acres owned by the Applicant called the Central Site. The Applicant's project, known as Ocala Sandhills, is located in approximately 9 miles west of Ocala just north of State Road 200, Marion County, Florida. The proposed ITP would authorize incidental take of a four RCW groups (currently consisting of 8 breeding adults, 1 female helper, and 6 fledglings) in exchange for mitigation elsewhere as described further in the SUPPLEMENTARY INFORMATION Section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see ADDRESSES). This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, (NEPA) as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be sent to the Service's Regional Office (see ADDRESSES) and should be received on or before December 26, 1996.
ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at Jacksonville, Florida, Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216-0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit under PRT-822026 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see ADDRESSES above), telephone: 404/679-7110; or Dr. L. Karolee Owns, Fish and Wildlife Biologist, Jacksonville Field Office, (see ADDRESSES above), telephone: 904/232/2580.

SUPPLEMENTARY INFORMATION: The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and

nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 Southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

Based upon a range-wide assessment and estimate conducted in 1994, the State of Florida contains about 1,285 RCW groups; 1,063 occurring on Federal lands, 128 occurring on State lands, and an estimated 94 on private lands.

There has not been a complete inventory of RCWs in Florida so it is difficult to precisely assess the species' overall status in the State. However, the known populations on Federal properties are regularly monitored and generally considered stable. While several new active RCW clusters have been discovered on private lands over the past few years, many previously documented RCW clusters have been lost. It is expected that the RCW population on private lands in Florida will continue to decline, especially those from small tracts isolated from other RCW populations.

The RCW population on the Applicant's property currently consists of 15 birds (8 breeding adults, 1 female helper, and 6 fledglings). The nearest known RCW groups to the Ocala Sandhills population are found greater than 15 miles away; several single family/bird groups on private lands west and northwest; large populations on both the Goethe and Withlacoochee State Forests northwest and southwest,

respectively from the site; and a small population of about 7 groups on the Ocala National Forest east of the Applicant's property.

The Applicants propose to harvest the timber at Ocala Sandhills in association with land development and alteration activities associated with construction of a mixed use residential, commercial, and golf course community.

The EA considers the environmental consequences of three alternatives, including the proposed action. The proposed action alternative is issuance of the ITP and implementation of the HCP as submitted by the Applicant. The HCP provides for an off-site mitigation strategy focusing on enhancing clusters in designated recruitment stands in the Ocala National Forest over a 5-year period. During the first 5 years of the permit/HCP, the Applicant would conserve the habitat necessary to support/stabilize the existing RCW population. Juvenile RCWs produced by the Applicant's population will be translocated to these sites and monitored. At the completion of the translocation efforts for the juveniles, any remaining adults would also be moved to the Ocala National Forest. In addition, the Applicant will assist the Ocala National Forest by financially supporting selected hardwood control efforts at the recipient sites. The HCP will involve monitoring the mitigation clusters for a specified time period to determine success of the habitat enhancement efforts. The HCP provides a funding source for the above-mentioned mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of this ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA and will result in the FONSI. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.
2. The proposed take is incidental to an otherwise lawful activity.
3. The Applicants have ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.
4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the

indirect impacts which may result from issuance of the ITPs are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITPs are contingent upon the Applicants' compliance with the terms of their permits and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of either Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue either ITP.

Dated: November 18, 1996.
Jerome M. Butler,
Acting Regional Director.
[FR Doc. 96-30099 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-35-P

Geological Survey

Federal Geographic Data Committee (FGDC): Notice Establishing the Closing Date for Submission of the Project Summary Under the FGDC Framework Demonstration Projects Program

AGENCY: U.S. Geological Survey, Department of the Interior.
ACTION: Notice inviting organizations to submit project summaries for competitive cooperative agreements for fiscal year 1997.

SUMMARY: This is a notice of phase one of a two phase approach in connection with the Framework Demonstration Projects Program (FDPP). On behalf of the Federal Geographic Data Committee (FGDC), the U.S. Geological Survey (USGS) plans to issue a program announcement to request proposals for the FDPP later this fiscal year. Organizations interested in the program have asked for the ability to provide project summaries to the FGDC for comment in advance of the program announcement. Therefore, the first phase of this two phase approach invites organizations interested in the program to provide a project summary to the FGDC for comment. Participation in phase one is voluntary. Organizations who submit a project summary in phase one are not obligated to apply for the program announcement. Organizations who do not submit a summary for phase one are eligible to request the program announcement in phase two. The FGDC

will provide comments to the organization describing how a project can be strengthened. The FGDC will use insights gained from the review of summaries to guide the development of the FDPP request for proposals announcement.

DATES: The project summary is due January 17, 1997, at 3:00 p.m. EST.

ADDRESSES: Copies of the FGDC report, "Development of a National Digital Geospatial Data Framework" may be obtained by writing to Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, VA 20192, or by sending a request by facsimile to (703) 648-7901.

FOR FURTHER INFORMATION CONTACT: Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; voice telephone number (703) 648-7363; facsimile telephone number (703) 648-7901.

SUPPLEMENTARY INFORMATION: The purpose of the FDPP is to facilitate and provide resources for the development and implementation of the framework for the National Spatial Data Infrastructure (NSDI). The framework concept, outlined in the report "Development of a National Digital Geospatial Data Framework" (April 1995), proposes a means by which the geospatial data community can work together to produce and maintain commonly needed themes of data for national, regional, state, and local analyses. Included in this report is the definition of a basic information content, and the technical, institutional, and business contexts by which a distributed, collaborative data collection and maintenance effort for the nation would operate.

Project Summary Narrative: Project summaries will be reviewed by the factors set forth below (see items 1-5). The project summary should address each of the following factors in the sequence as they are listed: (1) **Relevance to the NSDI Framework:** Describe the degree to which the project contributes to the development of the NSDI framework concept, its potential application to other institutions, and the extent to which the proposed project may stimulate growth of similar efforts. Describe the relationship of the proposed effort to related and similar ongoing projects. Narrative should not include reiterations of text from FGDC/NSDI fact sheets and other committee publications. (2) **Information Content:** Identify which of the framework themes

(geodetic control, digital orthoimagery, elevation and bathymetry data, transportation, hydrography, governmental units, cadastral) will be addressed in the proposed project. Summary should describe the geographic area to be addressed, and the scale and resolution of data. (3) **Technical/Operational Context:** Briefly summarize the key unique technical and operational activities to be implemented in the proposed project that address the framework goals of: Integration of high-resolution, locally-produced data; providing geospatial data at varying resolutions for any given location; enabling users to integrate new framework data into their data holdings without endangering their existing investments in spatial data and attribute information; and vertically integrating data between themes, and horizontally within themes. (4) **Business Context:** Describe the approach proposed to ensure that the project will result in framework data that are widely used and useful. Project summary should describe the approach to: Avoiding restrictive practices that would inhibit use of the framework; providing information about the data limitations, optimal uses, and liability; providing data in public, non-proprietary format(s); conforming to approved standards; and containing data that are certified to ensure that they meet the minimal standard for all framework criteria. (5) **Institutional Organization Process:** Identify the participating organization and briefly describe each organization's tasks and responsibilities.

Background Material: The FGDC report "Development of a National Geospatial Data Framework" will be helpful in developing project summaries. It may be obtained by writing to Ms. Tammy Fanning at the address above. Requests may also be made by facsimile to (703) 648-7901. Confirmation by telephone at (703) 648-7372 is recommended. No telephone request for this report will be accepted. An electronic version of the report and additional background information about the framework is available through the World Wide Web at <http://www.fgdc.gov/Fram/index.html>. **Unsuitable Project Summaries:** Project summaries will not be considered for projects on topics not being sought under this program. Data collection is not considered an appropriate activity for funding under this program. Project summaries focused on metadata and clearinghouse development will not be considered (the FGDC encourages these activities to seek support through the NSDI Competitive Cooperative

Agreements Program (1434-HQ-97-PA-00022)). Additionally, project summaries will not be considered for the following: from Federal agencies or Federally Funded Research and Development Centers where the agency or center is identified as the lead on the proposed project, from and work in foreign countries, from projects in which there is a real or the appearance of a conflict of interest, and from projects solely involving the direct procurement of a product or service. **Project Summary Preparation Instructions:** Organizations wishing to participate in the first phase should submit an unbound, signed original and one copy of the project summary. The project summary shall not exceed 3 single-spaced pages (including any figures or tables), and the type size shall not be smaller than 12 pitch/10 point type. Pages shall be numbered. Please note, that regardless of how many pages are submitted, only the first 3 pages of the Project Summary will be reviewed.

Project Summary Delivery Instructions: Project summaries must be received on or before January 17, 1997, at 3:00 p.m. EST. Project summaries delivered by mail should be sent to Ms. Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, MS 205B, 12201 Sunrise Valley Drive, Reston, VA 20192. Project summaries delivered by hand, during the work week, should be taken to the USGS, Office of Acquisition and Federal Assistance, Room 8A331, Attention: Ms. Tammy Fanning, MS 205B, 12201 Sunrise Valley Drive, Reston, Virginia, office business hours are 7:45 a.m. to 4:15 p.m. Project summaries received after 3:00 p.m. EST on January 17, 1997 will be returned to the applicant. **Planned Terms and Conditions for the FDPP** to be issued later this fiscal year. At the completion of phase two, the USGS intends to award cooperative agreements with funds totaling \$260,000 during fiscal year 1997. Funds requested for a project shall not exceed \$65,000. One year project periods are anticipated. This estimate does not bind the USGS to a specified number of awards. Each project must be collaborative and involve two or more organizations. **Please Note:** The project summaries submitted in response to this notice for phase one will not be used to make award selections, and will not be provided to the selection panels. No special consideration in the phase two FDPP selection process will be given to applications provided by organizations that submitted a program summary in response to phase one. The USGS

anticipates that it will announce phase two in late winter. The Government does not intend to award a cooperative agreement on the basis of this notice or to otherwise pay for the information solicited as a direct cost. The subsequent program announcement to be released in phase two will be synopsized in both the Commerce Business Daily and the Federal Register prior to release.

Dated: November 15, 1996.

Richard E. Witmer,
Acting Chief, National Mapping Division.
[FR Doc. 96-30082 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-31-M

Bureau of Land Management Alaska

(AK-062-1410-00-F)

Notice for Publication; Alaska Native Claims Selection

(AA-0646-A AA-0672-A)

In accordance with Departmental regulation 43 CFR 2850.7(d), notice is hereby given that decisions to issue conveyances under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Akhiok-Kaguyak, Incorporated, successors in interest to Natives of Akhiok, Inc. and Kaguyak, Inc., for 6,629 acres and 3,397.07 acres, respectively. The lands involved are located on and in the vicinity of Kodiak Island, Alaska, as follows:

Seward Meridian, Alaska

T. 36 S., R. 28 W., T. 39 S., R. 28 W., T. 35 S., R. 29 W., T. 39 S., R. 29 W., T. 40 S., R. 29 W., T. 39 S., R. 30 W., T. 35 S., R. 31 W., T. 36 S., R. 31 W., and T. 38 S., R. 32 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Kodiak Daily Mirror*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 26, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an

appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary L. Cunningham,
Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.
[FR Doc. 96-30116 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-05-P

(NV-000-1990-01; NS-03-001P (06-2A))

Notice of Intent To Prepare an Environmental Impact Statement for the South Pipeline Mining Plan of Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Cortez Gold Mines (Cortez) South Pipeline Project for mining in Lander County, Nevada, and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as amended, and to 43 Code of Federal Regulations Part 3809, the Bureau of Land Management, Battle Mountain Field Office (BLM) will be directing the preparation of an Environmental Impact Statement (EIS) for the proposed expansion and development of an open pit gold mine and associated facilities, in Lander County, Nevada. The EIS will be prepared by a third party consultant and funded by the proponent, Cortez. The BLM invites comments and suggestions on the scope of the analysis.

DATES: There will be two public scoping meetings hosted by the BLM in order to solicit input from the public about the South Pipeline Project. The first meeting will be held at the BLM Battle Mountain Field Office, at 50 Bastian Road, Battle Mountain, Nevada on Tuesday evening, December 10, 1996 from 7:00 p.m. until 9:00 p.m. The second meeting will be held at the Crescent Valley Senior Center, 6024 Ruby Way, Crescent Valley, Nevada on Wednesday evening, December 11, 1996, from 7:00 p.m. until 9:00 p.m. The purpose of these meetings is to identify issues to be addressed in the EIS, identify viable possible alternatives, and to encourage public participation in the NEPA process. BLM representatives will present an overview of the NEPA process, public involvement, and anticipated environmental impacts resulting from the project. Cortez representatives will be summarizing the Plan of Operations. Additional briefing meetings will be held as necessary. Written comments on

the scope of the EIS will be accepted through January 31, 1997.

ADDRESSES: Scoping comments may be sent to: BLM, Battle Mountain District Manager, 50 Bastian Rd., P.O. Box 1420, Battle Mountain, Nevada 89820 ATTN: Dave Davis.

FOR FURTHER INFORMATION CONTACT: Dave Davis, Project Manager, or Helen Mary Johnson, Geologist, at (702) 635-4000.

SUPPLEMENTARY INFORMATION: Cortez has recently submitted a proposal to expand their Pipeline mining facility located in southern Crescent Valley, Lander County, Nevada. The project will consist of an expansion of the current Pipeline Gold Mine Project. The South Pipeline Expansion will consist of a new open pit and associated dewatering facilities, new haul roads, expansion of the permitted Pipeline waste rock facility, a new heap leach facility, and soil stockpiles. Existing facilities will also be used. These facilities include the permitted infiltration ponds and conveyance systems, either the Cortez or Pipeline mills (or both), existing haul roads, the Pipeline tailings/heap leach facility, the Cortez tailings facility, and ancillary facilities such as offices, shops, power lines, water lines, etc. Total disturbance for the South Pipeline Plan Amendment as currently proposed is estimated to be 3,162 acres.

Potentially significant and significant direct, indirect, cumulative and residual impacts from the proposal will be analyzed in the EIS. Significant issues to be addressed in the EIS include those relating to: surface and ground water issues, air quality, cultural resources, and social and economic values. A significant issue that will be one of the focuses of the EIS will be the formation of a pit lake or pit lakes at the end of mining. Currently two large pit lakes separated by a common highwall or one large pit lake encompassing both the Pipeline and South Pipeline pits are possible post-mining scenarios. Partial backfilling of the Pipeline open pit with material from the South Pipeline Pit will also be evaluated. Additional significant issues to be addressed may arise during the scoping process. Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on this plan of operation are invited to participate in the scoping process.

Dated: November 19, 1996.

Wayne King,
Acting District Manager.
[FR Doc. 96-30143 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-05-P

FOR 96-0772-84; GRS-0134; OR-18514 (WAG)

Public Land Order No. 7225;
Revocation of Executive Order Dated
June 30, 1916; Washington

AGENCY: Bureau of Land Management,
Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety an Executive order which withdrew 94.17 acres of public lands for the Bureau of Land Management's Powersite Reserve No. 534. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 80 acres to surface entry. The lands have been and will remain open to mining and mineral leasing. The remaining 14.17-acre balance is included in another existing withdrawal and will remain closed to surface entry.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-952-8155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated June 30, 1916, which established Powersite Reserve No. 534, is hereby revoked in its entirety:

Willamette Meridian

T. 33 N., R. 10 E.,

Sec. 25, lot 1;

T. 33 N., R. 11 E.,

Sec. 19, lot 4;

Sec. 32, lot 2 and E½NW¼.

The areas described aggregate 94.17 acres in Skagit County.

2. At 8:30 a.m. on December 26, 1996, the land in the E½NW¼ of sec. 32, T. 33 N., R. 11 E., will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on December 26, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands described in paragraph 1, except as provided in paragraph 2, are within the Skagit Wild and Scenic River withdrawal and remain closed to surface entry.

Dated: November 4, 1996.

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 96-30078 Filed 11-25-96; 8:45 am]

BILLING CODE 4310-03-P

Minerals Management Service,
Interior.

Agency Information Collection
Activities: Proposed Collection;
Comment Request

AGENCY: Minerals Management Service,
DOI.

ACTION: Notice of information collection
solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, the Payor Information Form for solid minerals (OMB Control Number 1010-0064).

DATES: Written comments should be received on or before January 27, 1997.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225-0165; courier address is: Building 85, Room A-212, Denver Federal Center, Denver, Colorado 80225; e-Mail address is: David_Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Procedures Staff, phone (303) 231-3046, FAX (303) 231-3104, e-Mail: Dennis_Jones@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning this collection of information in order to solicit comment to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Secretary is authorized to prescribe rules and regulations and to

do any and all things necessary to accomplish the purposes of applicable laws. Relevant citations (Attachment 1) include 30 U.S.C. 189, pertaining to public lands; 30 U.S.C. 359, pertaining to acquired lands; and 25 U.S.C. 390d, pertaining to Indian lands. Regulations at 25 CFR 211 et seq. provide by cross-reference that applicable provisions of 30 CFR Chapter II apply to Indian leases. The Bureau of Land Management regulations at 43 CFR 3473 for coal, and 43 CFR 3503 for minerals other than coal, apply to this information collection. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary, who is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. MMS has developed computer applications that document payment and sales volumes and values as reported by payors and also track minerals from the point of production to the point of disposition, royalty determination, or point of sale. This consolidated database enables MMS to verify that proper royalties are being received for minerals produced; it is an essential part of an overall effort to improve the management of the nation's mineral resources and to ensure proper collection and accounting for revenues due from industries removing and processing solid minerals products from Federal or Indian leases. Information collected using the Payor Information Form (PIF) for solid minerals is an integral part of this database which is used to record and report data from new producing leases, for updating payor changes, and to notify MMS of the products on which royalties will be paid.

Detailed data are necessary to enable the Secretary to provide reliable, comprehensive sources of information for Federal, State, and Indian auditors and inspectors checking payors and lease operators. The data collected on the PIF are used to establish payor accounts for mineral leases on Federal and Indian lands, and to assign unique accounting identification numbers that will enable MMS to maintain, reconcile, and audit lease accounts. The PIF shows the party who pays rentals, minimum royalty, or royalties on production to MMS, and the products on which the payments are to be made.

Failure to collect the information reported on the PIF would make it impossible for MMS to comply with applicable laws and regulations of the United States. This, in turn, would result in significant loss of revenue to the U.S. Treasury, States, and Indians. In addition, the Secretary is required to

promptly disburse monies to the States and Indians. Accuracy of royalty collections and disbursements could not be assured without the PIF data.

Approximately 400 active solid minerals payors will submit an estimated 150 initial and updated PIF's annually. MMS estimates that it will take approximately 75 burden hours to complete these PIF's, or an average of ½ hour per PIF. MMS further estimates that it will take approximately 200 burden hours for all payors to perform the necessary recordkeeping directly related to the PIF, or an average of ½ hour per payor. Therefore, the total burden hours for this information collection is estimated to be 275 burden hours annually. At an estimated cost of \$25 per burden hour, the total estimated annual cost to respondents is \$6,875.

Dated: November 10, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96-30094 Filed 11-25-96; 8:45 am]

BILLING CODE 4310-MR-P

National Park Service

Delaware and Lehigh Navigation Canal
National Heritage Corridor
Commission meeting

AGENCY: National Park Service, Interior.
ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463).

Meeting Date and Time: Wednesday, December 4, 1996; 1:30 p.m. until 4:30 p.m.

Address: Commission Offices, 10 E. Church Street, Room P-205, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100-692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P-208, Bethlehem, PA 18018, (610) 861-9345.

Dated: November 19, 1996.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 96-30191 Filed 11-25-96; 8:45 am]

BILLING CODE 6225-PE-M

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and the Chairperson of the Subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission.

The following agenda items will be discussed:

- (1) Introduction of commission members and guests.
- (2) Review of SRC function and purpose.
- (3) Review and approval of minutes for February 1996 meeting.
- (4) Superintendent's report.
- (5) Commission membership status.
- (6) Update of Federal Subsistence Management Program.
- (7) Public and other agency comments:
- (8) Old business:
 - a. Status of SRC charter revision.
 - b. Status of draft Hunting Plan Recommendations (96-1, 96-2), review consultation comments.
- (9) New business:
 - a. Proposed 1997-98 subsistence hunting proposals/regulations.
 - b. Draft Subsistence Plan for Wrangell-St. Elias National Park and Preserve.
 - c. Review draft rulemaking to add Northway, Tetlin and Dot Lake as resident zone communities.
 - d. Review of NPS Subsistence Program.
- (10) Set time and place of next SRC meeting.

DATES: The meeting will be held Thursday and Friday, December 5 and 6, 1996. The meeting will begin at 9 a.m. and conclude around 5 p.m. each day.

LOCATION: The meeting will be held at the Tok Lodge, Tok, Alaska.

FOR FURTHER INFORMATION CONTACT: Jon Jarvis, Superintendent, Wrangell-St. Elias National Park, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822-5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul E. Anderson,

Acting Field Director.

[FR Doc. 96-30069 Filed 11-25-96; 8:45 am]

BILLING CODE 4310-TS-M

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: The Superintendent of Cape Krusenstern National Monument and Kobuk Valley National Park and the Chairpersons of the Subsistence Resource Commissions for Cape Krusenstern National Monument and Kobuk Valley National Park announce a forthcoming joint meeting of the Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions.

The following agenda items will be discussed:

- (1) Call to order and welcome by Chairs.
- (2) Moment of silence.
- (3) Roll call/confirmation of quorum.
- (4) Membership status report.
- (5) Introduction of guests.
- (6) Review agenda.
- (7) Approval of minutes from last meeting (August 18, 1993).
- (8) Election of officers (Chair and Vice Chair).
- (9) Superintendent's report:
 - a. NPS Subsistence Issue Paper report.
- (10) Agency and public comments.
- (11) Old business:
 - a. Review Secretarial response to hunting plan recommendations.
- (12) New business:
 - a. Hunting plan work session.
- (13) Set time and place of next SRC meeting.
- (14) Adjournment.

DATES: The meeting will be held Monday and Tuesday, December 9 and 10, 1996. The meeting will begin at 8 a.m. and conclude around 5 p.m. each day.

LOCATION: The meeting will be held at the Alaska Technical Center, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Spirtas, Superintendent, Cape Krusenstern National Monument and Kobuk Valley National Park, P.O. Box 1029, Kotzebue, Alaska 99752. Phone (907) 442-3890.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are

authorized under Title VIII, Section 806, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operate in accordance with the provisions of the Federal Advisory Committee Act.

Paul R. Anderson,
Acting Field Director.
[FR Doc. 96-30066 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-70-01

Bureau of Reclamation

Prospective Grant of Exclusive Patent License

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the Bureau of Reclamation (Reclamation) is contemplating the granting of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 5,558,462, titled "Flat Plate Fish Screen System," to River Solutions, Inc., having a place of business in Redding, California. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice Patent No. 5,558,462, it also serves to publish the availability of this patent for licensing in accordance with law. The prospective license may be granted unless Reclamation receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Written evidence and arguments against granting the prospective license must be received by February 24, 1997.

ADDRESSES: Inquiries, comments and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology

Transfer, MS-7612, 1849 C Street, N.W., Washington, D.C. 20240.

A copy of the above-identified patent may be purchased from the NTIS Sales Desk by telephoning 1-800-553-NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Donald E. Ralston at the address under the ADDRESSES caption or by telephone at (202) 208-5671.

SUPPLEMENTARY INFORMATION: The invention relates to fish screens for screening fish from water intakes for various installations such as pumps, canals and ditches, generators, water diversion structures, and the like. The present invention describes a fish screen device that is adapted to be lowered to the bottom of a body of water such as a lake, river, or the like and to be raised therefrom. The device includes, a housing unit including an upper flat wedge fish screen through which water passes and a discharge outlet for water passing through the fish screen for connection to external discharge piping. A controllable buoyancy arrangement, including a storage tank disposed within the housing unit and a compressor and control valves on shore, enables the housing unit, including the fish screen, to be lowered to the bottom of the body of water and to be raised therefrom. A pneumatic cleaning unit, also supplied from the compressor on shore, provides cleaning of the screen.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Date: November 20, 1996.

Donald E. Ralston,
Liaison, Research and Technology Transfer.
[FR Doc. 96-30197 Filed 11-25-96; 8:45 am]
BILLING CODE 4310-04-01

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 21, 1996.

The Department of Labor (DOL) has submitted the following public

information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219-5096 x166). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219-4720 between 9:00 a.m. and 12:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS/DM/ESA/ETA/MSHA/OSHA/PWRA/VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.
Title: Current Employment Statistics Survey.

OMB Number: 1220-0011.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Form	Number of respondents	Frequency of response	Annual responses	Minutes to complete report	Annual burden hours
BLS-730 BM	400	12	4,800	15	1,200
BLS-730-G, G-P, G-S-P J-FD	36,400	12	436,800	5	36,400
BLS-730-M (FAX) and P-Mail	0	1	45,000	2	1,500
BLS-730	0	1	45,000	2	1,500
All other BLS730, including H-P	325,000	12	3,900,000	7	455,000

Form	Number of respondents	Frequency of response	Annual responses	Minutes to complete report	Annual burden hours
Total	391,800		4,746,600		536,100

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Current Employment Statistics program provides current monthly statistics on employment, hours, and earnings by industry. The statistics produced are fundamental inputs in economic decision processes at all levels of government, private enterprise, and organized labor.

Agency: Occupational Safety and Health Administration.

Title: The 13 Carcinogens Standard.

OMB Number: 1218-0085.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 930.

Estimated Time Per Respondent: 2.76 hours.

Total Burden Hours: 2,568.

Signs, Labels and Training0.
Medical Surveillance1,379.
Operations Report194.
Emergency and Incident Report970.
Records Access and Transfer25.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): \$82,875.

Description: The 13 Carcinogens Standard is designed to provide protection for employees from the adverse health effects associated with occupational exposure to the following 13 carcinogens: 4-Nitrobiphenyl, alpha-Naphthylamine, Methyl chloromethyl ether, 3,3'-Dichlorobenzidine (and its salts), bis-Chloromethyl ether, beta-Naphthylamine, Benzidine, 4-Aminodiphenyl, Ethylenimine, beta-Propiolactone, 2-Acetylaminofluorene, 4-Dimethylaminoozobenzene, and N-Nitrosodimethylamine. Employers must post signs to regulate areas warning of cancer-suspect agents, as well as label containers identifying the carcinogen. Employees are to be trained prior to being authorized to enter regulated areas. Also employers are required to notify OSHA area directors of regulated areas, changes to regulated areas, and of incidents/emergencies. A medical surveillance program for employees considered for assignment to

enter regulated areas must also be established and implemented.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 96-30186 Filed 11-25-96; 8:45 am]
BILLING CODE 4510-04-01

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "The Consumer Expenditure quarterly-Interview and Diary Surveys."

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 27, 1997. BLS is particularly interested in comments which help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202-606-7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: **Background:** The Consumer Expenditure surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions.

The CE Survey has been an ongoing survey since 1979.

The data from the Consumer Expenditure Surveys is used to (1) provide data required for the CPI revision; (2) provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation; and (3) provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policy making agencies of the executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policy makers widely accept the need to improve the process used for revising the CIP. If the CE were not conducted on a continuing basis, current information necessary for more timely as well as more accurate updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand—from the public and private sectors—for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample

is interviewed every three months over five calendar quarters. The sample for each quarter is divided into three panels, with CU's being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures which respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

Current Actions: The CE survey will introduce revisions to the Diary Survey form in January of 1998. The Diary Survey, which is divided into five recording parts (Food Away from Home, Food for Home Consumption, Food and Beverages Purchased as Gifts, Clothing, Shoes and Jewelry, and All Other Purchases and Expenses), will introduce changes to the classification categories in the Food Away from Home part of the diary in order to meet the requirements of the new CPI item structure for Food Away from Home. Changes are also being made to the classification categories in the Clothing portion of the Diary to facilitate better reporting of clothing-related expenditures. These changes are being made to enhance the quality, utility and clarity of the data being collected in the Diary Survey.

The CE surveys will incorporate revisions into the Quarterly Interview Survey questionnaire in April of 1998. The changes being made to the Quarterly survey instrument are being made in an effort to reduce burden on CE respondents, where possible, and to enhance the quality and clarity of information being collected.

Type of Review: Revision of a currently-approved collection.

Agency: Bureau of Labor Statistics.

Title: Consumer Expenditure Surveys.

OMB Number: 1220-0050.

Affected Public: Individuals or households.

Total Respondents: 11,927.

Frequency: Quarterly Interview Survey respondents are interviewed quarterly for five consecutive quarters (four times in any one year). Diary Survey respondents complete two consecutive weekly reports.

Total Responses: 44,552.

Average Time Per Response: 87.7 minutes.

Estimated Total Burden Hours: 65,107 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (Operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requests; they also will become a matter of public record.

Signed at Washington, D.C., this 20th day of November, 1996.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 96-30185 Filed 11-25-96; 8:45 am]

BILLING CODE 4510-24-M

Mine Safety and Health Administration RIN 1219-AA81

Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers; Final Report

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of final report.

SUMMARY: This notice announces the availability of the final report of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (Advisory Committee).

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203; phone 703-235-1910.

SUPPLEMENTARY INFORMATION: The Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (Advisory Committee) was established by the Secretary of Labor on January 31, 1995, in accordance with the provisions of the Federal Advisory Committee Act (FACA) and Sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977, and was chartered under the provisions of FACA.

The Advisory Committee was charged to make recommendations to the Secretary for improved standards, or other appropriate actions, on permissible exposure limits to eliminate black lung disease and silicosis; the

means to control respirable coal mine dust levels; improved monitoring of respirable coal mine dust levels and the role of the miner in that monitoring; and the adequacy of the operators' current sampling program to determine the actual levels of dust concentrations to which miners are exposed.

The nine-member Advisory Committee visited three working mines and held five public meetings during which it reviewed an extensive amount of material and heard formal presentations from a number of technical experts on respirable dust control and measurement. The Advisory Committee also heard from some 75 members of the public including many miners. The Advisory Committee has issued its final report to the Secretary of Labor.

This report is available to interested members of the public and may be obtained upon request to: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203; phone 703-235-1910. The report is also available on MSHA's Homepage on the World Wide Web at: <http://www.msha.gov>.

The Advisory Committee unanimously recommended that the Mine Safety and Health Administration (MSHA) take full responsibility for all coal mine dust sampling conducted to determine compliance with exposure standards. As an interim measure, the group recommended that the current program of dust sampling by mine operators be strengthened, for example, by requiring only one full-shift sample to determine noncompliance rather than averaging five such samples.

Among other recommendations, the Advisory Committee said MSHA should:

1. Consider lowering the allowable exposure limit on coal mine dust;
2. Establish separate permissible exposure limits for silica (quartz) and coal mine dust;
3. Reduce silica exposure of coal miners to prevent silicosis;
4. Make better checks on the effectiveness of mine operators' dust control plans before MSHA approves them;
5. Improve dust control in surface coal mines;
6. Focus on dust exposure of independent contractor employees in coal mines;
7. Improve miner training on dust;
8. Expand the paid "walkaround rights" of miners' representatives to include participation in dust sampling;
9. Have mine operators pay for expanded government dust sampling;

10. Continue to push research on ways to achieve continuous monitoring of dust levels;

11. Include surface miners in periodic x-rays offered to underground coal miners; and

12. Further review the program required by 30 CFR part 90 that allows miners with signs of black lung to transfer into low-dust jobs.

Initial review of the final report by MSHA indicates that the Agency can adopt some of the recommendations quickly through administrative changes; however, some recommendations that require research or rulemaking may take a year or more to implement. The Agency plans to begin work immediately.

Dated: November 20, 1996.

J. Davitt McAleer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96-30120 Filed 11-25-96; 8:45 am]

BILLING CODE 4510-28-P

NUCLEAR REGULATORY COMMISSION

Correction to Order Approving Transfer of Licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation

On November 4, 1996 (61 FR 56714), the Federal Register published the Baltimore Gas and Electric Company; (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation); Order Approving Transfer of Licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation. On page 56714, under Section IV, the date by which a hearing request may be filed was inadvertently omitted. Section IV, paragraph 1 should read as follows:

By December 4, 1996, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

Dated at Rockville, Maryland, this 20th day of November 1996.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96-30150 Filed 11-25-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 96-443]

North Atlantic Energy Service Corporation; Notice of Consideration of Approval of Application Regarding the Formation of a Holding Company

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80, by issuance of an Order, of the application regarding the proposed creation of a holding company by Great Bay Power Corporation, holder of a 12.1324 percent interest in the Seabrook Station, Unit No. 1 (Seabrook) as authorized by the facility operating license. By letter dated May 8, 1996, North Atlantic Energy Services Corporation, the operator of Seabrook and authorized agent for the eleven joint owners of Seabrook, informed the Commission that a corporate restructuring of Great Bay has been proposed that will result in the creation of a holding company under the name Great Bay Holdings Corporation of which Great Bay would become a wholly-owned subsidiary. Additional information related to this restructuring was submitted by the firm of Shaw, Pittman, Potts & Trowbridge, counsel to Great Bay, by letter dated October 18, 1996. Following the restructuring, Great Bay would remain holder of its license for Seabrook with respect to its ownership interest in the facility. Under the restructuring, the owners of Great Bay's common stock will become the owners of common stock of the holding company on a share-by-share basis. According to the proposed plan, there will be no significant adverse change in ownership, management, or sources of funds for operation, maintenance, or decommissioning of Seabrook due to the corporate restructuring.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the North Atlantic letter dated May 8, 1996, and the Shaw, Pittman letter dated October 18, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington DC, and at the local public document room

located at Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 18th day of November 1996.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96-30152 Filed 11-25-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 72-2 (50-250/251)]

Notice of Issuance of Amendment to Materials License SNM-2501; Virginia Electric & Power Company, Surry Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 9 to Materials License SNM-2501 held by Virginia Electric and Power Company (VA Power) for the receipt, possession, transfer, and storage of spent fuel at the Surry ISFSI, located in Surry County, Virginia. The amendment is effective as of the date of issuance.

By application dated March 23, 1994, VA Power requested to amend its ISFSI license to authorize use of the TN-32 cask. This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L

Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Swam Library, the College of William and Mary, Williamsburg, VA 23185.

Dated at Rockville, Maryland, this 7th day of November 1996.

For the Nuclear Regulatory Commission,
Charles J. Haughey,

Acting Director, Spent Fuel Project Office,
Office of Nuclear Material Safety and
Safeguards.

[FR Doc. 96-30153 Filed 11-25-96; 8:45 am]

BILLING CODE 7590-01-2

[Docket No. 96-305]

Wisconsin Public Service Corporation,
Wisconsin Power & Light Co., Madison
Gas & Electric Co. (Kewaunee Nuclear
Power Plant); Exemption

I

The Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee), are the holders of Facility Operating License No. DPR-43 which authorizes operation of the Kewaunee Nuclear Power Plant (KNPP). The licensee provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a pressurized water reactor located at the licensee's site in Kewaunee County, Wisconsin.

II

The Code of Federal Regulations, paragraph I.D.3, "Calculation of Reflood Rate for Pressurized Water Reactors (PWRs)," of Appendix K to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR) requires that the refilling of the reactor vessel and the time and rate of reflooding of the core be calculated by an acceptable model that considers the thermal and hydraulic characteristics of the core and of the reactor system. In particular, paragraph I.D.3 requires, in part, that, "The ratio of the total fluid flow at the core exit plane to the total flow at the core inlet plane (carryover fraction) shall be used to determine the core exit flow and shall be determined in accordance with applicable experimental data." The purpose of this requirement is to assure that the core exit flow during the post-loss-of-coolant accident (LOCA) refill/reflood phase is determined using a model that accounts for appropriate experimental data.

Paragraph I.D.5, "Refill and Reflood Heat Transfer for Pressurized Water

Reactors," of Appendix K to 10 CFR Part 50 requires that: (1) for reflood rates of 1 inch per second or higher, the reflood heat transfer coefficients be based on applicable experimental data for unblocked cores, and (2) for reflood rates less than 1 inch per second during refill and reflood, heat transfer calculations be based on the assumption that cooling is only by steam.

By letter dated July 23, 1996, the licensee requested an exemption from the requirements of 10 CFR Part 50, Appendix K, paragraphs I.D.3 and I.D.5, as they apply to an evaluation model (EM) for the LOCA analysis for two-loop Westinghouse plants such as Kewaunee (WCAP-10924-P, Revision 1, Volume 1, Addendum 4).

The specific provision of paragraph I.D.3 from which the licensee requested an exemption, is the calculation of core exit flow based on carryover fraction. The licensee stated that the prescriptions for this calculation given in paragraph I.D.3 were based on data for a bottom-flooding configuration design. The Kewaunee design relies on upper plenum injection (UPI) for the ECCS injection during the reflood phase of a large-break LOCA. UPI is not a "lower flooding design;" its ECCS flow patterns, flow magnitudes, core cooling mechanisms, and, in fact, the meanings and impacts of the terms "inlet" and "exit" are different than those of bottom flooding plants. The EM is described in WCAP 10924-P, Revision 1, "Westinghouse Large-Break LOCA Best-Estimate Methodology, Volume 1: Model Description and Validation, Addendum 4: Model Revisions," dated August 1990, which was generically approved in a staff SER dated February 8, 1991. The EM determines core flow, including flow "exiting" the core, flow "entering" the core, and flow within the core and elsewhere within the reactor coolant system (RCS) in accordance with applicable experimental data. The data are different than that referenced in paragraph I.D.3, however, they were found acceptable because they are specifically applicable to UPI designs. Because of the differences between UPI design considerations and those for bottom flooding designs mentioned above, the "carryover fraction" as defined in paragraph I.D.3 is not calculated in the approved EM and would not have the same technical significance if it were. The licensee, therefore, concludes that, in using the approved UPI model for Kewaunee, it will not comply with paragraph I.D.3. The staff SER of February 8, 1991, finds that the WCAP-10924-P EM contains an empirically verified model, more directly applicable to top flooding

situations, to calculate core exit flow, which satisfies the technical purpose of the Appendix K, paragraph I.D.3 requirement to determine the core exit flow, but does not comply with the letter of the requirement.

In more detail, the intent of the Appendix K, paragraph I.D.3, requirement is to assure that the calculation of core exit flow is performed using an EM which has been verified against appropriate experimental data for LOCA accident analyses. The Westinghouse COBRA/TRAC code (WCobra/TRAC) consists of: (1) Westinghouse Large-Break LOCA Best Estimate Methodology, Volume 1: Model Description and Validation, WCAP-10924-P-A, Rev. 1, and Addenda 1, 2, and 3, December 1988, and (2) a Westinghouse Large-Break LOCA Best-Estimate Methodology, Volume 2: Application to Two-Loop PWRs Equipped with Upper Plenum Injection, WCAP-10924-P-A, Rev. 2, December 1988.

To assess WCOBRA/TRAC's capability for predicting the correct thermal-hydraulic behavior for upper plenum injection situations, WCOBRA/TRAC has been compared to the Japanese Cylindrical Core Test Facility data which models the interaction effects of upper plenum injection in a large scale test facility. WCOBRA/TRAC predicts the thermal-hydraulic effects of the upper plenum injection such that the carryover of steam and water into the hot legs is more realistically calculated.

The staff finds that the exemption from the paragraph I.D.3 requirement is acceptable because the licensee has provided an acceptable method to satisfy the underlying purpose of the requirement that appropriately models heat transfer mechanisms in UPI designs, and application of the regulation is not necessary to achieve the underlying purpose of the rule.

Paragraph I.D.5, dealing with refill and reflood heat transfer for PWRs, provides heat transfer prescriptions for refill, reflood with a flooding rate of less than 1 inch per second, and reflood with a flooding rate of more than 1 inch per second for bottom-flooding PWRs. The purpose of the paragraph is to assure that heat transfer in the core is appropriately calculated in the refill and reflood phases of post-LOCA recovery.

Paragraph I.D.5.a requires that "New correlations or modifications to the FLECHT (full length emergency cooling heat transfer) heat transfer correlations are acceptable only after they are demonstrated to be conservative, by comparison with FLECHT data, for a range of parameters consistent with the

transient to which they are applied." The licensee requested an exemption from the prescriptions of this paragraph because the FLECHT data do not portray UPI core heat transfer mechanisms as realistically as the more recent data upon which the models in WCAP-10924 were based. The licensee also indicates that the Kewaunee design is not lower flooding, and that technical considerations are different between bottom flooding designs and UPI design similar to those discussed above for paragraph I.D.3. The licensee identified that the WCAP-10924-P EM contains an empirically verified model which accounts for refill and reflood heat transfer, which satisfies the purpose of the paragraph I.D.5.a requirement. The heat transfer models in the approved UPI EM are based on comparisons to data other than the FLECHT data cited in paragraph I.D.5.a, and comparisons to the applicable data demonstrate acceptable conservatism (as identified in the staff SER of February 8, 1991). Because of the differences in bases, it is not clear that the licensee can demonstrate monotonic conservatism with respect to FLECHT data.

Further, to meet the intent of Appendix K, paragraph I.D.5, which is to use the most applicable data for LOCA accident analyses to appropriately calculate heat transfer during the refill and reflood phases; the WCOBRA/TRAC code has been verified against two independent sets of experimental data which model the upper plenum injection flow and heat transfer situation.

The first series of tests which have been modeled by WCOBRA/TRAC are the Westinghouse G-2 refill downflow and counterflow rod bundle film boiling experiments (Westinghouse G-2, 17x17 Refill Heat Transfer Tests and Analysis, WCAP-8793, August 1976).

These experiments were performed as a full length 17x17 Westinghouse rod bundle array which had a total of 336 heated rods. The injection flow was from the top of the bundle and is scalable to the UPI injection flows. The pressures varied between 20-100 psia which is the typical range for UPI top flooding situations. Both concurrent downflow film boiling and countercurrent film boiling experiments were modeled using WCOBRA/TRAC. Both of these flow situations are found in the calculated core response for a PWR with UPI.

In addition to modeling these separate effects tests, WCOBRA/TRAC has been used to model the Japanese Cylindrical Core Test Facility experiments with upper plenum injection. The tests which have been modeled included (1)

a symmetrical UPI injection with maximum injection flow; (2) minimum injection flows with a nearly symmetrical injection pattern, (3) a minimum UPI injection flow with a skewed UPI injection, and (4) a cold leg injection reference test for the UPI tests.

The results of these comparisons are documented and show that WCOBRA/TRAC does predict heat transfer behavior for these complex film boiling situations as well as the system response for upper plenum injection situations.

The effect of flow blockage due to cladding burst is explicitly accounted for in WCOBRA/TRAC with models which calculate cladding swelling, burst, and area reduction due to blockage. These models are based on previously approved models used in current evaluation models and on flow blockage models determined to be acceptable by the staff. The effect of flow blockage is accounted for from the time burst is calculated to occur. The fluid models in WCOBRA/TRAC calculate flow diversion as a result of the blockage and take into account the blockage from the time the cladding burst is calculated to occur. Thus, the heat transfer behavior is predicted for these complex film boiling situations and, thus, the intent of Appendix K, paragraph I.D.5, which requires flow blockage effects be taken into account, is met.

The staff finds that the exemption from the paragraph I.D.5.a requirement is acceptable based on the provision of an acceptable method to satisfy the purpose of the paragraph that requires appropriate calculation of core reflood rates and heat transfer during a large break LOCA.

Paragraph I.D.5.b requires that "During refill and during reflood when reflood rates are less than one inch per second, heat transfer calculations shall be based on the assumption that cooling is only by steam, and shall take into account any flow blockage calculated to occur as a result of cladding swelling or rupture as such blockage might affect both local steam flow and heat transfer." The EM approved for UPI plants which the licensee proposes to reference does base heat transfer on cooling other than steam if other regimes are calculated to occur. The bases of acceptability, including data comparisons, for this are discussed in the generic SER for the EM. By using this methodology, the licensee does not comply with this requirement, since the methodology recognizes that for a top flooding design, the preponderance of cooling water falls down into the core from above and may or may not be vaporized. Because the

licensee's model does not meet the "steam cooling only" requirement of I.D.5.b, but provides an approved alternate methodology (which does consider the thermal and hydraulic effects of cladding swelling and rupture, as also required in paragraph I.D.5.b) for calculating heat transfer, the staff finds the exemption from the requirement of I.D.5.b acceptable, as compliance is demonstrated not to be necessary to achieve the underlying purpose of the rule.

III

Section 50.12 of 10 CFR permits the granting of an exemption from the regulations under special circumstances. According to 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in question is not necessary to achieve the underlying purpose of the rule.

The staff finds that the requested exemptions for Kewaunee are acceptable, since compliance with the literal requirements of the paragraphs cited is not necessary given that the approved EM is based upon appropriate experimental data, the approved EM satisfactorily accounts for the cooling mechanisms in the Kewaunee UPI design for calculations of core reflood rates and heat transfer during a large break LOCA, and that the approved EM satisfies the purpose of the exempted requirements.

Thus, using the best-estimate thermal-hydraulic approved large break LOCA EM, the underlying purpose of the Appendix K, paragraphs I.D.3 and I.D.5 requirements can be achieved.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Therefore, the Commission hereby grants an exemption from 10 CFR Part 50, Appendix K, paragraphs I.D.3 and I.D.5. The staff also finds that the large break LOCA EM described in any approved version of WCAP-10924-P incorporated by Kewaunee may be used in licensing analyses, and that further exemptions will not be necessary unless the updated approved versions of the EM do not meet other requirements of 10 CFR 50.46 and/or Appendix K.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the exemption will have no significant impact on the quality of the human environment (61 FR 42447).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 19th day of November 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96-30154 Filed 11-25-96; 8:45 am]

BILLING CODE 7590-01-P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of November 25,

December 2, 9, and 16, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 25

Wednesday, November 27

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of December 2—Tentative

Friday, December 6

9:30 a.m.

Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

(Contact: John Larkins, 301-415-7360)

11:00 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of December 9—Tentative

Thursday, December 12

3:30 p.m.

Affirmation Session (Public Meeting) (if needed)

Week of December 16—Tentative

Monday, December 16

2:00 p.m.

Briefing on Inspection Criteria, Evolution of Assessment, and SALP System (Public Meeting)

Tuesday, December 17

2:00 p.m.

Meeting with Chairman of Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)

(Contact: Jose Cortez, 301-415-6596)

By a vote of 5-0 on November 13, the Commission determined pursuant to U.S.C. 552(b) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of EMERICK S. McDANIEL (Denial of Application for Reactor Operator License) LBP-96-17, Docket No. 55-21849-OT" be held on November 13, and on less than one week's notice to the public.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/sm/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 22, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96-30390 Filed 11-22-96; 3:00 pm]

BILLING CODE 7590-01-M

[Docket No. 56-309]

Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR 2.206 received from Ms. Anne D. Burt, on behalf of Friends of the Coast—Opposing Nuclear Pollution, dated January 20, 1996, for the Maine Yankee Atomic Power Station.

The Petition requests that the Commission take expedited action to (1) suspend the operating license of Maine Yankee pending resolution of the Petition; (2) examine and test by plug sampling—or other methods approved by the American Society of Mechanical Engineers—all large piping welds that may have been susceptible to micro-fissures at the time of construction; (3) reanalyze the Maine Yankee containment as one located in an area where seismic risk is not "low"; (4) reduce the licensed operating capacity of Maine Yankee to a level consistent with a flawed containment and/or flawed reactor coolant piping welds; (5) hold an informal public hearing in the area of the plant regarding the Petition; and (6) place the Petitioner on service and mailing lists relevant to the group's

interests in safety at Maine Yankee and intention to participate in all public forums opened by the Nuclear Regulatory Commission (NRC).

By letter dated May 13, 1996, the Director, Office of Nuclear Reactor Regulation (NRR), NRC, acknowledged the NRC's receipt of the Petition, and, for the reasons stated in the letter, denied Petitioner's request for immediate action suspending the operating license or reducing the licensed operating capacity of Maine Yankee (Requests 1 and, in part, 4). In addition, for reasons stated in the May 13, 1996, letter, the Director denied the Petitioner's request for an informal hearing (Request 5). The Director also stated in the May 13, 1996, letter that Petitioner's request that the NRC place Petitioner on service and mailing lists relevant to its interests in safety at Maine Yankee and its intention to participate in all public forums opened by the NRC (Request 6) was moot, as Petitioner's attorney had already been added to the Maine Yankee service list.

The Acting Director of the Office of Nuclear Reactor Regulation has now determined that no basis exists for taking any action in response to Requests 2, 3, and 4 of the Petition dated January 20, 1996. Accordingly, Requests 2, 3, and 4 have been denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD-96-20), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the local public document room located at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by the regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 20th day of November 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

I. Introduction

By letter dated January 20, 1996, Ms. Anne D. Burt filed a Petition with the U.S. Nuclear Regulatory Commission (NRC), pursuant to 10 CFR 2.206, on behalf of the Friends of the Coast—

Opposing Nuclear Pollution (the Petitioner) requesting that actions be taken regarding the Maine Yankee Atomic Power Station (Maine Yankee), operated by the Maine Yankee Atomic Power Company (the licensee). The Petition requests that the Commission take expedited action to (1) suspend the operating license of Maine Yankee pending resolution of the Petition; (2) examine and test by plug sampling—or other methods approved by the American Society of Mechanical Engineers—all large piping welds that may have been susceptible to micro-fissures at the time of construction; (3) reanalyze the Maine Yankee containment as one located in an area where seismic risk is not "low"; (4) reduce the licensed operating capacity of Maine Yankee to a level consistent with a flawed containment and/or flawed reactor coolant piping welds; (5) hold an informal public hearing in the area of the plant regarding the Petition; and (6) place the Petitioner on service and mailing lists relevant to the group's interests in safety at Maine Yankee and intention to participate in all public forums opened by the NRC.

By letter dated May 13, 1996, the Director, Office of Nuclear Reactor Regulation (NRR), NRC, acknowledged the NRC's receipt of the Petition, and, for the reasons stated in the letter, denied Petitioner's request for immediate action suspending the operating license or reducing the licensed operating capacity of Maine Yankee (Requests 1 and, in part, 4). In addition, for reasons stated in the May 13, 1996, letter, the Director denied the Petitioner's request for an informal hearing (Request 5). The Director also stated in the May 13, 1996, letter that the request that the NRC place Petitioner on service and mailing lists relevant to its interests in safety at Maine Yankee and its intention to participate in all public forums opened by the NRC (Request 6) was moot, as Petitioner's attorney had already been added to the Maine Yankee service list. In addition, the Petitioner was informed that NRC would review the Petition in accordance with 10 CFR 2.206 and issue a final decision within a reasonable time.

The remaining specific requests for NRC action in the Petition dated January 20, 1996, i.e., Requests 2, 3, and 4 identified above, and the issues that Petitioner raised as their bases, are addressed in this decision. For the reasons set forth below, Petitioner's remaining requests for action pursuant to 10 CFR 2.206 are denied.

II. Discussion

The NRC staff has conducted a thorough evaluation of each of the two safety-related issues raised in the Petition regarding the adequacy of the containment and reactor coolant welds. Each of the issues is addressed below.

a. Adequacy of Containment Design at or Above Originally Authorized Power Level

The Petitioner asserts that the containment is inadequate for operation at any power in excess of that authorized in the original license, and may be inadequate for the originally licensed power level because of insupportable original design acceptance criteria in that the Maine Yankee containment was designed and constructed without diagonal rods. The Petitioner states that

The Atomic Energy Commission staff recommended to the commission that a license amendment permitting this type of construction be allowed, "... for this plant and this plant only due to low seismic risk." Early in 1979 the MYAPS was shaken by an earthquake of 4.2 magnitude and epicentered less than ten miles from the plant site. The NRC then ordered the shutdown of five nuclear power stations including MYAPS until piping and piping supports could be seismically qualified

The Petitioner also states that there is no public record, however, that NRC reevaluated what Petitioner asserts is a marginally acceptable containment design at Maine Yankee before it granted license amendments to operate at increased power.

The Maine Yankee containment is a reinforced concrete structure. The original NRC operating license review determined that the seismic and thermal-hydraulic design of Maine Yankee's containment structure is adequate. (The construction permit for Maine Yankee was issued on October 21, 1968, and the operating license was issued on September 15, 1972.) With its Petition of January 20, 1996, the Petitioner enclosed an NRC letter of January 22, 1971, in which the staff asked the licensee to submit additional information related to seismic shear stress, given that there are no diagonal seismic shear reinforcements in the containment wall. Low seismicity of the site was not a factor in the staff's acceptance of the Maine Yankee containment design without diagonal seismic reinforcement bars. As described below, acceptance by the staff of the adequacy of the seismic design was based on the results of stress analyses.

The earthquake for which Maine Yankee was originally designed—termed a Safe Shutdown Earthquake (SSE)—is based on a Housner design response spectrum with a zero period peak horizontal ground acceleration of 0.10g. The five plant shutdown that was ordered on March 13, 1979, was triggered by a finding of an error in a piping computer program, which led to the issuance of IE Bulletin No. 79-07, "Piping Stress Analysis of Safety-Related Piping" on April 14, 1979. The earthquakes that occurred near the plant site starting on April 18, 1979, at 02 hours and 34 minutes universal time, were not a factor in the five plant shutdown that was ordered on March 13, 1979. As a consequence of the sequence of earthquakes that occurred near the plant in April 1979 and the occurrence of the January 9, 1982, magnitude 5 1/4 earthquake in New Brunswick, Canada, the licensee undertook a seismic analysis program. This program included analyses and upgrading of certain plant components and a reevaluation of the seismic hazard. Thus, the results from the seismic analyses and upgrading program were instrumental in the staff's conclusion that the existing seismic design for Maine Yankee remained adequate. However, following its review of the seismic hazard reevaluation, the NRC staff determined that the appropriate characterization of the ground motion for any future analysis of the plant is a high-frequency peak ground acceleration of 0.18 g anchoring the response spectrum obtained from NUREG/CR-0098, "Development of Criteria for Seismic Review of Selected Nuclear Power Plants," using the 50th percentile amplification factors.

Subsequently, in 1986, the Maine Yankee Plant underwent a seismic margin assessment program. The review-level earthquake used in the seismic margin assessment had a peak ground acceleration of 0.3g, which is much greater than the peak ground acceleration of the SSE. The seismic safety margin program included a review of the entire plant including analysis and upgrading of certain plant components, such as Main Control Board, Control Room Auxiliary Cabinets, Service Water Piping Support and others. As a result of this reassessment, it was established that, with the upgrades implemented at the plant, the Maine Yankee Plant can be safely shut down during an earthquake with a peak ground acceleration of 0.27g.

In its report "Seismic Margin Review of the Maine Yankee Atomic Power Station" (NUREG/CR-4826, Vol. 2,

dated March 1987), the NRC staff also concluded that the overall seismic margin of the plant, including the containment, was well above the 0.18g value and, therefore, no upgrading of the seismic design was considered necessary. Further, in the staff report "An Approach to the Quantification of Seismic Margins in Nuclear Power Plants" (NUREG/CR-4334, dated August 1985), it is also noted that prestressed and reinforced concrete containment structures have a large seismic margin above the SSE level earthquake.

Additionally, numerous tests and studies conducted since the operating license review of the Maine Yankee Plant, specifically on shear stress in biaxially cracked reinforced concrete without diagonal reinforcement bars, have led to the acceptance of specified allowable shear stress by the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section III, Division 2, CC-3421.5, for reinforced-concrete containment structures. An analysis of the Maine Yankee containment structure was conducted in December 1984 by the licensee and submitted on the Docket as an attachment to letter MN-85-27, dated February 5, 1985. The results of the study indicate that the controlling peak ground acceleration value is 0.39g for the ASME Code allowable tangential shear stress caused by the SSE loading in combination with design-basis internal pressure and dead loads. This provides additional confidence on the ruggedness of the Maine Yankee containment.

Based on the above, with regard to the Petitioner's concern about the adequacy of the Maine Yankee containment structural design for earthquakes (seismic), the staff concludes that the Maine Yankee containment is satisfactory and has adequate margin. The NRC staff has determined that the design of the Maine Yankee containment structure without diagonal reinforcement bars is supported by analysis and poses no undue risk to public health and safety. Accordingly, Petitioner's requests for NRC action based on the seismic design of the containment are denied.

b. Microfissuring of Low-Ferrite Stainless Steel Weldments

The Petitioner asserts that the Maine Yankee emergency core cooling system (ECCS), reactor coolant piping, and other large piping have not been adequately analyzed for materials degradation to ensure integrity at power operation in excess of the originally licensed power level or under accident

conditions. The Petitioner states further that the Atomic Energy Commission's concern with "microfissures" in reactor coolant system welds led to the appointment of a task force, and prompted studies and reports in 1971 (before heightened awareness of embrittlement phenomena) that concluded that the microfissures would not propagate or grow under foreseeable conditions. The Petitioner asserts that large pipe welds next to the reactor vessel have endured 23 years of corrosion, stress, vibration, and radiation and may fail, initiating a loss-of-coolant accident, or may be subject to thermal shock failure initiated by use of the ECCS.

In a safety evaluation dated February 25, 1972, the NRC staff concluded that the low-ferrite stainless steel weldments in large piping at Maine Yankee are acceptable because the microfissures of the type and density found in the low-ferrite stainless steel weldments of the Maine Yankee facility do not significantly impair the strength and capability of the welds, and that removal of the welds and rewelding could introduce other problems of greater safety significance than those resulting from the presence of microfissures. This evaluation was based on information provided by Battelle Columbus Laboratories, Stone and Webster Engineering Corporation, and Dr. Ernest F. Nippes of Rensselaer Polytechnic Institute. Furthermore, the Maine Yankee reactor vessel meets the requirements of 10 CFR 50.61, "Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock." In addition, the large diameter pipe welds attached to, or next to, the reactor vessel do not receive sufficient radiation to cause embrittlement. Finally, Type 316 stainless steel weld material, in which the microfissures were discovered, is resistant to corrosion in a PWR coolant environment, and the vibratory loads are insufficient to be a concern for large diameter piping.

In a letter to the Petitioner dated May 13, 1996, the staff stated that in order to determine if there is any long-term safety significance of the microfissures, the staff will review the inservice inspection results for the welds identified as being susceptible to microfissures. The staff has now completed its review of the inservice inspection tests results for welds susceptible to microfissures. The staff's review confirmed that no unacceptable indications have been observed during inservice inspection. In addition, pressure tests have not identified any leakage. These tests indicate that 23 years of plant operation have not caused

the microfissures to grow to a size detectable by inservice inspection or through-wall leakage. Plug sample testing was performed by Battelle, Columbus Laboratories, on the primary coolant system low-ferrite welds (Reference: Battelle's report dated September 17, 1971, which was transmitted by the licensee to the NRC by letter dated September 21, 1971). As part of the inservice inspection program in accordance with 10 CFR 50.55a(g), the licensee has been performing and continues to perform ASME Code inspections of large piping welds that may have been susceptible to microfissures at the time of construction. Additional plug sample testing would not yield any pertinent additional information and is not needed.

On the basis of the above analyses, inservice inspection, and pressure test results, microfissures are not considered a long-term safety-significant issue for Maine Yankee. Accordingly, the Petitioner's remaining requests for NRC action based on asserted microfissures in large piping welds is denied.

III. Conclusion

As explained above, and as requested by the Petitioner, the staff examined the adequacy of containment design and susceptibility of welds to microfissures. For the reasons stated above, no basis exists for taking any further action in response to the Petition. Accordingly, no action pursuant to 10 CFR 2.206 is being taken in this matter.

A copy of this Director's Decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Director's Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 20th day of November 1996.

For the Nuclear Regulatory Commission,
Frank J. Miraglia,
Acting Director, Office of Nuclear Reactor Regulation
[FR Doc. 96-30155 Filed 11-25-96; 8:45 am]
BILLING CODE 7530-01-P

Regulatory Guides; Availability

The Nuclear Regulatory Commission has updated the Regulatory Guide List to advise of the wide range of regulatory guides that are available and to list all published versions of each guide. The Regulatory Guide Series has been

developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Single copies of the Regulatory Guide List may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by fax at (301) 415-2280. Single copies of regulatory guides, both final and draft guides, may also be obtained free of charge at this address.

Regulatory guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides and the list of guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 8th day of November 1996.

For the Nuclear Regulatory Commission,
Frank A. Costanzi,
Deputy Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research
[FR Doc. 96-30151 Filed 11-25-96; 8:45 am]
BILLING CODE 7530-01-P

OFFICE OF PERSONNEL MANAGEMENT

[RI 25-41]

Submission for OMB Review; Comment Request for Extension of a Currently Approved Information Collection

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for extension of a currently approved information collection. RI 25-41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity to children who are age 18 or older.

Approximately 1,200 RI 25-41 forms are completed annually. It takes approximately 90 minutes to complete the form. The annual burden is 1,800 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to jmfarron@mail.opm.gov

DATE: Comments on this proposal should be received on or before December 26, 1996.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and
Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606-0623.

U.S. Office of Personnel Management
Lorraine A. Groom,
Deputy Director.
[FR Doc. 96-30161 Filed 11-25-96; 8:45 am]
BILLING CODE 3225-01-M

Submission for OMB Review; Comment Request for a Revised Information Collection

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management will submit to the Office of Management and Budget a request for reclearance of a revised information collection. Application to

Participate as a Carrier Under 5 U.S.C. 8903(4), is used by OPM to determine if Comprehensive Medical Plans applying for participation in the Federal Employees Health Benefit Program meet the requirements for participation. The revised application considerably lessens the information collection burden of the current application. This revision needs to be in place by the end of 1996 so plans can use it during the next application cycle.

The total annual reporting burden is estimated to be 4,500 hours based on 50 applications at an average time burden of 90 hours per plan.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-Mail to jmfarron@mail.opm.gov

DATE: Comments on this proposal should be received on or before December 26, 1996.

ADDRESSES: Send or deliver comments to—

Abby L. Block, Chief, Insurance Policy and Information Division, Retirement and Insurance Service, 1900 E Street, NW, Room 3451, Washington, DC 20415-0001

and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Team Leader, Management Services Division (202) 606-0623.

U.S. Office of Personnel Management
Lorraine A. Groom,
Deputy Director.
[FR Doc. 96-30162 Filed 11-25-96; 8:45 am]
BILLING CODE 3225-01-M

Privacy Act of 1974: Computer Matching Programs—OPM/Social Security Administration

AGENCY: Office of Personnel Management.
ACTION: Publication of notice of computer matching to comply with Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting and publication requirements of Pub. L. 100-503. The purpose of this match is for SSA to disclose benefit information to OPM to offset specific benefits.

DATES: The matching program will begin in December, 1996, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. Any public comment on this matching program must be submitted within the 30 day-public notice period, which begins on the publication date of this notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreeable between OPM and SSA after December 1, 1996, unless comments are received which will result in a contrary determination. Subsequent matches will take place annually on a recurring basis until one of the parties advises the other, in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to Kathleen M. McGettigan, Assistant Director, Financial Control and Management; Office of Personnel Management; 1900 E Street NW, Washington, DC 20415; or deliver to OPM, Room 4312, 1900 E Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606-0640.

SUPPLEMENTARY INFORMATION: OPM and SSA intend to conduct a computer matching program, as described below. The purpose of this agreement is to establish the conditions under which SSA agrees to the disclosure of benefit information to OPM. The SSA records will be used in a matching program with OPM's records on surviving spouses who may be eligible to receive a Supplementary Annuity, disability retirees, and child survivor annuitants, under the Federal Employees' Retirement System (FERS). The benefits payable to these recipients are offset if paid while also in receipt of SSA benefits. OPM will use the SSA data to verify the earnings information provided directly to OPM by the recipients.

Office of Personnel Management
James B. King,
Director.

Report of Computer Matching Program Between the Office of Personnel Management and Social Security Administration

A. Participating Agencies
OPM and SSA.

B. Purpose of the Matching Program
Chapter 84 of title 5, United States Code (U.S.C.), requires OPM to offset

specific benefits by a percentage of benefits payable under Title II of the Social Security Act. The matching will enable OPM to compute benefits at the correct rate and determine eligibility for benefits.

C. Authority for Conducting the Match Program

Chapter 84, title 5, United States Code.

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are SSA benefit status and amount and identifying information in order to match records (Master Files of Social Security Number Holders, HHS/SSA/OSR, 09-60-0058 and Master Beneficiary Record, HHS/SSA/OSR, 09-60-0090, last published at 69 FR 2144, January 6, 1995). The OPM records consist of annuity data from its system of records entitled OPM/Central 1—Civil Service Retirement and Insurance Records, last published in the Federal Register at 60 FR 63075, December 8, 1995.

E. Description of Matching Program

As frequently as daily, OPM will provide SSA with an extract from the annuity master file and from pending claims snapshot records via the File Transfer Management System (FTMS). The extracted file will contain identifying information concerning the disability annuitant, child survivor, or surviving spouse who may be eligible for a Supplemental annuity under FERS. Each record will be matched to SSA's records and requested information transmitted back to OPM.

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the files transmitted are protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988". Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe. Records used in this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records. The records matched and records created by the match will be transported under appropriate

safeguards. Both SSA and OPM have the right to make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and the Congress. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either, and the mandatory 30-day public notice period for comments has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective on the date specified above. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 96-30184 Filed 11-25-96; 8:45 am]
BILLING CODE 3225-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

- (1) *Collection title:* Notice of Intent to Offset Federal Income Tax Refund.
- (2) *Form(s) submitted:* G-49b.
- (3) *OMB Number:* 3220-0181.
- (4) *Expiration date of current OMB clearance:* December 31, 1996.
- (5) *Type of request:* Revision of a currently approved collection.
- (6) *Respondents:* Individuals or households.
- (7) *Estimated annual number of respondents:* 350.
- (8) *Total annual responses:* 350.
- (9) *Total annual reporting hours:* 58.
- (10) *Collection description:* Under Title 31 of the U.S. Code, the Railroad Retirement Board (RRB) may refer to the Internal Revenue Service for collection by tax refund offset, legally enforceable debts incurred by beneficiaries who received overpayments from the RRB. The collection obtains information

concerning the debtor's willingness to pay some or all of the debts or to state reasons for not doing so.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 96-30080 Filed 11-25-96; 8:45 am]
BILLING CODE 7000-01-M

Privacy Act of 1974; Proposed Changes to Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed amendment of a routine use.

SUMMARY: The purpose of this document is to give notice of a proposed amendment of a routine use to one of the RRB's Privacy Act systems of records.

DATES: The amended routine use will be effective 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092, (312) 751-4548.

SUPPLEMENTARY INFORMATION: Routine use "F" in System of Records RRB-20, Health Insurance and Supplemental Medical Insurance Enrollment and Premium Payment System (MEDICARE), currently reads as follows:

Beneficiary identification, premium rate and paid-thru date may be released to effect state buy-in and third party premium payments.

When this routine use was drafted, date of birth and sex of beneficiary as well as Medicare Part A and Part B entitlement date/end date, were inadvertently not included in the information to be released to effect state buy-in and third party premium payments. It has been determined that state agencies need these additional items of information in order to

efficiently effect state buy-in and third party premium payments. Accordingly, the RRB proposes to amend this routine use to include these additional items of information.

By authority of the Board,
Beatrice Ezerski,
Secretary to the Board.

RRB-20

SYSTEM NAME:

Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE)—RRB

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Paragraph "F" is revised to read as follows:

f. Beneficiary identifying information, date of birth, sex, premium rate, paid thru date, and Medicare Part A and Part B entitlement date/end date may be disclosed to effect state buy-in and third party premium payments.

[FR Doc. 96-30187 Filed 11-25-96; 8:45 am]
BILLING CODE 7000-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval of Existing Collection

Rule 10b-17, SEC File No. 270-427, OMB Control No. 3235—new.
Rule 11a1-1(T), SEC File No. 270-428, OMB Control No. 3235—new.
Rule 15c2-7, SEC File No. 270-420, OMB Control No. 3235—new.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of existing collections of information:

Rule 10b-17 (17 CFR 240.10b-17) requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of

securities: (1) A dividend; (2) a stock split; or (3) a rights or other subscription offering. Notice shall be given to the National Association of Securities Dealers, Inc.; in accordance with the procedures of the national securities exchange upon which the securities are registered; or may be waived by the Commission.

There are approximately 1,000 respondents that require an aggregate total of 3,800 hours to comply with this rule. Each of these approximately 1,000 issuers makes an estimated 2 annual responses, for an aggregate of 3,800 responses per year. Each response takes approximately 1 hour to complete. Thus, the total compliance burden per year is 3,800 burden hours. The approximate cost per hour is \$100, resulting in a total cost of compliance for the respondents of \$380,000 (3,800 hours @ \$100).

Rule 11a1-1(T) (17 CFR 240.11a1-1(T)) provides that an exchange member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

There are approximately 1,000 respondents that require an aggregate total of 333 hours to comply with this rule. Each of these approximately 1,000 respondents makes an estimated 20 annual responses, for an aggregate of 20,000 responses per year. Each response takes approximately 1 minute to complete. Thus, the total compliance burden per year is 333 hours (20,000 minutes/60 minutes per hour=333 hours). The approximate cost per hour is \$100, resulting in a total cost of compliance for the respondents of \$33,333 (333 hours @ \$100).

Rule 15c2-7 (17 CFR 240.15c2-7) renders it unlawful for a broker-dealer to furnish a quotation for a security to an inter-dealer-quotation-system unless certain conditions are met: (a) The appearing broker-dealer discloses whether the quote is on behalf of another broker-dealer, and if so, the

identity of such other broker-dealer; (b) the appearing broker-dealer discloses whether the quotation is submitted pursuant to any other arrangement between or among broker-dealers; (c) every broker-dealer who enters into any arrangement by which two or more broker-dealers submit quotations with respect to a particular security must inform all other broker-dealers of the existence of such an arrangement and the identity of the parties thereto; and (d) the quotation system must be one which makes it a general practice to differentiate between correspondent arrangements and all other arrangements, and which discloses the identities of all other broker-dealers where that information is required to be supplied to the quotation system. The purpose of the rule is to ensure that an inter-dealer-quotation-system clearly reveals where two or more quotations in different names for a particular security represent a single quotation or where one broker-dealer appears as a correspondent of another.

The rule requires the relevant information to be disclosed for each quotation submitted to an inter-dealer-quotation-system. Each registered market maker on an inter-dealer-quotation-system is required to disclose any correspondent broker-dealers for a particular security at the time the market maker initially registers with the inter-dealer-quotation-system as a market maker for such security. After the market maker's initial disclosure, the information is disclosed automatically through such market maker's electronic submission of a quotation to the inter-dealer-quotation-system. An aggregate total of approximately 20 of these initial disclosures are made per year. Each such initial disclosure takes approximately 1 minute to complete. Thus, the total compliance burden per year is approximately 20 minutes (0.33 burden hours).

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive

Office Building, Washington, D.C. 20503.

Dated: November 19, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-30175 Filed 11-25-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-22341; File No. 812-10198]

Wanger Advisors Trust, et al.

November 19, 1996.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Wanger Advisors Trust (the "Trust") and Wanger Asset Management, L.P. (the "Adviser").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company or series thereof that is designed to fund variable insurance products and for which the Adviser, or any of its affiliates, may serve now or in the future as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, with the Trust, the "Funds") to be sold to and held by: (a) The variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies"); and (b) certain qualified pension and retirement plans outside of the separate account context (the "Qualified Plans").

FILING DATES: The application was filed on June 12, 1996, and amended and restated on November 15, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 16, 1996, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Wanger Asset Management, L.P., 227 West Monroe Street, Suite 3000, Chicago, IL 60606, with copies to Janet D. Olsen, Bell, Boyd & Lloyd, Three First National Plaza, Suite 3300, Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Law Clerk, or Patricia Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Trust is a Massachusetts business trust which is registered under the 1940 Act as an open-end, management investment company. Currently, the Trust consists of two separate portfolios: Wanger U.S. Small Cap Advisor and Wanger International Small Cap Advisor (each a "Portfolio" and together the "Portfolios"). The Trust may offer additional portfolios in the future. The Trust's initial registration statement on Form N-1A was declared effective on March 10, 1995.

2. The Adviser is registered with the SEC under the Investment Advisers Act of 1940, and is the investment adviser for each Portfolio. The Adviser is a Delaware limited partnership. The general partner of the Adviser is Wanger Asset Management, Ltd., a Delaware corporation.

3. The Trust currently offers its shares to, and its shares are held by: (a) separate accounts registered with the SEC under the 1940 Act as unit investment trusts of life insurance company affiliates of Phoenix Home Life Mutual Insurance Company, Safeco Life Insurance Company and First Provident Life and Health Insurance Company (collectively, the "Companies") and (b) Qualified Plans. The Trust serves as the investment vehicle for variable annuity contracts issued by the Companies.

4. The Funds intend to offer and sell their shares to variable annuity and variable life separate accounts ("Separate Accounts") of Participating Insurance Companies, including the Companies and insurance companies that are affiliated or unaffiliated therewith to serve as an investment vehicle for various types of insurance

products. These products may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, the "Contracts"). The Funds also intend to offer their shares directly to Qualified Plans.

5. Each Participating Insurance Company will enter into a participation agreement with the Trust or Fund in which such Participating Insurance Company invests. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract which it issues. The Funds will fulfill any conditions that the Commission may impose upon granting the order requested in the application.

6. The Adviser may act as an investment advisor, trustee or custodian to Qualified Plans which invest in the Trust. The Adviser is not permitted to advise such Qualified Plans to invest in the Trust, although the independent fiduciaries of such Qualified Plans may choose to invest in the Trust.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e-2(b)(15) are available only where a management investment company underlying a UIT ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated or unaffiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

2. The relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also

offers its shares to separate accounts funding variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding." "Mixed and share funding" denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. Rule 6e-2(b)(15) precludes mixed funding as well as shared funding.

3. Applicants state that because the relief under Rule 6e-2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a UIT, Rule 6e-3(T)(b)(15) provides partial exemptions from Section 9(a), and from Sections 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e-3(T)(b)(15) are available only where a UIT's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e-3(T)(b)(15) permits mixed funding for flexible premium variable life insurance, but does not permit shared funding.

5. Applicants state that because the relief under Rule 6e-3(T) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Qualified Plans.

6. Applicants therefore request that the Commission grant relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding.

7. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that

company is subject to a disqualification enumerated in Section 9(a)(1) or (a)(2). Applicants state that the partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of Section 9 limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that Section. Applicants state that Rules 6e-2 and 6e-3(T) recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies that fund the Separate Accounts that are managed, administered, or invested in by that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Accordingly, Applicants assert that there is no regulatory reason to apply the requirements of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts. Additionally, Applicants state that the relief requested should not be affected by the sale of shares of the Funds to Qualified Plans.

8. Applicants state that Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances.

9. Applicants state that Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A)(1) provide that an insurance company may disregard voting instructions of its contract owners with respect to the investments of any underlying investment company or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules).

10. Applicants state that Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(A)(2) provide that the

insurance company may disregard the voting instructions of contract owners in favor of any change in such company's investment objectives, principal underwriter, or any investment adviser (subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of the Rules).

11. Applicants maintain, therefore, that in adopting Rule 6e-2 the Commission expressly recognized that such exemptions from pass-through voting requirements are necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicants state that flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority and, therefore, the corresponding provisions of Rule 6e-3(T) undoubtedly were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e-2. Applicants argue that these considerations are no less important or necessary when an insurance company funds its separate account on a mixed and shared funding basis, and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

12. Applicants further represent that the Funds' sale of shares to the Qualified Plans should not affect the relief requested in this regard. Shares of the Funds sold to Qualified Plans are held by the trustees of the Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, plan trustees have the exclusive authority and responsibility

for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Qualified Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

13. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different from that which exists when a single insurer is licensed to do business in several states.

14. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions discussed below are designed to insure that the decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Fund.

15. Applicants also argue that affiliation does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a

Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of contract.

17. Applicants note that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817-5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants further note that while there are differences in the manner in which distributions from variable contracts and Qualified Plans are taxed, these differences do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset values. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan. A Participating Insurance Company will surrender values from the Separate Account in accordance with the terms of the variable contract.

19. Applicants submit that there is no greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and contract owners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

20. In connection with any meeting of shareholders, Applicants represent that the Funds will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the respective Funds. A Participating Insurance Company will then solicit voting instructions consistent with the "pass-through" voting requirement.

21. Applicants state that the ability of the Funds to sell their shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a Qualified Plan participant. Regardless of the rights and benefits of participants under Qualified Plans or contract owners under variable contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Funds. They can redeem such shares only at their net asset value. No shareholder of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

22. Applicants submit that there are no conflicts between contract owners of Separate Accounts and participants under Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in another funding vehicle, or even hold cash pending suitable investment, without the same regulatory impediments. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved in that the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds.

23. Applicants state that various factors have kept insurance companies from offering variable annuity contracts and variable life insurance contracts. These factors include the costs of

organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public as investment professionals. Applicants argue that use of a Fund as a common investment medium for variable contracts would alleviate these concerns. Applicants submit that mixed and shared funding would benefit Contract owners by: eliminating a significant portion of the costs of establishing and administering separate funds; allowing for a greater amount of assets available for investment by the Funds, thereby promoting economies of scale which permit increased safety of investments through greater diversification and make the addition of new portfolios more feasible; and encouraging more insurance companies to offer variable contracts which may result in increased competition with respect to both variable contract design and pricing, which, in turn, may be expected to result in more product variation and lower charges.

Applicants' Conditions

If the requested Order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Directors of each Fund (each, a "Board") will consist of persons who are not "interested persons" of that Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee(s) or director(s), then the operation of this condition will be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict among the interests of contract owners of all Separate Accounts and the interests of participants under Qualified Plans investing in the respective Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or

regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any portfolio of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) as applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. The Adviser (or any other investment adviser of a Fund), any Participating Insurance Company, and any Qualified Plan that executes a Fund participation agreement upon becoming an owner of ten percent (10%) or more of the assets of the Fund (referred to herein as a "Participating Plan"), will report any potential or existing conflicts to the Board. The Adviser, Participating Insurance Companies, and Participating Plans will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of each Participating Insurance Company and the Adviser to inform the Board whenever the Participating Insurance Company has determined to disregard contract owners' voting instructions, and, if pass-through voting is applicable, an obligation of the Adviser and a Qualified Plan, to inform the Board whenever the Qualified Plan has determined to disregard voting instructions of Qualified Plan participants. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of the Adviser and of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreements governing participation in each Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Contract owners and, as applicable, Qualified Plan participants.

4. If a majority of the Board of a Fund, or a majority of its disinterested members, determines that a material irreconcilable conflict exists, the Adviser and the relevant Participating Insurance Companies and Participating Plans shall, as appropriate and at their

¹ Investment Company Act Release No. 9104 (Dec. 30, 1975), 9 SEC Docket 932 (proposing Rule 6e-2).

expenses and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from that Fund and reinvesting such assets in a different investment medium, which may include another portfolio of that Fund, or submitting the question whether such segregation should be implemented to a vote of all affected Contract owners, and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners, variable life insurance contract owners, or contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation or offering to the affected Contract owners the option of making such a change; and (b) establishing a new registered management investment company (or series thereof) or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Fund's election, to withdraw its Separate Account's investment in that Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Plan's decision to disregard plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict, will be a contractual obligation of the Adviser and all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of Contracts owners and Qualified Plan participants, as applicable.

5. For purposes of condition 4, a majority of the disinterested members of the relevant Board will determine whether any proposed action adequately remedies any material irreconcilable

conflict, but in no event will the relevant Fund or the Adviser (or any other investment adviser of the Funds) be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by condition 4 to establish a new funding medium for any variable contracts if an offer to do so has been declined by vote of a majority of contract owners materially affected by the material irreconcilable conflict.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to the Adviser and to all Participating Insurance Companies and all Participating Plans.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Funds held in their Separate Accounts in a manner consistent with timely voting instructions received from Contract owners. Each Participating Insurance Company will vote Fund shares held in its Separate Accounts for which no timely voting instructions from Contract owners are received, as well as Fund shares held in its general account or otherwise attributed to it, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts investing in a Fund calculates voting privileges in a manner consistent with the Separate Accounts of other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in that Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instruction, as well as shares it owns, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in shares of the Funds), and in particular each Fund will either

provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings), or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c)) as well as with Section 16(a) of the 1940 Act and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity contracts and variable life insurance contracts offered by various Participating Insurance Companies and for Qualified Plans; (b) the interests of various Contract owners and Qualified Plans investing in the Funds may conflict; and (c) the Board will monitor its respective Fund for any material irreconcilable conflict and determine what action, if any, should be taken in response to such conflict.

10. If and to the extent that Rule 6e-2 or 6e-3(T) under the 1940 Act are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Funds and/or Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

11. At least annually, the Adviser, and the Participating Insurance Companies and Participating Plans will submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in this application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the relevant Board. The obligation to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of the Adviser and of all Participating Insurance Companies and Participating Plans

under their agreements governing participation in the Funds.

12. All reports received by a Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying the Adviser and Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records will be made available to the Commission upon request.

13. None of the Funds will accept a purchase order from a Qualified Plan if, after the entry of the order, such purchase would make the Plan an owner of 10% or more of the assets of a Fund, unless such plan executes a fund participation agreement with such Fund. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Funds, or, if the Qualified Plan is already a Fund shareholder at the date of this application, prior to the date of entry of the Commission order pursuant thereto.

Conclusion

For the reasons stated above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-30084 Filed 11-25-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-3765; File No. SR-Amex-96-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Extending Trading Hours To Permit the Execution of Matched Orders for Exchange-Listed Securities Which Are Part of a Basket Trade Being Done in Large Part on the New York Stock Exchange's Crossing Session II

November 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 12, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its trading hours to permit the execution of matched orders for Exchange-listed securities which are part of a basket trade being done in large part on the New York Stock Exchange's ("NYSE") Crossing Session II. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When the Exchange implemented an After-Hours Trading Facility for single-sided and matched closing price orders, it determined that it would not, at that time, establish an after-hours crossing session for aggregate-price basket trades similar to the NYSE's Crossing Session II.³ Some member organizations,

however, have noted that the Exchange's lack of such a facility has impaired their ability to effect program trades which include Amex-listed stocks. For example, if a firm wanted to do an after-hours program trade based on the S&P 500 Index, it would cross the component stocks listed on the NYSE during Crossing Session II; it would cross those listed on Nasdaq in-house; but it would have to cross most of the Amex-listed component stocks overseas. Because most of the Amex-listed stocks included in the S&P 500 Index are not 19c-3 securities (that is, they were exchange-listed on or prior to April 26, 1979), Exchange Rule 5 (Off Board Trading) applies and prohibits member firms from acting as principal in an upstairs trade in these securities executed in the United States. Due to the time differences, the Exchange believes that executing the Amex component of the basket trade overseas creates administrative difficulties and increased costs for member firms engaging in these transactions.

The Exchange is proposing to create a facility to permit members and member organizations to execute on the Exchange, after normal trading hours, coupled orders for Amex-listed securities which are part of an aggregate-price basket trade otherwise being done in the NYSE's Crossing Session II. Operationally, the Exchange's After-Hours Trading Facility for aggregate-price coupled orders would work in the same manner as the NYSE's Crossing Session II. Members and member organizations using the facility would transmit a facsimile form which would specify the number of stocks, aggregate number of shares and the dollar value of the securities to be crossed. The trade would be executed, and a report transmitted by facsimile to the initiating firm. At the end of the session (5:15 p.m. New York time) the number of stocks, shares and the dollar value of all baskets traded during the session would be aggregated separately for the Exchange-listed and NYSE-listed components of the baskets, and the totals would be transmitted to the Securities Industry Automation

Session II are aggregated and reported on Tape A as an administration message at the close of the session. Only the aggregate share volume and dollar amount of all programs executed during the session are reported. No reports are printed with respect to the individual stocks comprising the baskets. Notwithstanding the foregoing, members and member organizations effecting trades in Crossing Session II are required to submit to the NYSE's Market Surveillance by T+3 the names and the number of shares of each NYSE-listed stock comprising each basket. All NYSE transaction fees are waived for transactions effected during Crossing Session II.

¹ 15 U.S.C. 78a(b)(1).

² 17 CFR 240.19b-4.

³ As part of its overall after-hours trading plan, the NYSE created a facility for the execution of aggregate-price basket orders involving at least 15 NYSE-listed securities with an aggregate minimum value of one million dollars ("Crossing Session II"). In this facility, which is available from 4:00 p.m. to 5:15 p.m., New York time, a member transmits matched buy and sell orders to the NYSE on a facsimile from listing the number of stocks and shares to be traded and the total dollar value of the basket trade. Transactions effected during Crossing

Corporation for publication on the "Tape" as administrative messages. A print of the NYSE listed portion of the basket would appear on Tape B reflecting the Exchange-listed portion of the basket transactions.

On T+3 members will report to the Exchange the names and number of shares of each Amex-listed stock included in the basket. On T+4, the Exchange will publish this information in its Daily Sales Report.

The Amex will waive all transaction fees in connection with the execution of coupled orders for Amex-listed securities which are part of an aggregate-price basket trade otherwise being done in the NYSE's Crossing Session II.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-96-43 and should be submitted by December 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-30174 Filed 11-25-96; 8:45 am]
BILLING CODE 8110-01-M

SMALL BUSINESS ADMINISTRATION

Declaration of Economic Injury Disaster Loan Area #9250J

Massachusetts (With Contiguous Counties in New Hampshire and Rhode Island); Declaration of Disaster Loan Area

Barnstable, Bristol and Essex Counties and the contiguous counties of Dukes, Middlesex, Norfolk, Plymouth, and Suffolk in the State of Massachusetts; Hillsborough and Rockingham Counties in New Hampshire; and Bristol, Newport, and Providence Counties in Rhode Island constitute an economic injury disaster area as a result of a fishery resource disaster as determined by the Secretary of Commerce. The incident period of this disaster is from December 12, 1994 and continuing. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on August 20, 1997 at the address listed below:

U.S. Small Business Administration,
Disaster Area 1 Office, 360 Rainbow

* 17 CFR 200.30-3(a)(12).

Blvd. South, 3rd Floor, Niagara Falls, New York 14303

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The number assigned to this disaster for economic injury is 925000 for the State of Massachusetts, 925100 for New Hampshire, and 9252 for Rhode Island.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 20, 1996.

Ginger Law,

Acting Administrator.

[FR Doc. 96-30177 Filed 11-25-96; 8:45 am]

BILLING CODE 8020-01-P

Declaration of Disaster Loan Area #2911; Amendment #2

New Hampshire; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated November 14, 1996, the above-named Declaration is hereby amended to include Merrimack and Sullivan Counties in the State of New Hampshire as a disaster area due to damages caused by a fall northeaster rainstorm which occurred October 20 through October 26, 1996.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Grafton in the State of New Hampshire, and the contiguous counties of Windham and Windsor in the State of Vermont may be filed until the specified date at the previously designated location. All other counties contiguous to the above-named counties have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for loans for physical damage is December 28, 1996, and for loans for economic injury the deadline is July 29, 1997.

The number assigned to this disaster for economic injury is 925300 for Vermont.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006)

Dated: November 19, 1996.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96-30147 Filed 11-25-96; 8:45 am]

BILLING CODE 8020-01-P

COMMISSION ON UNITED STATES-PACIFIC TRADE AND INVESTMENT POLICY

Office of the United States Trade Representative

Notice of Meeting of the Commission on United States-Pacific Trade and Investment Policy

AGENCY: Commission on United States-Pacific Trade and Investment Policy/Office of the United States Trade Representative.

ACTION: Notice that the meeting of the Commission on United States-Pacific Trade and Investment Policy is scheduled for November 25, 1996 from 9:30 a.m. to 5:30 p.m. This meeting will be closed to the public.

SUMMARY: The Commission on United States-Pacific Trade and Investment Policy will hold a meeting on November 25, 1996 from 9:30 a.m. to 5:30 p.m. This meeting will be closed to the public. This meeting will include a review and discussion of current issues affecting U.S. trade policy with Asia and discussion of the Commission's final recommendations for its report to the President. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, the USTR has determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: This meeting is scheduled for November 25, 1996, unless otherwise notified.

ADDRESSES: These meetings will be held at the U.S. Department of Commerce, Patent and Trademark Office, Office of Patent Policy Dissemination, Crystal Square 4, Suite 700, 1745 Jefferson Davis Highway (Route 1), Arlington, VA 22202, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT:

Nancy Adams, Executive Director of the Commission on United States-Pacific Trade and Investment Policy, Room 400,

600 17th Street, NW, Washington, D.C. 20508, (202) 395-3679.

Nancy Adams,

Executive Director, Commission on United States-Pacific Trade and Investment Policy.
Charlene Barnhefky,

Acting United States Trade Representative.

[FR Doc. 96-30135 Filed 11-25-96; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96-063]

Incineration of Solid Waste Aboard U.S. Coast Guard Cutters; Environmental Assessment and Proposed Finding of No Significant Impact

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared an Environmental Assessment (EA) and proposed Finding of No Significant Impact (FONSI) for the proposed installation of marine incinerators on board certain classes of cutters (vessels larger than 65 feet in length) for the purpose of burning shipboard solid waste and waste oil to mitigate its accumulation. The EA analysis provides the basis for concluding that there will be no significant impact on the marine environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces availability of the EA and proposed FONSI and solicits comments.

DATES: Comments must be received on or before December 26, 1996.

ADDRESSES: Comments may be mailed to the Commanding Officer (ELC code 016), 2401 Hawkins Point Road, Baltimore, MD 21226-5000, or may be delivered to the same address between 8 a.m. and 3 p.m. EST, Monday through Friday, except Federal Holidays. The telephone number is (410) 636-3585, and FAX (410) 636-7379.

Copies of the EA and proposed FONSI may be obtained by contacting Mr. Hari Bindal at (410) 636-3585 or faxing a request to (410) 636-7379. Copies of EA and FONSI are also available for inspection at the office of the Commanding Officer, Engineering Logistics Center (ELC 016), 2401 Hawkins Point Road, Baltimore, Maryland 21226-5000.

FOR FURTHER INFORMATION CONTACT:

Mr. Hari Bindal, Environmental Protection Specialist, (410) 636-3585.

Request for Comments

Copies of EA and proposed FONSI are available as described under ADDRESSES. The Coast Guard encourages interested persons to comment on these documents. The Coast Guard will consider these comments prior to finalizing the proposed FONSI and prior to making a decision to implement installation of incinerators aboard its cutters. If comments are received that merit revision of the EA, the EA will be revised before finalizing the FONSI.

Background

U.S. Coast Guard's major missions are: Law Enforcement, Defense Operations, Search and Rescue, Ice Operations, Marine Science, Pollution Response, and Aids to Navigation. To accomplish these missions, USCG operates a fleet of boats and cutters on the U.S. domestic and international waters. Cutters having designed endurance of 5 days or more, and with a crew of more than 50, face problems with shipboard generated solid waste (trash, garbage) and waste oil. Some of the Coast Guard cutters voyage for a period up to 180 days between port visits, and carry a crew of over 200. The International Convention for the Prevention of Pollution from Ships (MARPOL) and the U.S. Act to Prevent Pollution from Ships (APPS) prohibit disposal of plastics anywhere at sea and restrict discharge of other waste to certain distances from shore. MARPOL also has designated certain special areas where waste discharge regulations are more stringent. To comply with MARPOL, APPS, and other environmental laws and regulations, Coast Guard cutters must either store and carry the waste back to port, or install on-board disposal devices which comply with these regulations. Given that cutters have very limited storage space, and to provide for healthy and safe conditions for the crew, the Coast Guard considered several alternatives, and has proposed incinerators as the means to handle the shipboard solid waste.

This environmental assessment (EA) was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969; and the Coast Guard's NEPA Implementing Procedures, to evaluate the potential environmental impacts of the proposed installation of incinerators on certain classes of Coast Guard cutters. Other International and U.S. Laws which apply to the use of incinerators on ships include: The Antarctic Treaties; Clean Air Act; Resource Conservation and Recovery Act; Coastal Zone Management Act;

Endangered Species Act; Fish and Wildlife Conservation Act; Clean Water Act; and Comprehensive Environmental Response and Liability Act.

Other alternatives for shipboard solid waste and waste oil handling considered by the Coast Guard were: (1) No Action; (2) Retention and Transfer; (3) Recycling; and (4) Volume Reduction by using Compactors, Pulpers, and Shredders. These alternatives do not provide a complete solution to the problem, since either the waste still requires some storage on board, or the waste is discharged at sea without sufficient treatment. Therefore, incineration was selected as the preferred alternative.

The EA investigated impacts of incineration on the physical environment (hydrologic and geographic features); biological environment (marine mammals, sea turtle, fish, invertebrates, coastal and marine birds, plankton, and benthos); and the atmosphere (ambient air quality, global warming, and ozone depletion). These factors were considered for all areas of operation, including MARPOL special areas.

Air emission tests were conducted on a prototype incinerator, installed on a Coast Guard cutter. Carbon monoxide (CO), Nitrogen oxides (NO_x), Sulphur dioxide (SO₂), Volatile organic compounds (VOCs), Dioxins and Trace metals in the flue were measured and analyzed. Residue ash was analyzed for trace metals. All analyzed constituents were found to be below the International Maritime Organization (IMO) shipboard incinerator standards and Environmental Protection Agency (EPA) standards for municipal incinerators. An air dispersion model was used to analyze the impact of trace pollutants on the sea surface. The concentrations were insignificant.

The EA concludes that the concentrations of pollutants generated by the proposed installation of incinerators on board certain classes of Coast Guard cutters are low enough that the physical, biological, and atmospheric effects on the marine environment are significant for all areas of operation. Consequently, an Environmental Impact Statement is not required.

Dated: September 19, 1996.

Gregory B. Kirkbride,

CDR, USCG, USCG Engineering Logistics Center, Environmental Branch.

[FR Doc. 96-30064 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-14-M

[CGD 96-062]

Natural Gas as Fuel in Marine Applications

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is studying the use of compressed natural gas (CNG) and liquefied natural gas (LNG) as fuel aboard commercial ships. Use of these types of fuel offers the opportunity to decrease harmful engine exhaust emissions and reduce the potential for oil spills.

DATES: A public meeting will be held on Tuesday, January 14, 1997. Comments must be received before Monday, February 3, 1997.

ADDRESSES: The meeting will be held at the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590-0001. Written comments may be mailed to Commandant (G-MSE-3), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, or faxed to 202-267-4816.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.K. Butturini, Mr. Wayne Lundy or Ensign Felicia K. Rydzewski, Systems Engineering Division, Commandant (G-MSE-3), room 1300, telephone (202) 267-2206 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. SUPPLEMENTARY INFORMATION: The Coast Guard is responsible for establishing safety standards for commercial vessels. As a result of concern over marine engine emissions, there has been growing interest in the shipping industry for the use of CNG and LNG as fuel. These fuels burn cleaner than oil fuels and may be more economical in some applications.

One U.S. commercial vessel is currently operating with CNG fuel. The Coast Guard wants to use the lessons learned from this operation, along with public comments, to evaluate the feasibility of future applications for both CNG and LNG as fuel on commercial vessels. Therefore, the Coast Guard is soliciting public comment regarding the use of CNG and LNG as fuel, particularly with respect to the potential pollution hazards, the type of vessels where use of CNG and LNG may be feasible, and current shoreside use of CNG and LNG for transportation.

Dated: November 19, 1996.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96-30063 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hartsfield Atlanta International Airport, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hartsfield Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). DATES: Comments must be received on or before December 26, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Ave., Suite 2-260, College Park, GA 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Art Bacon, Airport Business Manager of the city of Atlanta's Department of Aviation at the following address: Mr. Art Bacon, Airport Business Manager, Hartsfield-Atlanta International Airport, P.O. Box 20509, Atlanta, GA 30320.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Atlanta's Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Ms. Lee Kyker, Program Manager, 1701 Columbia Ave., Suite 2-260, College Park, GA 30337-2747.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Atlanta Hartsfield International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 18, 1996 the FAA determined that the application to impose and use the revenue from a PFC

submitted by the city of Atlanta was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 27, 1997. The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.
Proposed charge effective date: May 1, 1997.

Proposed charge expiration date: February 1, 2004.

Total estimated PFC revenue: \$491,566,664.

Application number: 96-01-C-00-ATL.

Brief description of proposed impose and use project(s): Acquisition of land for airport expansion, engineering design for the commuter runway, planning and environmental studies for eastside terminal, planning and environmental studies for road improvements. Brief description of proposed impose only project(s): Design and construction of eastside terminal, design and construction of roadside improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) and Commuter or Small Certified Air Carriers (CAC).

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Atlanta's Department of Aviation.

Issued in College Park, Georgia on November 18, 1996.

Dell T. Jernigan,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 96-30062 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Kings County, NY

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge/highway project in Kings County, New York.

FOR FURTHER INFORMATION CONTACT: Richard A. Maitino, Regional Director, New York State Department of Transportation, 47-40 21st Street—8th Floor, Executive Office, Hunters Point Plaza, Long Island City, New York 11101, Telephone (718) 482-4526; or Harold Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431-4141.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to rehabilitate/reconstruct or replace the Gowanus Expressway (I-278) Viaduct in Kings County, New York.

The proposed project is necessary to preserve the transportation services provided by the Gowanus Expressway that are currently in jeopardy due to its accelerating deterioration. The condition of this structure (viaduct deck and structural steel) is continuously monitored and the structure is frequently repaired. The continuous extensive repair work causes traffic diversions and increasing uncertainty over the remaining life of this structure. This, plus the fact that it may take several years to rehabilitate or replace the existing structure, requires that a fiscally viable solution be implemented quickly and cost effectively.

Three ways to achieve this goal include rehabilitating, reconstructing, or replacing the existing expressway. Reconstruction or rehabilitation actions will not only seek to rebuild or preserve the existing facility, but will also include, as practicable, changes to address the structural, operational and safety deficiencies of the existing facility. Replacement actions are of a significantly large scope, but still must be designed so as to provide: (1) Equivalent people and goods moving services to those currently provided by the Gowanus Expressway; (2) continuity with the adjacent portions of the interstate (I-278), and (3) avoidance of community impacts due to an emergency closure of the existing facility.

The Metropolitan Region's Long Range Plan does not recommend increasing the number of general use travel lanes of the Gowanus Expressway or any other portions of Interstate route I-278. It does, however, recommend the implementation of an HOV lane along the corridor and that opportunities for improving operating efficiencies be

considered when portions of this route are upgraded, replaced or rehabilitated.

A Draft Design Report/Environmental Assessment/Draft Section 4(f) Evaluation was prepared for this project and was released for public review on October 16, 1995. In this document, a number of alternatives were extensively evaluated. The following are the general categories of alternatives considered to date: (1) Taking no action other than routine maintenance and structural repair, (2) rehabilitating the viaduct while making safety and operational improvements, (3) reconstructing the viaduct in the same location, (4) reconstructing the viaduct in a different location, (5) replacing the elevated highway with a street level expressway, (6) replacing the elevated highway with a street level arterial, (7) replacing the elevated highway with a street level arterial that includes a light rail line. Alternative 2—Rehabilitation with Operational and Safety Improvements was the alternative that best met the project's needs and objectives. Since then, several innovative ideas have been put forth on how to perform the construction of this alternative that would minimize community disruption during the construction stage. If a new construction approach is believed to be practicable, this along with other alternatives will be addressed in the Environmental Impact Statement.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Formal scoping meetings will be held in January 1997. In addition, public hearings will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comments prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this EIS should be directed to the NYSDOT and FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Program and activities apply to this program.)

Issued on November 19, 1996.

Robert Arnold,

District Engineer, Albany, New York.

[FR Doc. 96-30192 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-23-M

Federal Highway Administration

Environment Impact Statement;
Orange County, FL

AGENCY: Federal Highway

Administration (FHWA), DOT.

ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in Orange County, Florida. **FOR FURTHER INFORMATION CONTACT:** David Unkefer, Transportation Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida, 32301, Telephone: (904) 942-0812.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Apopka Bypass new alignment roadway in Orange County, Florida, was issued on December 19, 1994 and published in the January 3, 1995 Federal Register. The FHWA, in cooperation with the Florida Department of Transportation, has since determined that preparation of an EIS is not necessary for this proposed highway project and hereby rescinds the previous Notice of Intent.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued On: November 12, 1996.

Mark D. Bertlett,

Program Operations, Engineer, Tallahassee, Florida.

[FR Doc. 96-30077 Filed 11-23-96; 8:45 am]

BILLING CODE 4910-23-M

Surface Transportation Board

[No. 41802]

National Association of Freight
Transportation Consultants, Inc.—
Petition for Declaratory Order

AGENCY: Surface Transportation Board,
DOT.

ACTION: Institution of declaratory order
proceeding.

SUMMARY: The Board is instituting a proceeding under 5 U.S.C. 554(e) to resolve questions regarding the application of the 180-day shipper

notification provisions of 49 U.S.C.
13710(a)(3)(B).

DATE: Comments by or on behalf of those opposing the positions of the National Association of Freight Transportation Consultants, Inc. (NAFTC) or petitioner and the Transportation Consumer Protection Council (TCPC), including any further comments by the Regular Common Carrier Conference (RCCC), are due December 26, 1996. Petitioner's replies and comments from any person desiring to submit comments in support of its positions are due January 10, 1997.

ADDRESSES: The original and 10 copies of submissions identified as such and referring to No. 41802 must be sent to: Office of the Secretary, Case Control Branch, Surface Transportation Board, Washington, DC 20423.

One copy of evidence and arguments by or on behalf of those opposing the positions of NAFTC and TCPC must be served simultaneously on their representatives: Donna F. Behme, Executive Director, National Association of Freight Transportation Consultants, Inc., P.O. Box 21418, Albuquerque, NM 87154-1418; Raymond A. Salvaggio, Augello, Pensold & Hirschmann, P.C., 120 Main Street, Huntington, NY 11743-6936.

One copy of evidence and arguments by or on behalf of those opposing the positions of the RCCC must be served simultaneously on its representative: Kevin M. Williams, Executive Director and General Counsel, Regular Common Carrier Conference, 211 North Union Street, Suite 102, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Michael Martin, (202) 927-6033, [TDD for the hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: In *Carolina Traffic Services of Gastonia, Inc.—Petition for Declaratory Order*, STB No. 41689 (June 7, 1996) (CTS), we issued a declaratory order answering certain questions regarding the so-called "180-day rule" of 49 U.S.C. 13710. That provision requires, inter alia, that shippers "contest the original bill or subsequent bill within 180 days of the receipt of the bill in order to have the right to contest such charges." 49 U.S.C. 13710(a)(3)(B).¹

¹This provision and the companion carrier-notification provision (49 U.S.C. 13710(a)(3)(A)), which requires carriers to rebill within 180 days of the original freight bill in order to collect any amounts in addition to those originally billed and paid, were enacted in the Transportation Industry Regulatory Reform Act of 1994 (TIRRA), Pub. L. No. 103-311, 206(c)(4), 106 Stat. 1683, 1685 (1994) and reenacted by the ICC Termination Act of 1995 (ICTTA), Pub. L. No. 104-88, 1103, 109 Stat. 803,

In CTS, we concluded: (1) That the rule applies to all original freight bills issued on or after August 26, 1994 (date of TIRRA's enactment), and to rebillings issued on or after January 1, 1996 (the effective date of ICTTA, which clarified the applicability of the 180-day rule to rebillings by carriers); (2) that, to perfect its right of action, a shipper must, in addition to complying with the statute of limitations on court actions (49 U.S.C. 14705), notify carriers that they contest a billing or rebilling within 180 days of the contested billing, but that they need not request a Board determination within that time period, or at all; and (3) that there is no statutory prohibition against carriers paying late-contested claims.

On June 17, 1996, NAFTC (which represents the interests of freight bill auditors for shippers) filed a petition for declaratory order asking the Board to resolve a number of issues relating to the 180-day rule. In its petition, NAFTC suggests that we establish a procedural schedule to permit interested parties to file comments regarding the issues it raises.

NAFTC asserts that the 180-day rule does not apply to billing "errors", but only to billing "disputes". It attempts to draw a distinction between erroneous billings based on factual, arithmetical or clerical mistakes and disputes over, for example, which of two or more rates should apply. NAFTC points to the title of section 13710(a)(3) ("Billing disputes") and relies on legislative history of TIRRA. It also cites *Duplicate Payments of Freight Charges*, 350 I.C.C. 513 (1975), in which the ICC ruled that duplicate payments, because they are made in response to bills issued in error, are not subject to the statute of limitations on court actions for overcharges.

NAFTC also challenges the Board's holding in CTS that 49 U.S.C. 13710(a)(3)(b) requires a shipper to notify the carrier (rather than bring an action before the Board) within 180 days in order to perfect its claim. According to NAFTC, the subsection, when read as a whole, indicates that the 180-day rule is simply a time limit for filing challenges before the Board.

NAFTC next contends that the 180-day rule applies only to billings for transportation that is subject to the tariff filing requirements administered by the Board. Petitioner also argues that carriers should be required to accept fax notification of overcharge claims and should be required to accept such

878-77 (1995). Further background concerning these provisions is set forth in CTS.

claims as long as they are postmarked by the 180th day.

Finally, NAFTC expresses concern that carriers may be engaging in concerted action by uniformly declining to pay overcharge claims received after the 180-day period, based on advice from the General Counsel of the National Motor Freight Traffic Association. It suggests that such action may constitute a violation of the antitrust laws.²

We initially determined to address NAFTC's claims at a voting conference we had scheduled for September 24, 1996. However, on September 23, 1996, TCPC filed a statement raising additional issues. As a result, we removed the matter from the conference agenda, and decided to ask for comments on the issues raised by petitioner and TCPC.

TCPC, in its comments, points to what it considers to be a possible inconsistency between 49 U.S.C. 13710(a)(3)(B), which provides that shippers must "contest (a carrier's) original bill or subsequent bill within 180 days of the receipt of the bill in order to have the right to contest such charges," and certain applicable limitations provisions. In particular, it notes that 49 U.S.C. 14705(b) allows a shipper to "begin a civil action to recover overcharges within 18 months after the claim accrues," or within three years after the claim accrues if it is against a carrier providing transportation subject to the jurisdiction of the Board and the Secretary under Chapter 135 of Title 49 and the shipper has elected to file a complaint under 49 U.S.C. 14704(c)(1), and that 49 U.S.C. 14705(d) extends those limitations periods "if a written claim is given to the carrier within those limitation periods." Therefore, according to TCPC, the 180-day rule should not be read—as we read it in CTS—to disallow all claims for overcharges as to bills that are not contested within 180 days of the date of the bill. Rather, its view is that the 180-day rule applies only to unpaid freight bills; once a bill is paid, the only limitations or conditions on a shipper's subsequent challenge to the charges are those embodied in the provisions of 49

²Atheorn Transportation Consultants, Inc.; Sandusky Traffic Consultants, Inc.; Traffic Service Bureau, Inc.; Transportation Cost Control; Audit Branch of Traffic; Scott Traffic Consultants, Inc.; Industrial Traffic Consultants, Inc.; Carolina Traffic Services of Gastonia, Inc.; Orchard Supply Hardware; and Robert R. Piper, Ph.D., all filed comments in support of the petition. They all raise arguments similar to those raised by petitioner and express their view that the statute applies (or should apply) only to disputes over the level of rates, rather than to "billing errors" generally.

U.S.C. 14705 (b) and (d).³ Although we are not certain that we share TCPC's logic in distinguishing, for purposes of the 180-day rule, between unpaid and paid bills, or overcharges in general and unpaid bills in particular, we seek comment on it.

TCPC raises two other issues in addition to the matters raised by NAFTC. First, it asserts that 49 U.S.C. 13710(a)(3)(A)'s requirement that a carrier must rebill within 180 days in order to collect additional charges does not bar a carrier from seeking to collect its originally-billed rates at any time before the expiration of the 18-month statute of limitations contained in 49 U.S.C. 14705(a). We believe that the plain language of the statute supports TCPC's conclusion. However, interested parties may also comment on this question, should they desire to do so. Second, TCPC contends that, even if the 180-day rule were deemed to bar overcharge claims contested more than 180 days after receipt of a bill, it could not apply to duplicate payment claims, because those claims seek recovery of a second payment made on an uncontested freight bill. Although our decision in CTS reached essentially that same conclusion, we do not preclude commenters from addressing that issue further.

Finally, we note that on October 22, 1996, the RCCC filed comments essentially supporting our decision in CTS, and responding to the comments of NAFTC and others.⁴ First, it contends

³Although not directly at issue in this proceeding, we note an apparent technical error in the statute. Section 14704(c)(1) authorizes a person to "bring a civil action under subsection (b) [of section 14704] to enforce liability against a carrier or broker providing transportation subject to jurisdiction under chapter 135." As codified, subsection (b) refers only to tariff overcharges, while the provision allowing recovery of damages from carriers is contained in section 14704(a)(2) (as to which the statute does not expressly authorize a civil action). Both the House and Senate bills (H.R. 2539 and S. 1396) that became the ICC Termination Act of 1995, however, placed the damages provision in subsection (b)(2), as to which the statute does authorize a civil action. Subsection (b)(2), as passed by both Houses, reads as follows:

A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

Thus, as enacted by Congress, section 14704(c)(1) authorized civil actions both for damages and for charges exceeding the tariff rate. Notwithstanding the fact that section 14704(b)(2) was misplaced (having been codified as section 14704(a)(2)), in our opinion, section 14704(c)(1) was intended to authorize a person to bring a civil action against a carrier or broker for damages sustained by that person as a result of any act or omission of the carrier in violation of Part B, Subchapter IV, of Title 49.

⁴On November 7, 1996, the American Trucking Associations, Inc., filed a letter supporting the comments of RCCC.

that we should reaffirm our holding that the 180-day rule applies broadly to all billing disputes, including those arising from errors or disputes involving challenges to the reasonableness or applicability of the rate. Second, it asserts that the 180-day rule is not a time limit for bringing disputes before the Board, but applies to any effort to contest a bill. Third, it argues that the 180-day rule applies to all billings, not just those for transportation that is subject to the tariff filing requirements administered by the Board. Fourth, it challenges TCPC's view that the 180-day rule applies only to unpaid freight bills. Finally, it agrees with NAFTC and with our view, as set forth in CTS, that carriers and shippers may mutually agree to waive the 180-day rule, but it asserts that the parties must do so expressly and in writing.

Despite its general concurrence with our CTS ruling, RCCC believes it appropriate that we address the issues raised by NAFTC and the other commenters. It suggests that the public be given an opportunity to comment prior to such a decision.

The petition will be granted and a declaratory order proceeding instituted. Opponents of the positions taken by NAFTC and TCPC, including RCCC, will be permitted to file comments on the issues presented, and NAFTC and TCPC, and any other party supporting their positions, will be permitted to file reply comments.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted to consider the issues raised in this proceeding.

2. Comments by or on behalf of opponents of the positions of NAFTC and TCPC, including any further comments by RCCC, are due December 26, 1996.

3. Petitioner's and TCPC's replies and any comments from other interested persons are due January 10, 1997.

Decided: November 14, 1996.

By the Board, Chairman Morgan, Vice
Chairman Simmons, and Commissioner
Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96-30180 Filed 11-25-96; 8:45 am]

BILLING CODE 4910-00-P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Meeting

AGENCY: Department Offices, Treasury.
ACTION: Notice of meeting.

SUMMARY: This notice announces the membership of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service for the two-year term commencing October 15, 1996. It also announces the date and time for the next meeting and the agenda for consideration by the Committee.

DATE: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Thursday, December 12, 1996 at 9:30 a.m. at the U.S. Treasury Department. The duration of the meeting will be approximately three hours. The precise location of the meeting can be ascertained by calling the information number the day prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel.: (202) 622-0220.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has appointed the following individuals to the Advisory Committee to serve for the two-year term commencing October 15, 1996.

Ms. Judith Barzilay, Sony Electronics, Inc.
Ms. Christine Berghofer, Hitachi America, Ltd.
Mr. Charles V. Bremer, American Textile Manufacturers Institute, Inc.
Mr. William Brown III, Schneider, Harrison, Segal & Lewis
Mr. Graham S. Cassano, Xerox Corporation
Mr. James Clawson, International Business Government Counselors, Inc.
Mr. James J. Cook, Sara Lee Knit Products, Inc.
Mr. Fermin Cuza, Mattel, Inc.
Mr. Michael Davenport, Washington International Insurance Company
Ms. Marsha Echols, Howard University School of Law
Mr. Kenneth E. Glenn, Federal Express Corporation
Ms. Kathy Hansen, Consolidated Freightways, Inc.
Mr. Stanley P. Hebert, Wendell, Rosen, Black & Dean
Mr. William F. Joffroy, Jr., William F. Joffroy Customs Brokers, Inc.
Mr. Arthur Litman, Tower Group International
Ms. Jane B. O'Dell, Eddie Bauer, Inc.

Mr. David Hayes Phelps, American Institute for International Steel
Mr. David Serko, Serko and Simon
Mr. M. Sigmund Shapiro, Samuel Shapiro & Company, Inc.
Mr. Paul F. Wegener, M.G. Maher & Company, Inc.

At the December 12, 1996 session, the regular quarterly meeting of the Advisory Committee, the Committee is expected to consider the agenda items listed below. The agenda may be modified prior to the meeting:

1. Commissioner's preview of Customs priorities for 1997.
 2. The Reorganization and staffing requirements and goals for Headquarters.
 3. The national account system and the small- and medium-size importer.
 4. Reconciliation issues.
 5. The Customs Modernization Act—year-end update on implementation.
- The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting, should give advance notice by contacting Theresa Manning at (202) 622-0220 no later than December 5, 1996.

Dated: November 21, 1996.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 96-30139 Filed 11-25-96; 8:45 am]
BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Floor Stocks Tax Return, Recordkeeping and Reporting Requirements.

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8202.

SUPPLEMENTARY INFORMATION:

Title: Floor Stocks Tax Return, Recordkeeping and Reporting Requirements.

OMB Number: 1512-0504.

Form Number: ATF F 5000.28.

Abstract: ATF F 5000.28 is completed by persons who held alcohol, tobacco or imported perfume for sale on 1/1/91. This tax collection was imposed by Public Law 101-508 for collection of tax. ATF uses the form to identify the taxpayer, the liability, and the adjustments to the amount paid. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 19, 1996.

Bradley A. Buckles,

Acting Director.

[FR Doc. 96-30113 Filed 11-25-96; 8:45 am]

BILLING CODE 4810-31-P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Brewer's Report of Operations.

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8202.

SUPPLEMENTARY INFORMATION:

Title: Brewer's Report of Operations.

OMB Number: 1512-0052.

Form Number: ATF F 5130.9.

Abstract: ATF F 5130.9 is a periodic report filed by brewers to account for taxable commodities. For this reason, ATF 5130.9 is a method to protect tax revenue. The data collected on the form is also summarized by ATF in a statistical release which is used by industry and other government agencies.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 879.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4236.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Dated: November 19, 1996.

Bradley A. Buckles,

Acting Director.

[FR Doc. 96-30114 Filed 11-25-96; 8:45 am]

BILLING CODE 4810-31-P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Firearms Transaction Record Part II Non-Over-The-Counter.

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations

Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8300.

SUPPLEMENTARY INFORMATION:

Title: Firearms Transaction Record Part II Non-Over-The-Counter.

OMB Number: 1512-0130.

Form Number: ATF F 4473 (5300.9) Part II.

Abstract: This form is used to establish the eligibility of the buyer and to determine the legality of the sale. It is sent to the chief law enforcement officer in the buyers' locale to insure there is no barrier to the sale. It becomes part of the dealers' records and is used by law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons who have violated the Gun Control Act. The record retention requirement for this information collection is 20 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 20,900.

Estimated Time Per Respondent: 24 minutes (form) and 10 minutes (recordkeepers).

Estimated Total Annual Burden Hours: 11,843.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 20, 1996.

John W. Magaw,

Director.

[FR Doc. 96-30115 Filed 11-25-96; 8:45 am]

BILLING CODE 4810-31-P

Proposed Collection; Comment Request**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Firearms Transaction Record Part 1 Over-The-Counter.

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8300.

SUPPLEMENTARY INFORMATION:

Title: Firearms Transaction Record Part 1 Over-The-Counter.

OMB Number: 1512-0129.
Form Number: ATF F 4473 (5300.9) Part 1.

Abstract: The form is used to determine the eligibility of a person to receive a firearm from a Federal firearms licensee. It is also used to establish the identity of the buyer. The form is used in law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons violating the Gun Control Act. The record retention requirement for this information collection is 20 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.
Affected Public: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 8,000,000.

Estimated Time Per Respondent: 6 minutes (form) and 4 minutes (recordkeepers).

Estimated Total Annual Burden Hours: 1,316,750.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 19, 1996.

Bradley A. Buckles,
Acting Director.

[FR Doc. 96-30116 Filed 11-25-96; 8:45 am]
BILLING CODE 4810-31-P

Internal Revenue Service**Proposed Collection; Comment Request for Form 911**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 911, Application for Taxpayer Assistance Order (TAO) (Taxpayer's Application for Relief from Hardship).

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue

Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Taxpayer Assistance Order (TAO) (Taxpayer's Application for Relief from Hardship).
OMB Number: 1545-1504.
Form Number: 911.

Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Problem Resolution Office in the district where the taxpayer lives.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and state, local or tribal governments.

Estimated Number of Respondents: 33,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 16,500.

The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 1996.

Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 96-30156 Filed 11-25-96; 8:45 am]
BILLING CODE 4830-01-P

Proposed Collection; Comment Request for Form 5305-SIMPLE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE).

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Savings Incentive Match Plan for Employees of Small Employers (SIMPLE).

OMB Number: 1545-1502.
Form Number: 5305-SIMPLE.

Abstract: This form is used by an employer to permit employees to make salary reduction contributions to a savings incentive match plan (SIMPLE IRA) described in Internal Revenue Code section 408(p). This form is not to be filed with IRS, but to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SIMPLE IRA. The data is used to verify the deduction.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 6 hr., 50 min.

Estimated Total Annual Burden Hours: 1,368,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 1996.

Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 96-30157 Filed 11-25-96; 8:45 am]
BILLING CODE 4830-01-U

Proposed Collection; Comment Request for Form 8569

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8569, Availability Statement.

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Availability Statement.
OMB Number: 1545-0973.

Form Number: Form 8569.

Abstract: This form is used to collect information from applicants for the Senior Executive Service Candidate Development Program and other executive positions. The form states an applicant's minimum area of availability and is used for future job placement consideration.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 167.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 1996.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 96-30161 Filed 11-25-96; 8:45 am]
BILLING CODE 4830-01-U

Proposed Collection; Comment Request For Form 9513

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9513, Self Assessment—SES Candidate Development Program.

DATES: Written comments should be received on or before January 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Self Assessment—SES Candidate Development Program.
OMB Number: 1545-1368.
Form Number: Form 9513.

Abstract: Form 9513 will be used to collect information from applicants for the Senior Executive Service Candidate Development Program. The form provides additional information to be used by executive panels to rate and rank applicants against the criteria for selection into the program.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Federal Government.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 1,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 1996.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 96-30162 Filed 11-25-96; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900-0460.
Title and Form Number: Request for Verification of Employment, VA Form 26-8497.

Type of Review: Extension of a currently approved collection.
Need and Uses: The form is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. The VA, however, does not require the exclusive use of VA Form 26-8497 for verification purposes; any comprehensible form of independent verification would be acceptable, provided all information presently shown on VA Form 26-8497 is provided. VA Form 26-8497 is also used in processing direct loan cases, offers on acquired properties, and release of liability/substitution of entitlement cases when needed.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 39,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 235,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: November 7, 1996.

By direction of the Secretary.

Donald L. Neilson,
Director, Information Management Service.
[FR Doc. 96-30106 Filed 11-25-96; 8:45 am]
BILLING CODE 8320-01-P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900-0381.

Title and Form Number: Notice for Election to Convey and/or Invoice for Transfer of Property, VA Form 26-8903.

Type of Review: Extension of a currently approved collection.

Need and Uses: VA Form 26-8903 serves four purposes: holder's election to convey; invoice for the purchase price of the property; VA's voucher for authorizing payment to the holder; and establishment of the VA's property records. The form provides the holder, who has elected to convey a property to the VA, with a convenient and uniform means of notification to the proper VA regional office. This form simplifies processing for lenders/holders who, in most instances, operate branch offices statewide and nationwide.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive

Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: November 7, 1996.

By direction of the Secretary.

Donald L. Neilson,
Director, Information Management Service.
[FR Doc. 96-30107 Filed 11-25-96; 8:45 am]
BILLING CODE 8320-01-M

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900-0365.

Title and Form Number: Request for Disinterment, VA Form 40-4970.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to allow a person who has a sincere wish and cogent reason to request removal of remains from a national cemetery for interment at another location. The information is used for approving or disapproving the disinterment request.

Affected Public: Individuals or households.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 197.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650.

Do not send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: November 7, 1996.

By direction of the Secretary.

Donald L. Neilson,
Director, Information Management Service.
[FR Doc. 96-30108 Filed 11-25-96; 8:45 am]
BILLING CODE 8320-01-P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900-0055.

Title and Form Number: Request for Determination of Loan Guaranty Eligibility—Unmarried Surviving Spouses, VA Form 26-1817.

Type of Review: Extension of a currently approved collection.

Need and Uses: A completed VA Form 26-1817 constitutes a formal request by an unmarried surviving spouse of a veteran for a certificate of eligibility for home loan benefits. The information is used to determine the applicant's basic eligibility for the benefit.

Affected Public: Individuals or households.

Estimated Annual Burden: 187 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive

Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Do not send requests for benefits to this address.

DATES: Comments on the collection of information should be directed to the OMB Desk Officer on or before December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: November 7, 1996.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96-30100 Filed 11-25-96; 8:45 am] BILLING CODE 3220-01-P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900-0120.
Title and Form Number: Report of Treatment by Attending Physician, VA Form Letter 29-551A.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form letter is used for collecting information from attending physicians to determine the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650.

Do not send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: November 7, 1996.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96-30110 Filed 11-25-96; 8:45 am] BILLING CODE 3220-01-P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900-0131.

Title and Form Number: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29-615.

Type of Review: Extension of a currently approved collection.

Need and Uses: This form letter is used by the policyholder to apply for new issue, reinstatement, or change of plan on National Service Life Insurance (NSLI) policies.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-4650. Do not send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273-8015.

Dated: November 7, 1996.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96-30111 Filed 11-25-96; 8:45 am] BILLING CODE 3220-01-P

Privacy Act of 1974; Altered System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of altered system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is altering a system of records entitled "Accounts Receivable Records—VA" (88VA20A6).

DATES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed changes to the system of records. All relevant materials received before December 26, 1996, will be considered. All written comments received will be available for public inspection at the Office of Regulations Management, room 1158, 810 Vermont Avenue, NW, Washington, DC 20420, only, between 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by VA, the altered system of records is effective December 26, 1996.

ADDRESSES: Written comments concerning the altered system of records may be mailed to the Director, Office of Regulations Management (02D), 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Daniel D. Osendorf, Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725-1844.

SUPPLEMENTARY INFORMATION: On November 3, 1994, The Department published original notice of this system of records at 59 FR 55155. That notice incorporated a recitation of the history

of debt collection within the Veterans Benefits Administration (VBA). The new system was established,

... to reflect the centralized environment VBA continues to build for collection activity as well as to provide the public with one reference for routine use disclosures related to debt collection.

In furtherance of these goals, and to broaden their application to a department-wide basis, collection responsibilities for additional types of debts are being consolidated under the administration of VA's Debt Management Center (DMC) in Ft. Snelling, Minnesota. These additional debts include: (1) First-party medical billings (including delinquent billings) resulting from treatment or prescriptions provided by or on behalf of VA health care facilities; (2) debts arising from participation in the VA Civilian Health and Medical Program (CHAMPVA); and (3) certain miscellaneous debts associated with VA home loan programs. Miscellaneous home loan debts include (but are not limited to) those incurred by virtue of veteran-borrowers' defaults on home loans guaranteed under The Veterans Benefits Act of 1989 (Pub. L. 101-237) and more commonly referred to as "Guaranty and Indemnity Fund" (GIF) loans.

Statutory citations to the Selected Reserve component of the All-Volunteer Force Educational Assistance Program (Also known as Montgomery G.I. Bill—Selected Reserve) and been changed from "chapter 106" to "chapter 1606". This change is the result of renumbering of title 10, U.S.C., as set forth in the Department of Defense Authorization Act for FY 1995, Pub. L. 103-337.

The debt collection program adheres to VA security and Reporting requirements under title 38, Code of Federal Regulations and other Federal regulations, as well as the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the appropriate provisions of the Internal Revenue Code, title 26, United States Code.

Approved: November 15, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

Report of Intention To Publish an Altered System of Records for "Accounts Receivable Records—VA" (88VA20A6)

Purpose

This system of records has been amended to further consolidate notice to the public of the types of information disclosed, and to whom it is disclosed, in the course of collection of debts

arising from participation in benefit, health care and other programs administered by the Department of Veterans Affairs (VA). This amendment also serves to revise citations related to the All-Volunteer Force Educational Assistance Program. Previous publication of this system of records consolidated notice for debts arising from most VA benefit programs (see 55 FR 55155 (November 3, 1994)). The revised system of records adds notice of the types of disclosure, and to whom disclosure is made, for the following types of indebtedness accounts: (1) First-party medical billings (including delinquent billings) resulting from treatment or prescriptions provided by or on behalf of VA health care facilities; (2) debts arising from participation in the VA Civilian Health and Medical Program (CHAMPVA); and, (3) certain miscellaneous debts associated with VA home loan programs. Miscellaneous home loan debts include (but are not limited to) those incurred by virtue of veteran-borrowers' default on home loans guaranteed under The Veterans Benefits Act of 1989 (Pub. L. 101-237) and more commonly referred to as "Guaranty and Indemnity Fund" (GIF) loans. Changes in the revised system of records are not individually bracketed.

Authority

Title 38, United States Code, sections 501(a), 5314 and 5315; Federal Claims Collection Act of 1986 (Pub. L. 89-508), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711, Collection and Compromise, 31 U.S.C. 3716, Administrative Offset; Debt Collection Act of 1982 (Pub. L. 97-365), 5 U.S.C. 5514, Installment Deduction for Indebtedness.

Probable Privacy Impact

Information concerning indebtedness accounts added to the system of records under this revision is currently disclosed under "Categories of Records in the System" set forth in the Privacy Act system of records, 88VA20A6. Disclosure is limited to that which is relevant and necessary to obtain the debtor's whereabouts or telephone number to identify a source of collection, provide an incentive for payment and to comply with certain requirements associated with the operation of the Government. The routine uses set forth in the accompanying notice of an altered system of records describe, generally, the data disclosed to various third parties, all of whom are, in turn,

obligated to protect that data under statute, contract or both.

Risk Assessment

Access to working spaces and record storage areas associated with VA debt collection is restricted to VA employees on a "need-to-know" basis. Access to computer rooms, magnetic media storage and documents classified as sensitive is even further restricted to certain designated employees. The repositories for debt collection records are automated systems accessible only by a limited number of computer terminals and only by employees with specific passwords and knowledge of computer systems dedicated to debt collection. Most paper documentation that must be kept at Debt Management Center is microfilmed and forwarded to the regional office or medical center of jurisdiction or the CHAMPVA Center for filing. The security measures for those documents are set forth in the Privacy Act system of records, 88VA20A6.

Routine Uses

The routine uses of this system are compatible with the purposes for which this information is collected. Disclosures under the routine uses are limited to those necessary for the management of debt collection operations, including answering inquiries from or on behalf of debtors.

Compatibility Requirement

The routine uses of this system are compatible with the purpose for which the information is collected and maintained.

New Rules or Changes to Published Rules

This system of records does not require any new regulations or changes to published regulations.

Information Collection Requirements

Establishing this system of records does not require any new information collection requirements.

88VA20A6

SYSTEM NAME:

Accounts Receivable Records-VA.

SYSTEM LOCATION:

Automated indebtedness records for first-party medical billing, compensation, pension, educational assistance, survivors' and dependents' educational assistance and most home loan debts are maintained at the VA's Austin Automation/Systems Development Center in Austin, Texas. Extracts of benefit and home loan debt automated records are maintained in the

Benefits Delivery Network for accounting and adjudication purposes. The Benefits Delivery Network is administered by the Benefit Delivery Center (BDC), Hines, Illinois. First-party medical billing information is extracted from records maintained at VA medical facilities and in automated media as more fully described in the Privacy Act system of records, 24VA136, "Patient Medical Records—VA" (56 FR 1054; Jan. 10, 1991). Automated and paper indebtedness records for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) are maintained at the CHAMPVA Center in Denver, Colorado, and are more fully described in the Privacy Act system of records, 54VA136, "Veteran's Spouse or Dependent Civilian Health and Medical Care Records—VA" 40 FR 38095 (Aug. 26, 1975), as amended at 53 FR 23845 (Jun. 24, 1988), 53 FR 25238 (Jul. 5, 1988) and 56 FR 26186 (Jun. 6, 1991). Certain paper records, microfilm and microfiche are maintained at the VA Debt Management Center (DMC), Ft. Snelling, Minnesota. Education loan and miscellaneous home loan automated, paper, microfilm and microfiche records are maintained at DMC. Automated and paper indebtedness records related to the All-Volunteer Force Educational Assistance Program are also maintained at DMC. Paper records related to benefit and home loan accounts receivable may be maintained in individual file folders located at the VA regional office having jurisdiction over the domicile of the claimant or the geographic area in which a property securing a VA guaranteed, insured or direct loan is located. Similarly, paper and automated records related to first-party medical billing and CHAMPVA are also maintained in individual patient medical records at VA health care facilities and CHAMPVA Center. Generally and with the exception of claims against third-party insurers and certain first-party medical debts, automated records and papers maintained at regional offices, health care facilities and CHAMPVA Center are not used directly in the debt collection process unless they are forwarded by conventional mail, electronic mail or facsimile to DMC. Records provided to the Department of Housing and Urban Development (HUD) for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are located at the HUD Data Processing Center in Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Persons indebted to the United States Government as a result of their participation in benefit programs (including health care programs) administered by VA under title 38, United States Code, chapters 11, 13, 15, 17, 21, 30, 31, 34, 35, 36 and 37, including persons indebted to the United States Government by virtue of their ownership, contractual obligation or rental of property owned by the Government or encumbered by a VA-guaranteed, insured, direct or vendee loan. Persons indebted to the United States Government as a result of their participation in a benefit program administered by VA under 10 U.S.C. or 10 U.S.C. ch. 1606. Persons who received benefits or services under 38 U.S.C. or 10 U.S.C. ch. 1606, but who did not meet the requirements for receipts of such benefits or services.

CATEGORIES OF RECORDS IN THE SYSTEM

Information varies depending on the benefit type (including health care and home loan) from which the debt arose. Identifying information, including VA claim number, Social Security number, name and address and, when appropriate, loan reference number obtained from the following Privacy Act systems of records: "Compensation, Pension, Education and Rehabilitation Records—VA" (58VA21/22); "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA" (55VA26); "Patient Medical Records—VA" (24VA136); and, "Veteran's Spouse or Dependent Civilian Health and Medical Care Records—VA" (54VA136). Initial indebtedness amount, dates of treatment, amounts claimed for reimbursement type of benefit from which the debt arose, identifying number of the VA regional office with jurisdiction over the underlying benefit claim or property subject to default or foreclosure, station number of the VA health care facility rendering services, name of co-obligor and property address of the defaulted home loan from 58VA21/22, 55VA26, 24VA136 and 54VA136. History of debt collection activity on the individual, including correspondence, telephone calls, referrals to other Government agencies, VA district counsel, private collection and credit reporting agencies. Payments received, refunds made, interest amount, current balance of debt and indication of status or current VA benefit payments. Federal employment status obtained by computer matching

with Government agencies and the United States Postal Service. No personal medical information concerning the nature of disease, injury or disability is transmitted to or maintained in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Title 38, United States Code, sections 501(a), 5314 and 5315. Federal Claims Collection Act of 1996 (Pub. L. 89-508), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711, Collection and Compromise, 31 U.S.C. 3716, Administrative Offset; Debt Collection Act of 1982 (Pub. L. 97-365), 5 U.S.C. 5514, Installment Deduction for Indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSE OF SUCH USES

For purposes of the following routine uses:

- The term "veteran", includes present, former or retired members of the United States Armed Forces, the reserve forces or national guard;
- The term, "debtor", means any person falling within the categories of individuals covered by this system, as set forth above. A "debtor" may be a veteran, as defined above, a veteran's dependent entitled to VA benefits (including health care) in his or her own right or a person who is neither a veteran nor a veteran's dependent for benefit purposes; and,
- The terms "benefit", "benefit program" and "VA program" include any gratuitous benefit, home loan (including miscellaneous home loan) or health care (including CHAMPVA) program administered by the Secretary.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: The hiring, retention or transfer of an employee; the issuance of a security clearance; the letting of a contract or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed, by computer matching or otherwise, in connection with any proceeding for the collection of an amount owed the United States by virtue of a person's participation in any benefit program administered by VA when in the judgment of the Secretary, or official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper in accordance with 38 U.S.C. 5701(b)(6).

4. The name and address of a veteran or the dependent of a veteran and other information as is reasonably necessary to identify such veteran or dependent may be disclosed to a consumer reporting agency for the purpose of locating the veteran or dependent indebted to the United States under a VA benefit program or to obtain a consumer report in order to assess the ability of a veteran or dependent to repay an indebtedness, provided the disclosure is consistent with 38 U.S.C. 5701(g)(2).

5. The name and address of a veteran or dependent, other information as is reasonably necessary to identify such persons, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the person's indebtedness to the United States by virtue of the person's participation in a VA benefit program may be disclosed to a consumer reporting agency for purposes of making such information available for inclusion in consumer reports regarding that person and for purposes of locating that person, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

6. Any information in this system, including available identifying information regarding a person, such as the person's name, address, Social Security number, VA insurance number, VA claim number, VA loan number, date of birth and employment information, may be disclosed, except to consumer reporting agencies, to a third party in order to obtain current name, address and credit report in connection with any proceeding for the collection of an amount owed the United States by virtue of the person's participation in a VA benefit program. Such disclosure may be made in the course of computer matching having the purpose of obtaining the information indicated above. Third parties may include other Federal agencies, State probate courts, State drivers' license bureaus, State automobile title and license bureaus and private commercial concerns in the

business of providing the information sought.

7. Identifying information, including the debtor's name, Social Security number and VA claim number, along with the amount of indebtedness, may be disclosed to any Federal agency, including the U.S. Postal Service, in the course of conducting computer matching to identify and locate delinquent debtors employed by or receiving retirement benefits from those agencies. Such debtors may be subject to offset of their pay or retirement benefits under the provisions of 5 U.S.C. 5514.

8. Any information in this system, including the nature and amount of a financial obligation as well as the history of debt collection activity against a debtor, may be disclosed to the Federal agency administering salary or retirement benefits to the debtor to assist that agency in initiating offset of salary or retirement benefits to collect delinquent debts owed the United States under VA benefit programs.

9. The name(s) and address(es) of a veteran or beneficiary may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting Government research of oversight necessary to accomplish a statutory purpose of that agency.

10. Any information in the system, including the amount of debt, may be disclosed at the request of a debtor to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid persons indebted to VA in the preparation, presentation and prosecution of debt-related matters under the laws administered by VA. The name and address of a debtor will not, however, be disclosed to these individuals under this routine use if the debtor has not requested the assistance of an accredited service organization, claims agent or an attorney.

11. Any information in this system such as the amount of indebtedness and collection history may be disclosed in the course of presenting evidence to a court, magistrate or administrative authority in matters of guardianship, inquiries and commitments, to private attorneys representing debtors rated incompetent in conjunction with issuance of Certificates of Incompetence and to probation and parole officers in connection with court-required duties.

12. Any information in this system, including the amount of indebtedness, and history of collection activity, may be disclosed to a VA or court-appointed

fiduciary or a guardian ad litem in relation to his or her representation of a debtor only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem.

13. Any relevant information in this system may be disclosed to the Department of Justice and United States Attorneys in the defense or prosecution of litigation involving or pertaining to the United States. Any relevant information in this system may also be disclosed to other Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733 and other similar claims statutes.

14. Any information concerning a person's indebtedness to the United States by virtue of that person's participation in a benefit program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purpose of these disclosures may be to (a) assist VA in collection of title 38 and 10 U.S.C. ch. 1606 program debts and/or costs of services, and (b) initiate legal actions for prosecuting individuals who willfully or fraudulently obtain title 38 or 10 U.S.C. ch. 1606 benefits without entitlement.

15. The debtor's name, address, Social Security number and the amount (excluding interest) of any indebtedness waived, compromised or written off may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 28 U.S.C. 61(a)(12).

16. The name of a debtor, any other information reasonably necessary to identify such individual and any other information concerning the individual's indebtedness under a VA program, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of that indebtedness by offset of Federal income tax refunds pursuant to 31 U.S.C. 3720A.

17. Debtors' social security numbers, VA claim numbers, loan account numbers and other information as is reasonably necessary to identify individual VA indebtedness accounts may be disclosed to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS). Information in CAIVRS may be disclosed to all participating agencies and lenders who participate in the

agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. Records are disclosed to participating agencies and private-sector lenders by an ongoing computer matching program.

18. Name, Social Security numbers and any other information reasonably necessary to ensure accurate identification may be disclosed to the Department of the Treasury, Internal Revenue Service, to obtain the mailing address of taxpayers who are debtors under this system of records. Disclosure is made by computer matching and pursuant to 26 U.S.C. 6103(m)(2).

19. Any information in a record under this system of records may be disclosed to the United States General Accounting Office (GAO) to enabling GAO to pursue collection activities authorized to that office or any other activities within their statutory authority.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security number), the amount, status and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report. 38 U.S.C. 5701(g) governs the release of names and addresses of any person who is a present or former member of the Armed Forces, or who is a dependent of such a person, to consumer reporting agencies under certain circumstances. Routine uses, above, provide for disclosure under those circumstances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Records are maintained on magnetic tape and disk, microfilm, microfiche, optical disk and paper documents. DMC does not routinely maintain paper records of individual debtors in file folders with the exception of correspondence, and replies thereto, from Congress, the White House, members of the Cabinet and other similar sources. Paper records related to accounts receivable may be maintained in individual file folders located at VA

regional offices, health care facilities and CHAMPVA Center. Generally and with the exception of claims against third-party insurers and certain first-party medical debts, such papers maintained outside of DMC are not used directly in the debt collection process unless they are first forwarded to DMC. Information stored on magnetic media for most benefit debts, including first-party medical, may be accessed through a data telecommunications terminal system designated as CAROLS (Centralized Accounts Receivable On-Line System). Most CAROLS terminals are located in DMC; however, VA regional offices generally each have one terminal for inquiry purposes.

Information stored on magnetic media and related to the All-Volunteer Force Educational Assistance, education loan, miscellaneous home loan or CHAMPVA debt collection programs may be accessed through personal computers. Records provided to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are maintained on magnetic media at the HUD Data Processing Center in Lanham, Maryland. For benefit debts other than miscellaneous home loan, first-party medical and CHAMPVA, identifying information, the amount of the debt and benefit source of the debt may be stored on magnetic media in records that serve as the data base for the VA Benefits Delivery Network (BDN). The BDN is operated for the adjudication of claims and the entry of certain fiscal transactions. The identifying information, the amount of the debt and benefit source of the debt are transmitted to the Centralized Accounts Receivable System (CARS) or a personal computer local area network system before collection activity commences. When a debtor is awarded gratuitous benefits under VA programs, the BDN may operate to offset all or part of retroactive funds awarded, if any, to reduce the balance of the indebtedness. The Decentralized Hospital Computer Program (DHCP), through its various modules, is used to create and store first-party medical charges and debts associated with the provision of health care benefits. The identifying information about the person, the amount of the debt and program source of the debt may be transmitted to CARS as part of the collection process. When a person receives care under the auspices of VA, a VA medical facility may collect all or part of a charge or debt.

RETRIEVABILITY:

Paper documents, microfilm and microfiche are indexed by VA file number or date of receipt. Automated records are indexed by VA claim number, Social Security account number, name and loan account number in appropriate circumstances. Records in CAIVRS may only be retrieved by Social Security number.

SAFEGUARDS:

1. Physical Security: (a) Access to working spaces and document storage areas in DMC is restricted by cipher locks and to VA employees on a need-to-know basis. Generally, document storage areas in VA offices other than DMC are restricted to VA employees on a need-to-know basis. VA offices are generally protected from outside access by the Federal Protective Service or other security personnel. Strict control measures are enforced to ensure that access to and disclosure from documents, microfilm and microfiche are limited to a need-to-know basis. (b) Access to CAROLS data telecommunications terminals is by authorization controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution. (c) Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other personnel gaining access to computer rooms are escorted.

2. CAROLS and Personal Computer Local Area Network (LAN) Security: (a) Usage of CAROLS and LAN terminal equipment is protected by password access. Electronic keyboard locks are activated on security errors.

(b) At the data processing centers, identification of magnetic media containing data is rigidly enforced using labeling techniques. Automated storage media which are not in use are stored in tape libraries which are secured in locked rooms. Access to programs is controlled at three levels: programming, auditing and operations.

3. CAIVRS Security: Access to the HUD data processing center from which CAIVRS is operated is generally restricted to center employees and authorized contact employees. Access to computer rooms is restricted to authorized operational personnel through locking devices. All other persons gaining access to computer rooms are escorted.

Records in CAIVRS use Social Security numbers as identifiers. Access to information files is restricted to authorized employees of participating agencies and authorized employees of lenders who participate in the agencies' programs. Access is controlled by agency distribution of passwords. Information in the system may be accessed by use of a touch-tone telephone by authorized agency and lender employees on a need-to-know basis.

RETENTION AND DISPOSAL:

Microfilm and microfiche are retained in metal cabinets in DMC for 25 years. CARS records are retained until termination of debt collection (payment in full, write off, compromise or waiver). All other automated storage media are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States. DMC generally forwards all substantive paper documents to VA regional offices,

health care facilities and CHAMPVA Center for storage in claims files, patient treatment files, imaging systems or loan files. Those documents are retained and disposed of in accordance with the appropriate system of records. Information provided to HUD for CAIVRS is stored on magnetic tape. The tapes are returned to VA for updating each month. HUD does not keep separate copies of the tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the system manager indicated above.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records may write, call or visit the nearest VA regional office. Address locations are listed in VA Appendix 1.

CONTESTING RECORD PROCEDURES:

See record access procedures, above.

RECORD SOURCE CATEGORIES:

The records in this system are derived from four other systems of records as set forth in "Categories of records in the system", above, persons indebted to the United States by virtue of their participation in programs administered by VA, dependents of those persons, fiduciaries for those persons (VA or court appointed), other Federal agencies, State and local agencies, private collection agencies, consumer reporting agencies, State, local and county courts and clerks, other third parties and other VA records.

[FR Doc. 96-30105 Filed 11-25-96; 8:45 am]
BILLING CODE 3890-01-01

Corrections

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Federal Register

Vol. 61, No. 229

Tuesday, November 26, 1996

Tuesday
November 26, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 303

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

Docket No. 960508126-6126-61

FIM 6625-AA48

Proposed Changes in Procedures for Greater Possessions Watch Program

Correction

In proposed rule document 96-18427 beginning on page 37845 in the issue of Monday, July 22, 1996 make the following corrections:

On page 37845, in the third column, under SUMMARY, ten lines from the bottom "9 1/2" should read "8 1/2".

BILLING CODE 1505-01-0

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

16 CFR Part 645

Docket No. 960612172-6172-61; LD, 651666C

FIM 6646-A121

Fisheries of the Northeastern United States

Correction

In rule document 96-16660, beginning on page 34966, in the issue of

Wednesday, July 3, 1996, make the following corrections:

§ 645.73 [Corrected]

1. On page 34994, in the second column, in § 645.73(a)(1), in lines 2 and 3, "42°25'36" and "70°35'00" should read "42°25'36'" and "70°35'00'" respectively.

2. On the same page, in the same column, in § 645.73(a)(2), in lines 4, 9, 10, 14, 16, and 17, "40°25'04", "73°42'38", "40°31'00", "73°43'38", "40°19'48", "73°45'42", "40°14'00", and "73°55'42" should read "40°25'04'", "73°42'38'", "40°31'00'", "73°43'38'", "40°19'48'", "73°45'42'", "40°14'00'", and "73°55'42'" respectively.

3. On the same page, in the same column, in § 645.73(a)(3), in lines 4 and 5, "48°40'00", "39°00'00", "72°00'00", and "72°30'00" should read "38°40'00'", "39°00'00'", "72°00'00'", and "72°30'00'" respectively.

BILLING CODE 1505-01-0

ENVIRONMENTAL PROTECTION AGENCY

[SWH-FRL-5522-5]

Recovered Materials Advisory Notice

Correction

In notice document 96-28735, beginning on page 57760, in the issue of Thursday, November 7, 1996, make the following correction:

On page 57762, in Table C-5, in the third column, line 3 should read "90-100".

BILLING CODE 1505-01-0

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

1997 Cost-of-Living Increase and Other Determinations

Correction

In notice document 96-27414, beginning on page 55346, in the issue of

Friday, October 25, 1996, make the following corrections:

1. On page 55346, in the third column, in entry (6), in the second line, "use" should read "used".

2. On the same page, in the same column, in entry (1), "(1)" should read "(11)".

3. On the same page, in the same column, in the SUPPLEMENTARY INFORMATION section, in the 11th line, "ration" should read "ratio".

4. On pages 55347 and 55348, in the table, in the first column, "Dec. 1996" should read "Dec. 1995".

5. On page 55349, in the first column, in the last paragraph, in the first line, "Computation." should read "Computation."

BILLING CODE 1505-01-0

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards, Research and Safety Assurance Programs Meetings

Correction

In notice document 96-29363 appearing on page 58604 in the issue of Friday, November 15, 1996 make the following correction:

In the second column, under FOR FURTHER INFORMATION CONTACT, in the second line "(202) 336-4931" should read "(202) 366-4931".

BILLING CODE 1505-01-0

federal register

Part II

Department of Education

Federal Pell Grant Program; Notice

DEPARTMENT OF EDUCATION

Federal Pell Grant Program

AGENCY: Department of Education.
ACTION: Notice; correction.

SUMMARY: This document corrects an error in the notice published in the Federal Register on September 8, 1996 for the Federal Pell Grant Program. The text of the double asterisk footnote on page 47654 is deleted and replaced with the text of the last paragraph on page 47655 under "Proof of Delivery." It should read: "An institution that

transmits the Student Payment Data information via the EDE Electronic Payments service must ensure that its transmission is completed before midnight (local time at the institution's EDE destination point) on September 30, 1997."

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, Pell and State Grant Section, Grants Branch, Policy Development Division, Policy, Training, and Analysis Service, Office of Postsecondary Education, U.S. Department of Education, 800 Independence Avenue, SW., (ROB-3,

Room 3045), Washington, DC 20202-5447. Telephone: (202) 708-4607. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1-800-730-8913 between 9 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: November 20, 1996.
David A. Longanecker,
Assistant Secretary for Postsecondary Education.
[FR Doc. 96-30090 Filed 11-25-96; 8:45 am]
BILLING CODE 4000-01-M

federal register

Tuesday
November 26, 1996

Part III

Department of Housing and Urban Development

24 CFR Part 200, et al.
Streamlining the Single Family
Components of the Single Family-
Multifamily Regulations; Final Rule

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT24 CFR Parts 200, 213, 220, 221, 233,
and 234

(Docket No. FR-4112-F-01)

FBN 2502-AG80

Streamlining the Single Family
Components of the Single Family-
Multifamily RegulationsAGENCY: Office of the Assistant
Secretary for Housing-Federal Housing
Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends primarily the single family components of HUD's regulations for certain FHA single family and multifamily housing mortgage insurance programs. In an effort to comply with the President's regulatory reform initiatives, this rule streamlines these regulations by eliminating regulatory provisions that are redundant, obsolete, or otherwise unnecessary.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Richard K. Manuel, Director of the Home Mortgage Insurance Division, Department of Housing and Urban Development, Room 9272, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-2700 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (800) 877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. HUD determined that the regulations for certain Federal Housing Administration (FHA) programs could be improved and streamlined by eliminating obsolete and unnecessary provisions, and by consolidating provisions that were repeated throughout several sets of regulations. Therefore, on April 1, 1996 (61 FR 14396), HUD published a final rule streamlining the regulations for certain FHA single family housing, multifamily housing, and health care facility mortgage insurance programs. Today's final rule will continue HUD's efforts to streamline its FHA regulations by amending the single family components of parts 220, 221, and 234

to eliminate regulatory provisions that are redundant, obsolete, or otherwise unnecessary. Today's final rule will also remove the single family components of the obsolete program in part 213, and both the single family and the multifamily components of the regulations for the obsolete program in part 233. This final rule will thereby eliminate approximately 44 pages of unnecessary regulations.

I. Single Family Streamlining

A. Part 220

The Mortgage Insurance and Insured Improvement Loans for Urban Renewal and Concentrated Development Areas Program (part 220) is relatively inactive; there were few new loans insured in FY 1996, and HUD does not anticipate that this volume will increase. The April 1, 1996 final rule (61 FR 14396) streamlined the multifamily components of the regulations in part 220. Today's final rule will similarly streamline the single family components of these regulations by removing the eligibility provisions in subpart A. HUD has determined that it is unnecessary to retain these requirements because the statute, supplemented by the contract of insurance and HUD handbooks, will be sufficient. HUD is, however, retaining the provisions in these regulations regarding contract rights and obligations, because they are necessary for the continued administration of the outstanding loans insured under the program.

B. Part 221

Several single family provisions of HUD's regulations in part 221 for the Low Cost and Moderate Income Mortgage Insurance Program are duplicative or obsolete. Specifically, this final rule streamlines these provisions by correcting § 221.1(a), which contains a general cross-reference to the single family mortgage insurance regulations in part 203, along with a list of the exceptional sections in part 203 that do not apply to mortgages insured under section 221 of the National Housing Act (12 U.S.C. 1715j) (the Act). Although § 203.17 (Mortgage provisions) appears on this list of exceptions, the requirements of § 203.17 actually do apply to mortgages insured under section 221 of the Act, and in fact there are provisions within part 221 that duplicate those requirements. Therefore, this final rule removes § 203.17 from the list of exceptions in § 221.1, and it also removes these provisions that duplicate the requirements in § 203.17. This rule also removes § 203.46, which no longer exists, from the list of exceptions in

§ 221.1. This rule removes §§ 221.80 and 221.85, which are obsolete due to the inactivity of the mortgage insurance programs under sections 221(h) and 221(i) of the Act to which they apply. This rule also removes several other provisions that are duplicative either of part 203 or of the statute, or that are obsolete.

C. Part 234

Several provisions in HUD's regulations for the Condominium Ownership Mortgage Insurance Program in part 234 repeat the general single family mortgage insurance regulations in part 203. Therefore, this final rule will amend subpart A of part 234, which contains the eligibility requirements, to provide a general cross-reference to the similar eligibility requirements in subpart A of part 203. Subpart A of part 234 will retain those eligibility provisions that are unique to the Condominium Ownership Mortgage Insurance Program.

II. Obsolete Programs

A. Part 213

There was no new loan activity in fiscal year (FY) 1996 in the single family component of HUD's Cooperative Housing Mortgage Insurance Program in part 213. HUD has determined that, due to the changes in the housing market and other factors, the single family component of this program is obsolete. Therefore, this final rule will remove the single family regulations in part 213 (subparts C, D, and E). A "savings clause" will be maintained in part 213 providing that the single family regulations in effect immediately before December 26, 1996 will continue to apply to any existing mortgages.

B. Part 233

HUD's regulations for the Experimental Housing Mortgage Insurance Program in part 233 are also obsolete. This program has been inactive for approximately 15 years. In accordance with the President's National Homeownership Strategy (May 1995), HUD will consider whether the program would effectively promote technological advances in homebuilding products. If HUD decides to expand and promote the program, it will develop new and more appropriate regulations at that time. Therefore, this final rule will remove the substance of the regulations in part 233, including both the single family and the multifamily components. A "savings clause" will be maintained in part 200, subpart W (§ 200.1302), providing that the regulations in effect immediately before December 26, 1996

will continue to apply to any existing mortgages.

III. Clarifications and Corrections

HUD is taking the opportunity in this final rule to clarify or correct certain provisions in its FHA regulations. First, this rule corrects a provision of the April 1, 1996 final rule (61 FR 14396). In an earlier final rule published in the Federal Register on September 11, 1995, HUD established a new § 200.1301 to contain the savings clauses for several expiring FHA programs. In the April 1, 1996 final rule, HUD intended to add a list of additional expiring programs to a new § 200.1302. Due to an error, however, rather than adding a new § 200.1302, the April 1, 1996 rule inadvertently revised § 200.1301, supplanting the list of programs initially issued in § 200.1301 on September 11, 1995. To correct this error, the Federal Register published a correction document on October 17, 1996 (61 FR 54267), which effectively reestablished § 200.1301 as it appeared in the September 11, 1995 rule, and added a new § 200.1302 as HUD intended in the April 1, 1996 rule.

While that error in the April 1, 1996 final rule has been corrected, today's final rule will correct another error. In the preamble to the April 1, 1996 rule, on page 14397, toward the bottom of the first column, HUD states that "Part 222 which pertains to Servicepersons Mortgage Insurance Program is an expired program. No more mortgages are insured under this program. The part will be removed and a savings clause will be retained." HUD inadvertently omitted part 222 from the savings clause for additional expiring programs (see 61 FR 14404-05). Therefore, this final rule will correct the provision for additional expiring programs in § 200.1302 to include part 222.

Second, this rule clarifies a new provision in § 234.26 regarding requirements for the insurance of mortgages on individual units in condominium projects that have not received FHA approval in advance. On May 29, 1996 (61 FR 26962), HUD published a final rule in the Federal Register that added paragraph (i) to § 234.26 to permit such "spot loans" if the project meets certain criteria. In § 234.26(i)(1)(vi), HUD requires that for projects with fewer than 30 units, no more than 20 percent of the units in the project may be encumbered by FHA-insured mortgages. This final rule clarifies that for projects with four units (20 percent of which would be less than one whole unit), only one unit may be encumbered by an FHA-insured mortgage.

IV. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes obsolete and unnecessary regulatory provisions, and consolidates repetitive requirements; it does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This streamlining final rule will not have an environmental impact. When HUD was developing its final rule published on April 1, 1996 (61 FR 14396) that streamlined the regulations for certain FHA single family housing, multifamily housing, and health care facility mortgage insurance programs, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). That Finding applies to today's final rule, which continues HUD's streamlining efforts by primarily amending the single family components of those regulations. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12806, the Family

The General Counsel, as the Designated Official under Executive Order 12806, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development,

Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 233

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, chapter II of title 24 of the Code of Federal Regulations is amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715a–18; 42 U.S.C. 1436a and 3535(d).

2. In subpart W, section 200.1302 is revised to read as follows:

§ 200.1302 Additional expiring programs—savings clause.

No new loan assistance, additional participation, or new loans are being insured under the programs listed in this section.

(a) Any existing loan assistance, ongoing participation, or insured loans under the following programs will continue to be governed by the regulations in effect as they existed immediately before May 1, 1996:

Part 215 Rent Supplement Payments Program

Part 222 Serviceperson's Mortgage Insurance Program

Part 237 Special Mortgage Insurance for Low and Moderate Income Families

(b) Any existing loan assistance, ongoing participation, or insured loans under the following program will continue to be governed by the regulations in effect as they existed immediately before December 26, 1996:

Part 233 Experimental Housing Mortgage Insurance Program

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Subpart C consisting of § 213.501, is revised to read as follows:

Subpart C—Individual Properties Released From Project Mortgage; Expiring Program

§ 213.501 Savings clause.

No new loans are being insured under the Cooperative Housing Mortgage Insurance Program for individual properties released from a project mortgage. Any existing insured loans on individual properties released from a project mortgage under this program will continue to be governed by the regulations on eligibility requirements, contract rights and obligations, and servicing responsibilities in effect as they existed immediately before December 26, 1996.

Subparts D and E—[Removed]

5. In part 213, subpart D (consisting of §§ 213.751 and 213.752) and subpart E (consisting of § 213.800) are removed.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

6. The authority citation for part 220 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

Subpart A—[Removed]

7. In part 220, subpart A (consisting of §§ 220.1 through 220.249) is removed.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

8. The authority citation for 24 CFR part 221 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715i; 42 U.S.C. 3535(d). Section 221.544(a)(3) is also issued under 12 U.S.C. 1707(e).

9. Section 221.1 is amended by revising paragraph (a) to read as follows:

§ 221.1 Cross-reference.

(a) All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on dwellings insured under section 221 of the National Housing Act (12 U.S.C. 1715j), except the following provisions:

Sec.

203.18 Maximum mortgage amount.

203.18a Solar energy system.

203.18b Increased mortgage amount.

203.19 Mortgagor's minimum investment.

203.28 Economic soundness of project.

203.42 Rental properties.

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

203.43 Eligibility of graduated payment mortgages.

203.44 Eligibility of adjustable rate mortgages.

203.50 Eligibility of rehabilitation loans.

203.51 Applicability.

§§ 221.3 and 221.5 [Removed]

10. Sections 221.3 and 221.5 are removed.

11. Section 221.20 is amended by revising paragraph (c) to read as follows:

§ 221.20 Maximum mortgage amount—loan-to-value limitation.

(c) *Definitions.* As used in the section, the terms *principal residence*, *secondary residence*, *eligible non-occupant mortgagor*, *undue hardship*, and *vacation home* are defined in § 203.18(f) of this chapter.

§§ 221.25, 221.30, 221.32, 221.35, and 221.45 [Removed]

12. Sections 221.25, 221.30, 221.32, 221.35, and 221.45 are removed.

13. Section 221.50 is amended by revising paragraph (a) to read as follows:

§ 221.50 Mortgagor's minimum investment.

(a) At the time the mortgage on a single-family dwelling is insured, a mortgagor other than a mortgagor qualifying as a "displaced family" (as that term is defined in section 221(f) of the Act) shall have paid in cash or its equivalent at least 3 percent of the Commissioner's estimate of the acquisition cost of the property.

§§ 221.57, 221.60, 221.65, and 221.70 [Removed]

14. Sections 221.57, 221.60, 221.65, and 221.70 are removed.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

15. Part 233 is removed.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

16. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715i; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

17. In part 234, subpart A is revised to read as follows:

Subpart A—Eligibility Requirements—Individually Owned Units

Sec.

234.1 Cross-reference.

234.3 Definitions.

234.17 Mortgagor and mortgage requirements for maintaining flood insurance coverage.

234.26 Project requirements.

234.54 Eligibility of assigned mortgages and mortgages covering acquired property.

234.63 Location of property.

234.65 Nature of title.

234.66 Free assumability; exceptions.

Subpart A—Eligibility Requirements—Individually Owned Units

§ 234.1 Cross-reference.

(a) All of the provisions of subpart A of part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on individually owned units insured under section 234 of the National Housing Act (12 U.S.C. 1715y), except the following provisions:

Sec.

203.12 Mortgage insurance on proposed or new construction in a new subdivision.

203.14 Builders' warranty.

203.18a Solar energy system.

203.18c One-time or up-front mortgage insurance premium excluded from limitations on maximum mortgage amounts.

203.38 Location of dwelling.

203.42 Rental properties.

203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

203.43d Eligibility of mortgages in certain communities.

203.43f Eligibility of mortgages covering manufactured homes.

203.43g Eligibility of mortgages in certain communities.

203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

203.50 Eligibility of rehabilitation loans.

(b) For the purposes of this subpart, all references in part 203 of this chapter to section 203 of the Act shall be construed to refer to section 234 of the Act.

§ 234.3 Definitions.

The terms *Act*, *Beginning of amortization*, *Commissioner*, *FHA*, *Insured Mortgage*, *Mortgage*, *Mortgagor*, and *State*, as used in this

part, are defined in § 203.251 of this chapter. The following terms, as used in this part, are defined as follows:

Bona fide tenants' organization means an association of tenants formed by the tenants to promote their interests in a particular project, with membership in the association open to each tenant, and all requirements of the association applying equally to every tenant.

Common areas and facilities means those areas of the project and of the property upon which it is located that are for the use and enjoyment of the owners of family units located in the project. The areas may include the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space and community and commercial facilities.

Conversion means the date on which all documents necessary to create a condominium under State law (and under local law, where applicable) have been recorded.

Family unit means a one-family unit including the undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated.

Project means a structure or structures containing four or more family units.

Project mortgage means a mortgage which is or has been insured under any of the FHA multifamily housing programs, other than sections 213(a)(1) and 213(a)(2) of the Act (12 U.S.C. 1715e).

Restricted common areas and facilities means those areas and facilities restricted to a particular family unit or number of family units.

Tenant means the occupant(s) named in the lease or rental agreement of a housing unit in a project as of the date the condominium conversion documents are properly filed for the project, or as of the date on which the occupants are notified by management of intent to convert the project to a condominium, whichever is earlier.

§ 234.17 Mortgagor and mortgage requirements for maintaining flood insurance coverage.

The maintenance of flood insurance coverage on the project by the condominium association will satisfy the requirements of § 203.16a of this chapter if such coverage protects the interest of the mortgagor in the family unit. For this purpose, "the interest of the mortgagor" is defined as insurance coverage equal to the replacement cost of the project less land costs.

§ 234.26 Project requirements.

No mortgage shall be eligible for insurance unless the following requirements are met:

(a) *Location of family unit.* The family unit shall be located in a project that the Commissioner determines to be acceptable.

(b) *Plan of condominium ownership.* The project in which the unit is located shall have been committed to a plan of condominium ownership by a deed, or other recorded instrument, that is acceptable to the Commissioner.

(c) *Releasees.* The family unit shall have been released from any mortgage covering the project or any part of the project.

(d) *Certificate by mortgagor.* The mortgagor shall certify that:

(1) The deed of the family unit and the deed or other recorded instrument committing the project to a plan of condominium ownership comply with legal requirements of the jurisdiction.

(2) The mortgagor has good marketable title to the family unit, subject only to a mortgage that is a valid first lien on the family unit.

(3) The family unit is assessed and subject to assessment for taxes pertaining only to that unit.

(e) *Conditions and provisions.* (1) The Commissioner may require such conditions and provisions as the Commissioner determines are necessary for the protection of consumers and the public interest.

(2) An application for mortgage insurance of a unit will not be approved if approval would result in less than 80 percent of the FHA-insured mortgages covering units in the project being occupied by mortgagors or comortgagors as a principal residence or a secondary residence (as these terms are defined in § 203.18 of this chapter).

(3) In addition to the other requirements of this section, in order for a project to be acceptable to the Secretary, at least 51 percent of all family units (including units not covered by FHA-insured mortgages) must be occupied by the owners as a principal residence or a secondary residence (as these terms are defined in § 203.18 of this chapter), or must have been sold to owners who intend to meet this occupancy requirement.

(f) *Limitations on conversion of rental housing to condominium use.* With respect to a family unit in any project that was converted from rental housing, no insurance will be provided under this section unless:

(1) The conversion occurred more than one year before the application for insurance; or

(2) The mortgagor or comortgagor was a tenant of a unit in the rental housing project converted to condominium use; or

(3) The conversion of the property is sponsored by a bona fide tenants' organization representing a majority of the households in the project.

(g) *Projects covered by an insured or Secretary-held mortgage.* In addition to the requirements contained in paragraphs (a) through (f) of this section, projects which are covered by an FHA-insured project mortgage, or by a mortgage held by the Secretary, must be in compliance with a conversion plan approved by the Commissioner. The conversion plan shall provide for:

(1) The termination by payment in full of the mortgage or by voluntary termination of the insurance contract covering any HUD/FHA-insured or Secretary-held mortgage on the project, unless the Commissioner determines that the Commissioner's interests, and those of the individuals purchasing the family units, are best served by not requiring the termination of the insurance or payment in full of the mortgage.

(2) On release of a family unit from the project mortgage, payment shall be made on the outstanding balance of the project mortgage in an amount equal to the share of the balance determined by HUD to be attributable to the family unit.

(3) The project mortgagee shall certify that, notwithstanding any provisions of the mortgage covering prepayment, no charge is contemplated or has been collected for prepayment in full of the project mortgage.

(h) *Projects not covered by an insured or Secretary-held mortgage.* In addition to the requirements contained in paragraphs (a) through (f) of this section, projects which are not covered by an insured project mortgage or by a Secretary-held mortgage and which have not been approved by the Department of Veterans Affairs for its guaranty, insurance, or direct loan programs shall meet the requirements of this paragraph. Except with the approval of the Commissioner for the purpose of constructing or converting the project in phases or stages, any special right of the declarant (as declarant and not as a unit owner) to do any or all of the following must have expired or must have been waived in a recorded instrument:

- (1) Add land or units to the condominium;
- (2) Convert common elements into additional units or limited common elements;
- (3) Withdraw land from the condominium;
- (4) Use easements through the common elements for the purpose of making improvements within the

condominium or within any adjacent land; or

(5) Convert a unit into two or more units, common elements, or into two or more units and common elements.

(i) Notwithstanding the requirements of paragraphs (a) through (h) of this section, a loan on a single unit in an unapproved condominium project (spot loan) may qualify for mortgage insurance under this part.

(1) The project must meet the following criteria:

(i) All units, common elements, and facilities—including those that are part of any master association—must have been completed, and the project cannot be subject to additional phasing or annexation. The project must provide for undivided ownership of common areas by unit owners;

(ii) Control of the owners' association must have been turned over to the unit purchasers, and the unit purchasers must have been in control for at least one year;

(iii) At least 90 percent of the total units in the project must have been conveyed to the unit purchasers, and at least 51 percent of the total units in the project must have been conveyed to purchasers who are occupying the units as their principal residences or second homes. No single entity (the same individual, investor group, partnership, or corporation) may own more than 10 percent of the total units in the project;

(iv) The units in the project must be owned in fee simple or be an eligible leasehold interest, as described in § 234.65, and the unit owners must have sole ownership interest in, and right to the use of, the project's facilities, common elements, and limited common elements including parking, recreational facilities, etc.;

(v) The project must be covered by hazard, flood, and liability insurance acceptable to the Commissioner;

(vi) For projects with more than 30 units, no more than 10 percent of the total units in the project may be encumbered by FHA-insured mortgages. (If endorsement would result in more than 10 percent of the units in such a project being encumbered by FHA-insured mortgages, the condominium project must be approved under paragraphs (a) through (h) of this section.) For projects with between 5 and 30 units inclusive, no more than 20 percent of the total units may be encumbered by FHA-insured mortgages. For projects with four units, only one unit may be encumbered by an FHA-insured mortgage under the spot loan procedure of this paragraph (i); and

(vii) The assumability provisions of § 234.66 must be satisfied.

(2) Lenders must perform an underwriting analysis and certify that a project satisfies the eligibility criteria for a spot loan in a condominium project that has not been approved by FHA. Lenders may use information from the appraiser, the owners' association, the management company, the real estate broker, and the project developer, but the lender must ensure the accuracy of the information obtained from these sources.

(Approved by the Office of Management and Budget under control number 2502-0513.)

§ 234.34 Eligibility of assigned mortgages and mortgages covering acquired property.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart (except that the property must be located in a condominium project approved under § 234.26), any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired in the settlement of an insurance claim under any section or title of the Act.

§ 234.43 Location of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 203.251 of this chapter, and not located on "Hawaiian home lands," as that term is defined in section 247(d)(2) of the Act.

§ 234.45 Nature of title.

A mortgage, to be eligible for insurance, shall be on a fee interest in, or on a leasehold interest in, a one-family unit in a project including an undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated. To be eligible, a leasehold interest shall be under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

§ 234.66 Free assumability; exceptions.

For purposes of HUD's policy of free assumability with no restrictions, as provided in § 203.41 of this chapter, the definition of *Legal restrictions on conveyance* in § 203.41(a)(3) of this chapter does not include rights of first refusal held by a condominium association for a project approved by the Secretary under this subpart prior to September 10, 1993.

18. Section 234.251 is revised to read as follows:

§ 234.251 Definitions.

The definitions in § 203.251 of this chapter apply to this subpart.

§ 234.256 (Amended)

19. Section 234.256 is amended by revising paragraphs (a), (b), (e), and (f), to read as follows:

(a) *Selling mortgagor.* The requirements for the selling mortgagor are set forth in § 203.258(a) of this chapter.

(b) *Purchasing mortgagor.* (1) If the dwelling is a principal or secondary place of residence, the requirements for the purchasing mortgagor are set forth in § 203.258(b)(1) of this chapter.

(e) *Direct endorsement.* Requirements for the direct endorsement program are set forth in § 203.258(f) of this chapter.

(f) *Substitute mortgagor* is defined in § 203.258(f) of this chapter.

20. Section 234.259 is revised to read as follows:

§ 234.259 Claim procedure—graduated payment mortgages.

Section 203.436 of this chapter applies to mortgages under this subpart.

Dated: November 8, 1996.

Stephanie A. Smith,
General Deputy Assistant Secretary for
Housing-Federal Housing Commissioner.

[FR Doc. 96-29925 Filed 11-25-96; 8:45 am]

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Tuesday
November 28, 1996

Part IV

Federal Reserve System

12 CFR Parts 207, 220, and 221
Securities Credit Transactions; Borrowing
by Brokers and Dealers; Final Rule and
Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220 and 221

(Regulations G, T and U; Docket No. R-9643)

Securities Credit Transactions;
Borrowing by Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board is issuing an interpretation of its margin regulations (Regulations G, T and U) in response to the enactment of the National Securities Markets Improvement Act of 1996 (the Markets Improvement Act). Under the Markets Improvement Act, the Board no longer has the authority to regulate certain loans to registered broker-dealers unless it finds that such rules are necessary or appropriate in the public interest or for the protection of investors. This interpretation makes clear that the Board has not made such a finding and that provisions in its margin regulations for which the Board no longer has general authority are without effect. The interpretation also identifies the regulatory provisions that the Board has adopted to implement section 8(a) of the Securities Exchange Act of 1934 (the Exchange Act), which limits the sources of credit for broker-dealers, and concludes that these provisions are without effect in light of the repeal of section 8(a) contained in the Markets Improvement Act.

EFFECTIVE DATE: November 19, 1996.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202) 452-3625; Gregory Baer, Managing Senior Counsel (202) 452-3236; or Scott Holz, Senior Attorney (202) 452-2966, Legal Division; for the hearing impaired only.

Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Markets Improvement Act (Pub. L. 104-290) affects the Board's margin authority in two ways. First, the Markets Improvement Act amends section 7 of the Exchange Act (15 U.S.C. 78g) to exclude certain loans¹ to broker-dealers² from the Board's margin setting

¹ The excluded loans to broker-dealers are: 1. loans to finance market making or underwriting activities, and 2. loans to finance any activity if a "substantial portion" of the broker-dealer's "business consists of transactions with persons other than brokers or dealers."

² The exact language in the Markets Improvement Act covers "a member of a national securities exchange or a registered broker or dealer." Although the Exchange Act defines the terms

authority. The Board is nevertheless authorized to adopt rules and regulations covering these loans if the Board finds such rules are "necessary or appropriate in the public interest or for the protection of investors." Second, the Markets Improvement Act repeals section 8(a) of the Exchange Act (15 U.S.C. 78h(a)). The Board is issuing an interpretation of Regulations G, T and U, which were adopted under the authority of sections 7 and 8(a) of the Exchange Act, to clarify the application of the regulations in light of the enactment of the Markets Improvement Act. In a separate document published elsewhere in today's Federal Register, the Board is proposing amendments to Regulations G, T and U to implement the recent statutory amendments and further the policies behind them.

The interpretation states that the Board has not made a finding that it is "necessary or appropriate in the public interest or for the protection of investors" to impose rules and regulations on loans to members of a national securities exchange or registered brokers or dealers if a substantial portion of their business consists of dealing with persons other than brokers or dealers or the loan is to finance their activities as a market maker or an underwriter. In other words, the interpretation concludes that provisions of Regulations G, T and U are without effect if the credit extended is within the new statutory exclusion. The interpretation also identifies the provisions of the Board's margin regulations adopted to implement section 8(a) of the Exchange Act and concludes that they are without effect in light of the Market Improvement Act's repeal of section 8(a).

List of Subjects in 12 CFR Parts 207, 220 and 221

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, 12 CFR Parts 207, 220 and 221 are amended as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS (REGULATION G)

1. The authority citation for Part 207 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

"broker" and "dealer," the Markets Improvement Act language is restricted to brokers and dealers who are subject to oversight by the Securities and Exchange Commission.

2. Section 207.114 is added to read as follows:

§ 207.114 Credit to brokers and dealers.

(a) The National Securities Markets Improvement Act of 1996 (Pub. L. 104-290, 110 Stat. 3416) restricts the Board's margin authority by repealing section 8(a) of the Securities Exchange Act of 1934 (the Exchange Act) and amending section 7 of the Exchange Act (15 U.S.C. 78g) to exclude the borrowing by a member of a national securities exchange or a registered broker or dealer "a substantial portion of whose business consists of transactions with persons other than brokers or dealers" and borrowing by a member of a national securities exchange or a registered broker or dealer to finance its activities as a market maker or an underwriter. Notwithstanding this exclusion, the Board may impose such rules and regulations if it determines they are "necessary or appropriate in the public interest or for the protection of investors."

(b) The Board's margin regulations, Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively), currently contain rules regarding loans to brokers and dealers based on former section 8(a) of the Exchange Act and its interplay with the earlier version of section 7 of the Exchange Act, which instructed the Board to prescribe rules and regulations with respect to the amount of credit that may be extended on any nonexempted security.

(c) The Board has not found that it is necessary or appropriate in the public interest or for the protection of investors to impose rules and regulations regarding loans to brokers and dealers covered by the National Securities Markets Improvement Act of 1996. Consequently, the Board believes that extensions of securities credit that are unregulated under section 7, as amended by the National Securities Markets Improvement Act of 1996, currently are not limited by Regulations G, T and U, notwithstanding any provisions to the contrary, because the provisions of section 7, as amended, supersede conflicting provisions of the Board's regulations.

(d) Section 220.15 of Regulation T (12 CFR 220.15), § 221.4 of Regulation U and the reference in § 221.5(a) of Regulation U (12 CFR 221.5(a)) to "a member bank and a nonmember bank that is in compliance with § 221.4," and the introductory text of § 207.4 of Regulation G (12 CFR 207.4) were all adopted by the Board to implement the requirements of former section 8(a) of the Exchange Act. The Board believes that these sections are without effect in

light of the repeal of section 8(a) of the Exchange Act. Brokers and dealers are not restricted as to the type of lender to which they may pledge exchange-traded equity securities as collateral for extensions of credit. In addition, a bank, as defined in section 3 of the Exchange Act (15 U.S.C. 78c) and the rules thereunder, may rely on § 221.5 of Regulation U (12 CFR 221.5) in making loans to brokers and dealers without regard to membership in the Federal Reserve System or the existence of an agreement with the Federal Reserve under former section 8(a) of the Exchange Act.

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

2. Section 220.132 is added to read as follows:

§ 220.132 Credit to brokers and dealers.

For text of this interpretation, see § 207.114 of this subchapter.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK (REGULATION U)

1. The authority citation for Part 221 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

2. Section 221.125 is added to read as follows:

§ 221.125 Credit to brokers and dealers.

For text of this interpretation, see § 207.114 of this subchapter.

By order of the Board of Governors of the Federal Reserve System

Dated November 19, 1996.

William W. Wilms,

Secretary of the Board.

[FR Doc. 96-30004 Filed 11-25-96; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220 and 221

(Regulations G, T and U; Docket No. R-0944)

Securities Credit Transactions; Borrowing by Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: On October 11, 1996, the President signed the National Securities Markets Improvement Act of 1996 (the Markets Improvement Act). Under the Markets Improvement Act, the Board no longer has the authority to regulate certain loans to registered broker-dealers unless it finds that such rules are necessary or appropriate in the public interest or for the protection of investors. The Markets Improvement Act also repeals section 8(a) of the Securities Exchange Act of 1934 (the Exchange Act), which limited the sources of credit for broker-dealers who pledge exchange-traded equity securities to certain banks and other broker-dealers. The Board is soliciting comment on amendments to its margin regulations (Regulations G, T and U) to implement the statutory amendments in the Markets Improvement Act and further the policies behind their adoption.

DATES: Comments should be received by December 26, 1996.

ADDRESSES: Comments should refer to Docket No. R-0944 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. between Constitution Avenue and C Street, N.W. at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202) 452-3625; Gregory Baer, Managing Senior Counsel (202) 452-3236; or Scott Holz, Senior Attorney (202) 452-2966, Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Markets Improvement Act (Pub. L. 104-290) affects the Board's margin authority in two ways. First, the Markets Improvement Act amended section 7 of the Exchange Act (15 U.S.C. 78g) to exclude certain loans to broker-dealers from the Board's margin authority. The Board is nevertheless authorized to adopt rules and regulations covering these loans if the Board finds such rules are "necessary or appropriate in the public interest or for the protection of investors." Second, the Markets Improvement Act repealed section 8(a) of the Exchange Act (15 U.S.C. 78h(a)), which limits the sources of funding for broker-dealers who pledge exchange-traded equity securities to other broker-dealers and certain banks. In a separate document published elsewhere in today's Federal Register, the Board is issuing an interpretation of Regulations G, T and U to clarify their applicability in light of the statutory amendments in the Markets Improvement Act.

The Board is seeking comment on appropriate amendments to Regulations G, T and U to reflect the changes contained in the Markets Improvement Act and to further the policies behind these changes. To reflect the repeal of section 8(a) of the Exchange Act, the Board is proposing to delete the provisions of its regulations which repeat the former statutory restriction on sources of broker-dealer funding. Two regulatory sections would be removed in their entirety. These sections, § 220.15 of Regulation T and § 221.4 of Regulation U, restate the requirements of former section 8(a) of the Exchange Act and identify the FR T-1, T-2 as the form to be used by nonmember banks wishing to extend credit to brokers and dealers. Regulation U would also be amended by revising § 221.5 (special purpose loans to brokers and dealers) to eliminate the requirement that nonmember banks making such loans have an agreement in force with the Federal Reserve pursuant to section 8(a) of the Exchange Act. Use of the FR T-1, T-2 would be discontinued, as would the Board's "K. 22" publication, which lists those nonmember banks with section 8(a) agreements in force. Finally, § 207.4 of Regulation G would be revised to delete the general prohibition that lenders not extend credit to broker-dealers secured by margin stock.

To address the amendments to section 7 of the Exchange Act, the Board is specifically seeking comment on whether the exclusion of loans to specified types of broker-dealers from these regulations should be accomplished by amending the "scope" provision in the first section of each

regulation or by amending the definition of "customer" in the second section of each regulation.¹ The Board is also seeking comment on whether it needs to provide a test to identify brokers or dealers or members of a national securities exchange "a substantial portion of whose business consists of transactions with persons other than brokers or dealers" and, if such a test is necessary, what an appropriate test would be. The Board believes an appropriate test should be able to be readily administered by both regulators and market participants while not being more restrictive than the Congressional intent behind the Markets Improvement Act. The Board seeks comment on whether a test based on volume, revenue, transactions or some other measure can achieve these goals. In addition, the Board is seeking comment on potential changes specific to the various regulations.

Regulation T

Regulation T contains nine accounts in which to record financial transactions between broker-dealers and their customers. Three of these accounts, the omnibus account, the broker-dealer credit account and the market functions account allow favorable treatment for certain transactions that are generally limited to broker-dealers.

Under the Markets Improvement Act, most of the transactions eligible for execution in the market functions account are excluded from the Board's general margin authority because they involve market making and underwriting. The omnibus account is used by broker-dealers who seek to finance the credit they extend to their public customers and these transactions are excluded from the Board's general margin authority under the Markets Improvement Act if the borrowing broker-dealer has a substantial public customer business. The Board is seeking comment on whether there is any continuing need for these accounts.

The broker-dealer credit account contains several permissible transactions, some of which are not limited to members of a national securities exchange or registered brokers and dealers.² In addition to these

¹ 12 CFR 207.1 (Regulation G), 12 CFR 220.1 (Regulation T), and 12 CFR 221.1 (Regulation U).

² 12 CFR 207.2 (Regulation G), 12 CFR 220.2 (Regulation T), and 12 CFR 221.2 (Regulation U).

³ Section 220.11(a)(1) of Regulation T was recently amended to allow unregistered foreign broker-dealers to purchase and sell securities on a delivery-versus-payment (DVP) basis without application of 40-day freeze and letter of free funds requirements imposed on DVP transactions in the cash pursuant to § 220.8(c). At the same time, § 220.11(a)(5) was added to cover transactions with

transactions, broker-dealers who do not meet the test that a "substantial portion" of their business involves public customers may continue to be subject to Board rules for certain borrowings unless the Board exempts them. The Board is seeking comment on whether these broker-dealers should continue to be covered by Board rules, and if so, whether there is a continuing need for the broker-dealer credit account. The Board is also seeking comment on whether transactions currently permitted in the broker-dealer credit account that do not require the customer to be a member of a national securities exchange or a registered broker-dealer should continue to be allowed under Regulation T and if so, how this should be accomplished.

Regulation T covers the borrowing and lending of securities in § 220.16 to accommodate short sales and fails to receive while preventing circumvention of the margin requirements. Because these transactions are traditionally collateralized with cash or other collateral equal to at least the market value of the security being lent, the lender of the securities can be viewed as receiving 100 percent credit against the security being lent. If both parties to a securities lending transaction are broker-dealers with a substantial public customer business, it appears that § 220.16 is no longer applicable. The Board is soliciting comment on how to amend the rules regarding the borrowing and lending of securities to reflect the Markets Improvement Act.

Regulations G and U

The current structure of the Board's margin regulations is based in part on the requirements of the recently-repealed section 8(a) of the Exchange Act. Section 8(a) sought to limit sources of funding for broker-dealers to certain banks and other broker-dealers. Both of these types of lenders were themselves subject to Federal Reserve regulation when they extended securities credit. The repeal of section 8(a) of the Exchange Act raises fundamental questions about the appropriate coverage of Regulations G and U.

In 1968, the Board determined that it was appropriate to extend its margin requirements to cover lenders other than banks and broker-dealers. Rather than extend the provisions of Regulation U to the newly covered lenders, Regulation G was adopted as a separate regulation, in part because section 8(a) of the

customers that are part of a "prime-broker" arrangement effected in accordance with SEC guidelines. "Prime-broker" arrangements involve two or more broker-dealers effecting and financing transactions for a nonbroker-dealer customer.

Exchange Act mandated a distinction between bank and nonbank lenders with respect to loans to broker-dealers. Over the years, the Board has tried to make Regulations G and U more and more similar.⁴

The Board seeks comment on whether it is still appropriate to distinguish between Regulation G and Regulation U lenders. For example, is it appropriate to retain in Regulation U the concept of special-purpose loans to broker-dealers for those broker-dealers, a substantial portion of whose business does not consist of transactions with public customers, when the broker-dealer is engaged in activities other than market making and underwriting. If so, should these special-purpose loans be part of Regulation G as well. Should Regulation G continue to allow good faith credit to broker-dealers for emergency needs arising from exceptional circumstances, based on a certification from the broker-dealer, and should this treatment be extended to Regulation U. Finally, the Board seeks comment on the advisability of conforming some or all of the provisions of Regulations G and U or combining Regulations G and U into one regulation.

Regulatory Flexibility Act

As discussed in the preamble, the proposed amendments have been developed to implement section 104 of the National Securities Markets Improvement Act (Pub. L. 104-290), which reduced the scope of the Board's statutory authority for margin regulation. The Board is requesting comment to identify potential burden effects of the proposed amendments. After reviewing the comments, the Board should be able to address the impact of the amendments on small broker-dealers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this regulation are found in 12 CFR 220.15(b). This information collection was mandatory under 15 U.S.C. 78h, which was repealed by the National Securities

⁴ Currently, the primary difference between the regulations is that Regulation G prohibits most margin-stock secured lending to broker-dealers while Regulation U not only permits such lending, but contains numerous exceptions (called special-purpose loans) allowing banks to extend credit to broker-dealers without regard to the margin requirements otherwise applicable.

Markets Improvement Act of 1996 (Pub. L. 104-290). The respondents are for-profit broker-dealers. The estimated burden per response is 1.0 hour. It is estimated that there is 1 respondent and an average frequency of 1 response per respondent each year. Therefore the total amount of annual burden is estimated to be 1.0 hour. The annual cost burden over the annual hour burden is estimated to be \$20. As a result of the Board's proposed action, this collection of information would be discontinued.

Send comments regarding any aspect of this collection of information to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20051; and to the Office of Management and Budget, Paperwork Reduction Project (#100-0191), Washington, DC 20503.

List of Subjects in 12 CFR Parts 207, 220 and 221

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Parts 207, 220 and 221 as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS (REGULATION G)

1. The authority citation for Part 207 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

2. Section 207.4 is revised to read as follows:

§ 207.4 Credit to broker-dealers.

A lender may extend or maintain credit secured, directly or indirectly, by any margin stock to a creditor who is subject to part 220 of this chapter. If the credit is extended in good faith reliance upon a certification from the customer that the credit is essential to meet emergency needs arising from exceptional circumstances, any collateral for the credit shall have good faith loan value. In all other cases, collateral shall be valued in accordance with § 207.7.

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

§ 220.15 [Removed and Reserved]

2. Section 220.15 is removed and reserved.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK (REGULATION U)

1. The authority citation for Part 221 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

§ 221.4 [Removed and Reserved]

2. Section 221.4 is removed and reserved.

3. In § 221.5, paragraph (a) is revised to read as follows:

§ 221.5 Special purpose loans to brokers and dealers.

(a) A bank may extend and maintain purpose credit to brokers and dealers without regard to the limitations set forth in §§ 221.3 and 221.6 if the credit

is for any of the specific purposes and meets the conditions set forth in paragraph (c) of this section.

By order of the Board of Governors of the Federal Reserve System, November 19, 1996.
William W. Wiles,

Secretary of the Board.

[FR Doc. 96-30003 Filed 11-25-96; 8:45 am]

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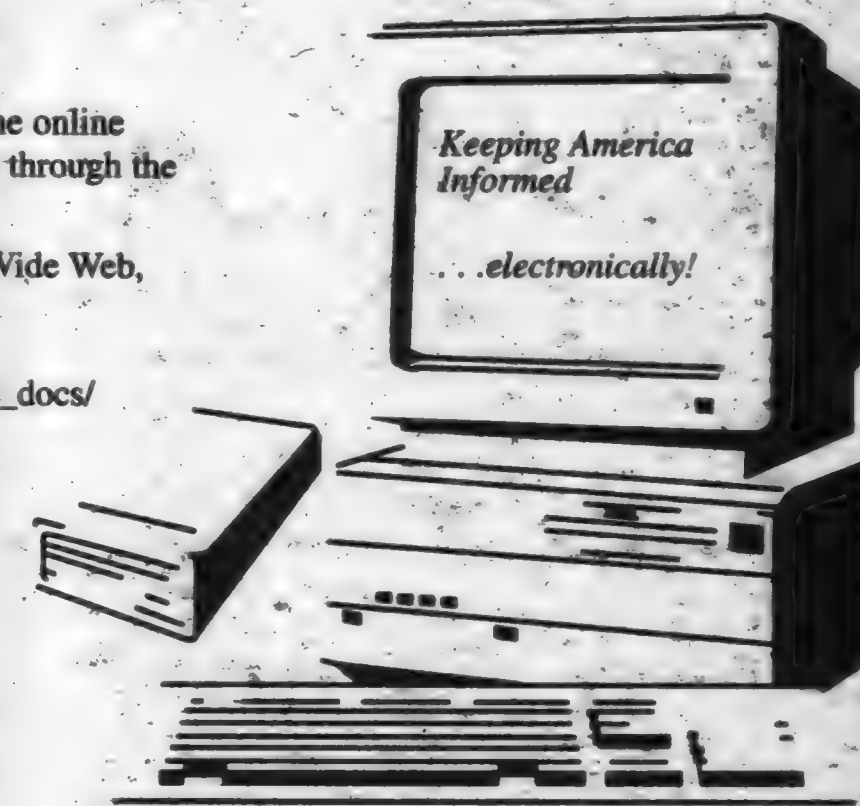
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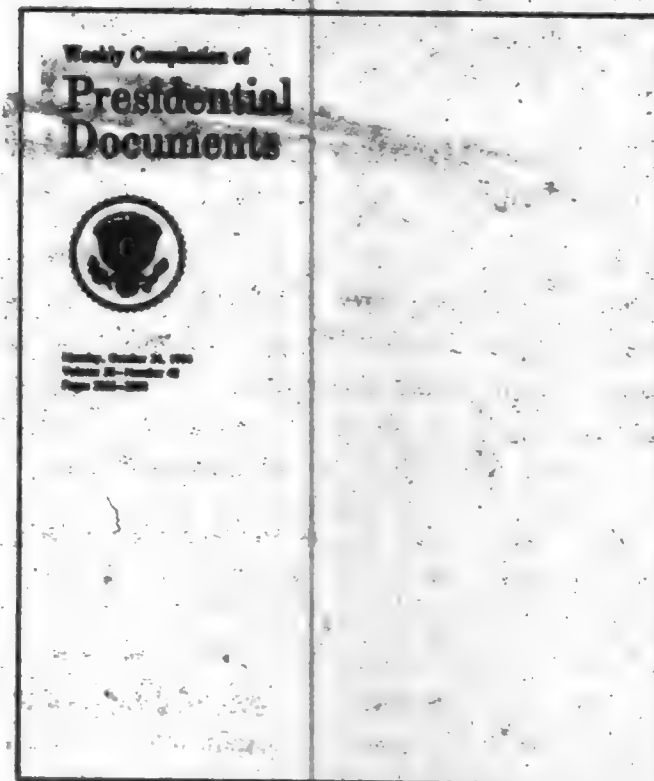
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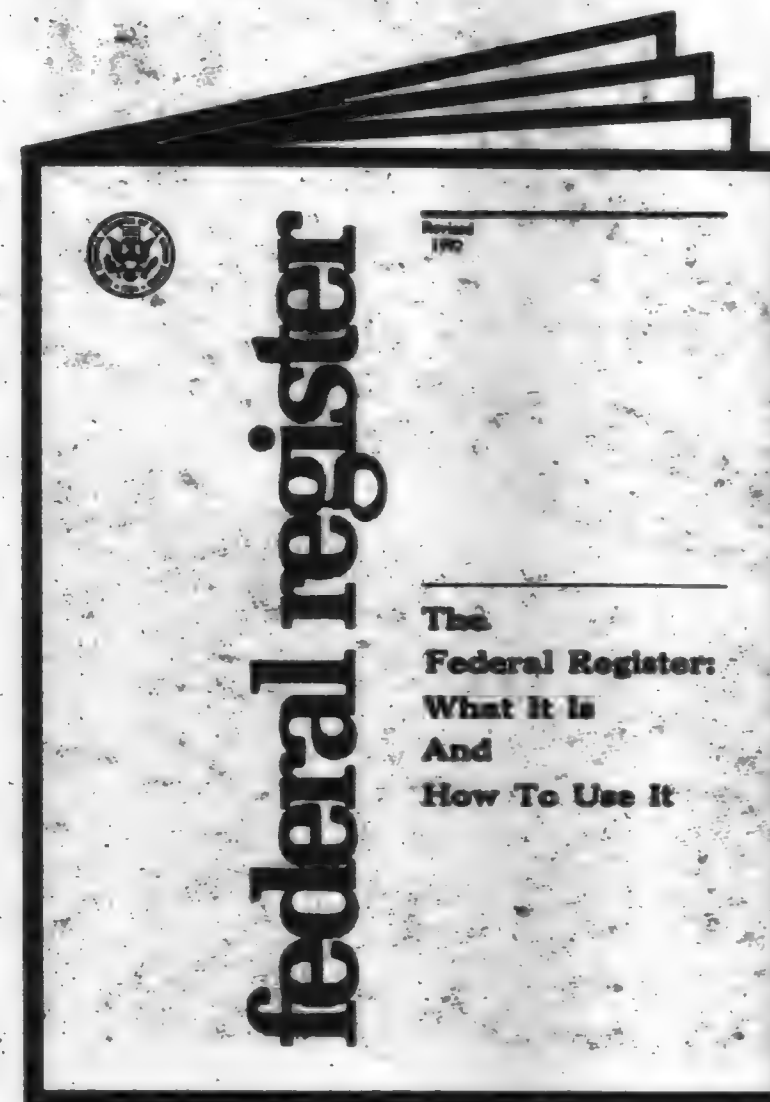
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Wednesday, November 17, 1996

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; DocIdat No. R-0945]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from \$52.0 million to \$49.3 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from \$4.3 million to \$4.4 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from \$57.0 million to \$59.3 million for nonexempt depository institutions and from \$46.4 million to \$46.2 million for exempt institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements (\$4.4 million) while exempt institutions are those with total reservable liabilities not exceeding the amount exempted from reserve requirements.) Thus nonexempt institutions with total deposits of \$59.3 million or more will be required to report weekly while nonexempt

institutions with total deposits less than \$59.3 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of \$46.2 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than \$46.2 million may report annually on form FR 2910a. **DATES:** Effective date, December 17, 1996.

Compliance dates. For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 31, 1996, and the corresponding reserve maintenance period that begins Thursday, January 2, 1997. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 17, 1996, and the corresponding reserve maintenance period that begins Thursday, January 16, 1997. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1997 to determine the reporting frequency for the twelve month period that begins in September 1997.

FOR FURTHER INFORMATION CONTACT: J. Ericson Heyke III, Attorney (202/452-3688), Legal Division, or June O'Brien, Economist (202/452-3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of \$25 million or less and at 12 percent on net transaction accounts above \$25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that,

before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is \$52.0 million. Net transaction accounts of all depository institutions decreased by 6.5 percent (from \$789.2 billion to \$737.7 billion) from June 30, 1995, to June 30, 1996. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1997 by \$2.7 million to \$49.3 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)) provides that \$2 million of reservable liabilities¹ of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage

¹Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 3.6 percent (from \$1,632.3 billion to \$1,691.8 billion) from June 30, 1995, to June 30, 1996. Consequently, the reservable liabilities exemption amount for 1997 under section 19(b)(1)(B) will be increased by \$0.1 million to \$4.4 million.² The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1995, to June 30, 1996, is to decrease the low reserve tranche to \$49.3 million, to apply a zero percent reserve requirement on the first \$4.4 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective on the reserve computation period beginning Tuesday, December 31, 1996, and on the corresponding reserve maintenance period beginning Thursday, January 2, 1997. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective on the computation period beginning Tuesday, December 17, 1996, and on the reserve maintenance period beginning Thursday, January 18, 1997. In addition, all institutions currently submitting form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set a single cutoff level for all depository institutions of \$40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.³ In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions

with separate cutoff levels. The cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was raised from the indexed level of \$44.8 million to \$55.0 million. The deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), remained at the indexed level of \$44.8 million. In 1996, these levels were increased to \$57.0 million and \$46.4 million, respectively.

From June 30, 1995, to June 30, 1996, total deposits increased 4.9 percent, from \$3,975.5 billion to \$4,172.0 billion. Accordingly, the nonexempt deposit cutoff level will increase by \$2.3 million to \$59.3 million and the exempt deposit cutoff level will increase by \$1.0 million to \$46.2 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from \$4.3 million to \$4.4 million. Institutions with total deposits below \$4.4 million will be excused from reporting if their deposits can be estimated from other data sources. The \$59.3 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the \$46.2 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the \$4.4 million level threshold for reporting will be used in the second quarter 1997 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1997.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1997, all other institutions that have reservable liabilities in excess of the exemption level of \$4.4 million prescribed by section 19(b)(1) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the nonexempt deposit cutoff level (\$59.3 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve month period starting September 1997. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level (\$59.3 million), will be able to file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report

of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level (\$4.4 million) (known as exempt institutions) will be required to file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level (\$46.2 million). Exempt institutions with total deposits less than the exempt deposit cutoff level (\$46.2 million) but at least equal to the exemption amount (\$4.4 million) will be able to file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount (\$4.4 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice and public participation. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding \$49.3 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, or contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding \$49.3 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions. See "Notice and public participation" above.

List of Subjects in 12 CFR Part 204

Banks, banking. Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for Part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement ¹
Net transaction accounts:	
\$0 to \$49.3 million	3 percent of amount.
Over \$49.3 million	\$1,479,000 plus 10 percent of amount over \$49.3 million.
Nonpersonal time deposits.	0 percent.

Category	Reserve requirement ¹
Eurocurrency liabilities.	0 percent.

¹ Before deducting the adjustment to be made by the paragraph (a)(2) of this section.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of \$4.4 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, November 21, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96-30148 Filed 11-26-96; 8:45 am]
BILLING CODE 6210-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 560, 563, 571

[No. 95-111]

RIN 1850-AA99

Conflicts of Interest, Corporate Opportunity and Hazard Insurance

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or agency) is today issuing a final rule updating and substantially streamlining its regulations and policy statements concerning conflicts of interest, usurpation of corporate opportunity and hazard insurance. These amendments are being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires OTS and other federal banking agencies to review, streamline, and modify regulations and policies to improve efficiency, reduce unnecessary costs, and remove inconsistent, outmoded and duplicative requirements.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Manager, Thrift Policy,

(202) 966-5751; or Francis Raus, Policy Analyst, (202) 966-5750, Supervision Policy; Deborah Dakin, Assistant Chief Counsel, (202) 966-8445, Regulations and Legislation Division; Chief Counsel's Office.

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- II. Summary of Comments and Description of the Final Rule
 - A. General Discussion of the Comments
 - B. Section-by-Section Analysis
 - C. Description of Final Rule
- III. Disposition of Existing Conflicts of Interest, Corporate Opportunity and Hazard Insurance Regulations and Policy Statements
- IV. Executive Order 12856
- V. Unfunded Mandates Act of 1995
- VI. Regulatory Flexibility Act Analysis

I. Background

In a comprehensive review of its regulations, beginning in the spring of 1995, pursuant to section 303 of the CDRIA¹ and the Administration's Reinvention Initiative, OTS identified its conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements as an important area for updating and streamlining. Each conflicts of interest, corporate opportunity and hazard insurance regulation and policy statement was reviewed to determine whether it was current and understandable; imposed the least possible burden consistent with safety and soundness and statutory requirements; addressed subject matter more suited for handbook guidance; and was written in a clear, straightforward manner. OTS also sought industry input regarding staff's initial recommendations through an industry focus group consisting of five thrift representatives, an industry trade association and OTS staff. As a result of this review, OTS identified a number of ways in which its conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements could be revised to reduce regulatory burden. On June 14, 1996, OTS issued a notice of proposed rulemaking.²

Today's final rule is substantially similar to the June proposal. The conflicts of interest rule has been clarified to give more specificity on what conflicts are prohibited. The conflicts of interest provisions apply if there is disclosure to the board of directors, the interested person refrains from participation in discussion of the

¹ 12 U.S.C. 4803(a)(1).

² 61 FR 30180 (June 14, 1996).

² Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest \$0.1 million.

³ "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

transaction and recuse himself or herself from voting on the transaction. In addition, the final rule on corporate opportunity incorporates a safe harbor. The corporate opportunity safe harbor applies if there is disclosure to the board of directors, and a disinterested and independent majority of the board rejects the proposed business opportunity.

The final rule reduces the number of conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements from eight to three and results in a net reduction of more than five pages of CFR text. As proposed, OTS has removed in their entirety five unnecessary, duplicative and outdated regulations and policy statements: § 545.126 (referral of insurance business), § 556.16 (insurance agencies—usurpation of corporate opportunity), § 563.35 (restrictions involving loan services), § 563.44 (loans involving mortgage insurance) and § 571.4 (hazard insurance). The remaining three provisions—loan procurement fees, conflicts of interest, and corporate opportunity—will be retained in the form of regulations, but streamlined and clarified.

OTS's objective is to reduce regulatory burden on savings associations to the greatest extent possible consistent with statutory requirements and safety and soundness. In the context of conflicts of interest, corporate opportunity and hazard insurance, we believe maximum burden reduction can be achieved by pursuing three specific objectives.

First, we are attempting to eliminate duplication and overlap. For example, the policy statement regarding hazard insurance (§ 571.4) has been largely superseded by the Interagency Real Estate Lending Guidelines.³ Similarly, the regulatory provisions prohibiting a savings association from conditioning the extension of credit on the borrower obtaining certain other services from the institution (tying arrangements) (§ 563.35) have been superseded by tying prohibitions in section 5(q) of the Home Owners' Loan Act of 1933, as amended (HOLA).⁴ Additionally, the regulatory provisions governing kickbacks and unearned fees for loans (§ 563.40) are largely duplicative of the Real Estate Settlement Practice Act of 1974 (RESPA).⁵

³ Formerly, Appendix A to Subpart D of Part 563, recodified without change as Appendix to § 560.101 (61 FR 50951, 50979–81 (September 30, 1996)).

⁴ 12 U.S.C. 1461, et seq.

⁵ Pub. L. 93–533, 88 Stat. 1734 (1974).

Second, as part of its reinvention effort, OTS is seeking to move away from regulations that micromanage thrift operations. Accordingly, today OTS is repealing in their entirety detailed regulations concerning when federal thrifts can refer customers to affiliates that sell insurance, leaving insurance referrals to be handled in the same way as other corporate opportunity issues.

Third, in its reinvention effort, OTS is seeking to enhance the conciseness and clarity of its regulations. Accordingly, each of the three final rules has been redrafted using plain language techniques pioneered by the Department of Interior and promoted by the Reinvention Initiative.

In summary, OTS believes that regulations should generally be limited to essential safety and soundness requirements. If regulations are unnecessarily detailed and rigid, regulated entities may find themselves unable to respond to market innovations. Today's final rule achieves what OTS believes is the right balance by placing key safety and soundness requirements in binding regulations and putting more expansive guidance on prudent practices in the Thrift Activities Regulatory Handbook.

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the June 14 proposal closed on August 13, 1996. Ten commenters responded to the notice of proposed rulemaking. Four state and national trade associations, three federal savings associations, one law firm, one dual bank and savings and loan holding company, and one mortgage insurance corporation submitted comments.

All but three of the commenters generally supported OTS efforts to update and streamline its conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements. Commenters commended OTS's proposed elimination of duplicative, overlapping and burdensome restrictions and indicated that the proposed modifications would give institutions greater flexibility in structuring their operations. Commenters believed that the proposed changes would significantly reduce regulatory burden on the thrift industry and promote operational flexibility.

Several commenters raised concerns, however, that the proposed conflicts of interest and corporate opportunity regulations were unclear and failed to give meaningful guidance about what practices were prohibited. Commenters

also expressed concern that OTS's intended approach for dealing with corporate opportunity within a holding company structure was only to be part of guidance and not included in the regulatory text. In response, OTS has refined the language of the rules and provided examples in the preamble to clarify the scope of the provisions. These concerns and OTS's responses are addressed in detail in the description of the final rules.

A few commenters expressed concern over the elimination of the hazard insurance provision allowing thrifts to force-place insurance and to reject policies that would provide inadequate protection to the institution. They agreed with OTS's view that these were matters of general safety and soundness principles with respect to lending practices, but believe that thrifts would be in a weaker bargaining position with borrowers if these provisions were removed. These concerns are discussed in detail below in the section-by-section analysis in reference to §§ 563.35 and 571.4.

B. Section-by-Section Analysis

1. Conflicts of Interest

Section 563.35 Restrictions Involving Loan Services

OTS proposed deleting paragraph (a) of § 563.35, which enumerates specific services typically involved in real estate lending that cannot be "tied" to the granting of a loan. OTS received no comments on this paragraph, which is duplicative of HOLA section 5(q). The paragraph is deleted as proposed.

OTS proposed to remove paragraph (b) of § 563.35, which requires a savings association to inform borrowers of their right to freely select providers of insurance services (e.g., hazard and mortgage insurance) and paragraph (c), which provides that a savings association may refuse to make a loan if the borrower's choice of insurance services would provide insufficient coverage.

OTS received no comments on paragraph (b). One commenter urged OTS to retain paragraph (c) to protect thrifts from having to accept insurance that provided insufficient coverage. OTS's significantly streamlined and revised lending rule⁶ sets forth the basic rules governing lending practices. Federal savings associations have the authority under these rules to refuse to make loans in the absence of adequate insurance coverage, with or without paragraph (c) of § 563.35. Coincident

⁶ 61 FR 50951, 50971 (September 30, 1996), to be codified at 12 CFR Part 560.

with this authority, borrowers must be provided the right to freely select insurance carriers, within the parameters established by the savings associations as necessary to meet their legitimate business needs and consistent with applicable law. Although the commenter noted that legislation had been proposed in at least one state that would prohibit a lender from refusing to accept a hazard insurance policy from any insurer admitted in the state and selected by the borrower, OTS's revised lending rules contain a detailed provision addressing preemption of state laws relating to lending practices.⁷ The states cannot force federal savings associations to accept insurance coverage that the associations deem inadequate. Accordingly, for the reasons set forth above and in the preamble to the proposed rule, paragraphs (b) and (c) are deleted as proposed.

OTS proposed to delete paragraph (d) of § 563.35, which provides that a savings association must give residential borrowers a written itemization of fees in excess of \$100 to be paid by the borrower for the lender's attorney. OTS received no comments on this paragraph, which is removed as proposed. Instead these settlement practices of savings associations will be governed by RESPA.

Section 563.40 Restrictions on Loan Procurement Fees, Kickbacks and Unearned Fees

OTS proposed retaining in modified form paragraph (a) of § 563.40, which prohibits certain persons from receiving any fee in connection with the procurement of a loan from the association or a subsidiary of the association. After considering the comments received, which are discussed below in Part II.C, OTS has decided to retain this paragraph with some technical corrections from the proposed rule, as new § 560.130.

OTS proposed deleting paragraph (b) of § 563.40, which prohibits the payment of unearned fees for loan origination and settlement services. This provision overlaps RESPA. OTS received no comments on this paragraph, which is removed as proposed.

Section 563.44 Mortgage Insurance

OTS proposed to repeal § 563.44, which prohibits a savings association (or service corporation affiliate) from insuring any loan with a mortgage insurance company if certain affiliations are present.

⁷ 61 FR 50972, to be codified at 12 CFR 560.2.

One commenter noted that it is appropriate to eliminate this provision because consumers are adequately protected by RESPA and the regulations promulgated thereunder, and conflicts of interests would be covered by existing law. Another commenter asserted that allowing thrifts to invest in mortgage insurance companies would create a conflict of interest that poses a risk to the safety and soundness of the thrift.

As indicated in the preamble to the proposed rule, OTS believes that common law fiduciary duties, the statutory rules governing transactions with affiliates, and OTS's new conflicts of interest regulation are adequate to address any conflicts of interest relating to the mortgage insurance business. OTS also notes that, under RESPA, a lender must disclose its interest in an affiliated mortgage company and give borrowers a choice of insurance providers.

For these reasons and those set forth in the preamble to the proposed rule, § 563.44 is removed, as proposed.

Section 571.7 Conflicts of Interest Policy Statement

OTS proposed codifying this policy statement as a regulation, after making modifications to clarify and simplify the language. OTS received two comments urging the agency not to adopt a conflicts of interest regulation. As indicated in the preamble to the proposed rule, fiduciary duties lie at the heart of safety and soundness. OTS believes a regulation will serve as an important reminder to thrift insiders of their fiduciary duties to avoid conflicts of interest. Therefore, OTS is promulgating a conflicts of interest regulation, with some modifications from the proposal, as described below in Part II.C.

2. Corporate Opportunity

Section 545.126 Referral of Insurance Business

OTS proposed removing § 545.126, which prohibits a federal savings association from referring any insurance business to an agency owned by officers or directors of the association, or by individuals having the power to direct its management, subject to certain exceptions. This section is removed, as proposed. General corporate opportunity principles will govern insurance referrals.

OTS also notes that the Department of Housing and Urban Development recently issued regulations that *inter alia*, govern fee payments for settlement

service referrals.⁸ Savings associations are advised to review these rules for applicability to their operations.

Section 556.16 Insurance Agencies—Usurpation of Corporate Opportunities

OTS proposed to eliminate § 556.16, which substantially duplicates § 545.126, and provides that a federal savings association's corporate opportunity to engage in the insurance business is usurped if it refers any insurance business to an agency owned by officers or directors of the association, or by individuals having the power to direct its management, subject to certain exceptions. OTS received no comments on this section, which is removed as proposed. As noted above, general corporate opportunity principles will govern insurance referrals.

Section 571.9 Corporate Opportunity in Savings Associations

OTS proposed retaining in modified form, and codifying as a regulation, paragraph (a) of § 571.9, which states that it is a breach of fiduciary duty for officers, directors and certain other persons to take advantage of a business opportunity for his or her own or another person's personal profit or benefit when the opportunity is within the corporate powers of the association or its service corporation and when the opportunity is of present or potential practical advantage to the association.

OTS received two comments urging the agency not to adopt a corporate usurpation regulation. OTS believes that avoiding corporate usurpation is as essential to safety and soundness as avoiding conflicts of interest. Therefore, it is adopting the regulation, with modifications from the proposal, as described below in Part II.C.

OTS proposed removing paragraph (b) of § 571.9, which provides that a usurpation of corporate opportunity to engage in the insurance business is an unsafe and unsound practice. OTS received no comments on this provision, which is removed as proposed. As noted above, OTS believes that the general prohibition on usurpation of corporate opportunity will be sufficient to address any usurpation of insurance opportunities.

3. Hazard Insurance

Section 571.4 Hazard Insurance

OTS proposed removing § 571.4, which contains detailed provisions

⁸ 61 FR 25239 (June 7, 1996). The effective date of these rules was delayed until July 31, 1997 by section 2109(f) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104–308, 110 Stat. 3006 (1996).

concerning a savings association's obligation to require borrowers to maintain hazard insurance in a sufficient amount to protect the savings association from loss in the event of damage to or destruction of the real estate securing the savings association's loans.

OTS received two comments urging the agency to retain the provision as a protection to thrifts from law suits by borrowers relating to "force placing" insurance⁹ and to modify the rule to specifically cover "force placing" insurance.

OTS disagrees that a specific provision on hazard insurance is necessary for several reasons. First, details regarding hazard insurance are unnecessary in light of the general safety and soundness requirements set forth in OTS's revised lending regulations and Interagency Real Estate Lending Guidelines as well as standard business practices in the mortgage lending industry. Second, savings associations clearly have the right to contract with borrowers to include whatever terms they deem appropriate in loan agreements (when not in contravention of law), including provisions governing force placing insurance. OTS's elimination of its hazard insurance policy statement does not alter this right.

For the reasons set forth above and in the preamble to the proposed rule, this section is removed as proposed.

C. Description of Final Rule

1. New § 560.130 Prohibition on Loan Procurement Fees

OTS is moving the prohibition on loan procurement fees (§ 563.40(a)) to a new section (§ 560.130) in its Part 560 on Lending and Investment and is narrowing the scope of the rule. OTS is promulgating new § 560.130 substantially as proposed, with some technical corrections.

The rule prohibits directors, officers and natural persons having the power to control the management or policies of savings associations from receiving, directly or indirectly, any commission, fee or other compensation in connection with the procurement of any loan by the savings association or a subsidiary of the savings association.

The current rule applies to affiliated persons. This has been changed to natural persons. As OTS noted in the preamble to the proposed loan

⁹ "Force placing" insurance is when the savings association exercises its right under a contract with a borrower to purchase insurance coverage at the borrower's expense in the event the borrower fails to purchase or provide insurance.

procurement rule, the revised regulation would not apply to holding companies and holding company affiliates of savings associations. Therefore, affiliates of thrifts that are mortgage brokers will be able to receive an arm's-length fee when acting as agent soliciting loans for affiliated thrifts. It is OTS's belief that loan procurement fees paid to corporate affiliates pose less risk than those paid to individuals because these fees will be subject to section 23B of the FRA and corporate affiliates will generally have less ability than officers and directors to influence the daily workings of an institution's loan approval process. OTS wants to clarify here that the revised rule is not intended to cover payments made in the ordinary course of business in the form of dividends or capital gains received by shareholders of the holding company who are also officers or directors of the savings association. In addition, it is OTS's view that to "receive" a prohibited payment, a person must have accepted that payment. For example, it is not enough that a payment is made to the person's account without his or her knowledge or consent.

OTS received one comment urging the agency to eliminate the loan procurement rule. This commenter believed that the proposed rule was too vague and that the common law duties of loyalty and care, other OTS guidance and RESPA are sufficient to address the subject matter of the regulation.

OTS disagrees. As indicated in the preamble to the proposed rule, the regulation has been amended from current § 563.40 to more precisely tailor the scope of the regulation to the persons the agency believes should be covered and the practices the agency wishes to prohibit. While OTS agrees that the subject matter of this rule is generally covered by common law fiduciary duties and other OTS guidance, OTS continues to believe that loan procurement fees paid to the persons enumerated in the rule pose a particular threat to the safety and soundness of savings associations. Such fees provide incentives to these individuals to bring loans into the association and to press for their approval, without giving proper consideration to whether they are a good investment for the institution. Therefore, OTS believes that a specific rule addressing loan procurement fees is appropriate.

Accordingly, § 563.40(a) is amended and moved to new § 560.130, as proposed, with technical corrections.

2. New § 563.200 Conflicts of Interest

OTS proposed codifying its conflicts of interest policy statement (§ 571.7) as a regulation in new § 563.200 and clarifying and simplifying the text of the rule. OTS's proposed conflicts of interest regulation prohibited directors, officers, employees, persons having the power to control the management or policies of savings associations, and other persons who owe fiduciary duties to savings associations from advancing their own personal or business interests, or those of others, at the expense of the institutions they serve.

OTS is making two changes in the final rule from the proposal after considering issues raised in the comment letters. First, two commenters pointed out that the phrase "or those of others" was vague. OTS agrees and is therefore modifying this phrase to read "or those of others with whom you have a personal or business relationship." This language more precisely identifies those related interests that would give rise to a conflict of interest.

Second, one commenter suggested that OTS include in the regulation a safe harbor to provide greater certainty about what transactions are excluded from the rule. OTS is sympathetic to the commenter's desire for greater certainty in this area; however, OTS is not including a safe harbor provision in its regulation. To give greater guidance regarding what transactions may be excluded, OTS is adding a paragraph to the end of its conflicts of interest rule that provides that if a person with a fiduciary duty to a savings association has an interest in a matter or transaction before the board of directors, he or she must do three things. First, the person must disclose to the board of directors all material non-privileged information relevant to the board's decision. This includes the existence, nature and extent of his or her conflicting interest and the facts known to the person as to the matter or transaction under consideration. Second, the interested person may not participate in the board discussion of the matter. Third, if the person with the conflict is a director, he or she must recuse himself or herself from voting on the matter.¹⁰ Absent unusual circumstances, OTS will not take enforcement action against a person who has complied with these requirements.

¹⁰ See *In the Matter of Neil M. Bush*, ERG 90-30 (Decision and Order) at 21-22 (April 18, 1991); *In the Matter of Simpson*, OTS Order No. AP 92-123 (November 18, 1992), upheld on appeal, 29 F.3d 1418 (9th Cir. 1994), cert. denied, 115 S. Ct. 1006 (1995).

Several comments sought additional clarification of the types of conduct that would be acceptable or impermissible under the rule. OTS wants to emphasize that the regulation is a reformulation of the current policy statement, written more concisely, and is intended to encompass the common law of conflicts of interest as it has been articulated in Director's Orders. The regulation does not impose any new requirements on persons covered by the rule but reiterates general common law standards on the fiduciary duty officers, directors and others owe to the institutions they serve. Prior OTS interpretations of the policy statement will continue to provide guidance as to the scope of the rule.

To further clarify the type of conduct OTS intends to include and exclude from the coverage of the rule, the following examples are provided. A person who owes a fiduciary duty to a savings association and receives money or other benefits (e.g., a loan, forgiveness of debt, goods or services) from a third party in return for the savings association granting a loan to or purchasing property from the third party would be receiving a benefit that is covered by the rule. Similarly, payments by the third party to a spouse, child, parent, sibling or business partner of a person identified in the rule would generally provide a benefit to the person because of the personal or business relationship and would likewise be covered by the rule. In addition, a person who owes a fiduciary duty to a savings association may not advance a transaction between the savings association and companies in which that person owns shares, is on the board of directors or is an officer, at the expense of the institution.

Generally, a person will not be deemed to be advancing his, her or its interests at the expense of the institution if the transaction complies with sections 23A and 23B of the Federal Reserve Act (FRA),¹¹ Federal Reserve Board Regulation O, and the safe harbor described above.¹² Likewise, the rule does not prohibit an executive officer, director or principal shareholder from receiving a loan from the association in accordance with 12 CFR 563.43.

Section 571.7 is amended, codified as a regulation, and moved to new § 563.200, with changes from the proposal, as indicated above.

¹¹ 12 U.S.C. 371c and 371c-1.
¹² 12 CFR Part 215.

3. New § 563.201 Corporate Opportunity

Paragraph (a) of OTS's proposed corporate opportunity regulation prohibits directors or officers of savings associations, persons having the power to control the management or policies of savings associations and other persons who owe a fiduciary duty to savings associations from taking advantage of corporate opportunities belonging to their savings association or its subsidiaries. Paragraph (b) of the proposed rule indicates that a corporate opportunity will be deemed to belong to the savings association if (i) it is within the corporate powers of the savings association or its subsidiary; and (ii) the opportunity is of present or potential practical advantage to the savings association, directly or through its subsidiary.

OTS indicated in the preamble to the proposed rule and reiterates here, that the agency intends for common law standards governing usurpation of corporate opportunity to be applied in determining when an opportunity would be of present or potential practical advantage to an institution. Examples of the types of issues that should be considered under this standard include, without limitation, an institution's financial condition and management resources, the level of risk presented by the business, and potential profit from the business weighed against any profits that might arise from transfer of the business. Prior OTS interpretations have indicated that a usurpation of corporate opportunity does not occur when an institution receives fair market value consideration for transfer of a line of business. By definition, an institution that receives fair market value receives as much as it conveys.

OTS received several comments on its proposed corporate opportunity regulation. OTS is making one change to the final rule to reflect the comments received. One commenter urged OTS to include a provision in the regulation recognizing the role of the board of directors in determining whether an opportunity is advantageous to the institution. OTS agrees with this suggestion. OTS is adding a paragraph to the new regulation which provides that OTS will not deem a person to have taken advantage of a corporate opportunity belonging to the savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment. This safe harbor is not intended to affect the

rights of others, for example the Federal Deposit Insurance Corporation or shareholders, to bring actions alleging usurpation of corporate opportunity under applicable provisions of law.

A "disinterested" director is one without an interest in the matter or transaction before the board of directors. This determination will vary with the facts and circumstances of each case. The examples set forth above in the discussion of the conflicts of interest rule provide some guidance on whether a director has an interest in a transaction. An "independent" director for purposes of this rule is: (i) One who is not a salaried officer or employee of the savings association, any subsidiary, or any holding company affiliate;¹³ and (ii) one who is not dominated or controlled by an interested director. What will be considered "a full and fair presentation of the facts relating to a given matter" will vary depending upon the transaction. At a minimum, the interested director must disclose the nature and extent of his or her interest in the transaction.

Several commenters addressed the language in the preamble concerning OTS's intended treatment of business allocation within a holding company structure. OTS indicated that under the proposed regulation, the dealings of holding companies with their subsidiary thrifts will be subject to the doctrine of usurpation of corporate opportunity to the same extent as provided by common law. OTS noted, however, that other provisions of law generally provide an adequate basis for regulating dealings between thrifts and their holding companies. Thus, barring egregious circumstances or instances where a thrift is undercapitalized or unprofitable, OTS supervisors and examiners will generally defer to holding company decisions regarding where to allocate lines of business within a holding company structure, provided there is no violation of sections 23A and 23B of the FRA or general principles of safety and soundness.

Two commenters asked that this language be specifically included in the regulation or in handbook guidance. OTS has determined not to incorporate this language in the regulation for several reasons. First, it is the agency's view that the standard it has enunciated for the treatment of holding companies is not specific enough to be included in regulatory text. Second, holding companies are covered by the rule and OTS reserves the right to take action against holding companies for

¹³ See 12 CFR 563.23 (1996).

usurpation of corporate opportunity in the special circumstances described above. However, OTS reiterates that it will generally defer to holding company business allocation decisions. OTS's decision not to put this standard in the regulation in no way reflects a departure from this stated position. OTS intends to incorporate this language into the Thrift Activities Regulatory Handbook.

One commenter asked OTS to amend the general prohibition paragraph to provide that usurpation of corporate opportunity was only actionable if it was "for [a person's] personal profit or benefit." Usurpation of corporate opportunity is prohibited based on fiduciary principles, not whether a benefit accrues to an individual. It is enough that an opportunity belongs to the institution and is usurped from the institution. The concept of personal gain is more appropriate to a conflicts of interest analysis than a corporate opportunity analysis.

OTS notes that depending on the circumstances relating to a given matter or transaction, the conflicts of interest regulation (new § 563.200) may apply in addition to the corporate opportunity rule.

Section 571.9(a) is amended, codified as a regulation and moved to new § 563.201, with changes from the proposal, as indicated above.

III. Disposition of Existing Conflicts of Interest, Corporate Opportunity and Hazard Insurance Regulations and Policy Statements

Original provision*	New provision	Comment
§ 545.126	Removed.	Removed.
§ 556.16	Removed.	Removed.
§ 563.35	Removed.	Removed.
§ 563.40(a)	§ 560.130	Modified.
§ 563.40(b)	Removed.	Removed.
§ 563.44	Removed.	Removed.
§ 571.4	Removed.	Removed.
§ 571.7	§ 563.200	Modified.
§ 571.9(a)	§ 563.201	Modified.
§ 571.9(b)	Removed.	Removed.

IV. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal

governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. As discussed in the preamble, this final rule reduces regulatory burden and clarifies the fiduciary duties that directors, officers and other fiduciaries owe to savings associations. It does not create new standards but reiterates the common law duty that directors, officers and other fiduciaries owe to the institutions they serve.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 556

Savings associations.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Conflicts of interest, Corporate opportunity, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.126 [Removed]

2. Section 545.126 is removed.

PART 556—STATEMENTS OF POLICY

3. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j-3; 15 U.S.C. 1693-1693r.

§ 556.16 [Removed]

4. Section 556.16 is removed.

PART 560—LENDING AND INVESTMENT

5. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1701j-3, 1828, 3803, 3806; 42 U.S.C. 4106.

6. Section 560.130 is added to read as follows:

§ 560.130—Prohibition on loan procurement fees.

If you are a director, officer, or other natural person having the power to direct the management or policies of a savings association, you must not receive, directly or indirectly, any commission, fee, or other compensation in connection with the procurement of any loan made by the savings association or a subsidiary of the savings association.

PART 563—OPERATIONS

7. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§ 563.35 [Removed]

8. Section 563.35 is removed.

§ 563.40 [Removed]

9. Section 563.40 is removed.

§ 563.44 [Removed]

10. Section 563.44 is removed.

11. Section 563.200 is added to read as follows:

§ 563.200—Conflicts of interest.

If you are a director, officer, or employee of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association:

(a) You must not advance your own personal or business interests, or those of others with whom you have a

personal or business relationship, at the expense of the savings association; and

(b) You must, if you have an interest in a matter or transaction before the board of directors:

(1) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including:

(i) The existence, nature and extent of your interests; and

(ii) The facts known to you as to the matter or transaction under consideration;

(2) Refrain from participating in the board's discussion of the matter or transaction; and

(3) Recuse yourself from voting on the matter or transaction (if you are a director).

12. Section 563.201 is added to read as follows:

§ 563.201—Corporate opportunity.

(a) If you are a director or officer of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association, you must not take advantage of corporate opportunities belonging to the savings association.

(b) A corporate opportunity belongs to a savings association if:

(1) The opportunity is within the corporate powers of the savings association or a subsidiary of the savings association; and

(2) The opportunity is of present or potential practical advantage to the savings association, either directly or through its subsidiary.

(c) OTS will not deem you to have taken advantage of a corporate opportunity belonging to the savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment.

PART 571—STATEMENTS OF POLICY

13. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§§ 571.4, 571.7, 571.9 [Removed]

14. Sections 571.4, 571.7 and 571.9 are removed.

Dated: November 18, 1996.

By the Office of Thrift Supervision.

Nicholas P. Rotsinas,

Director.

[FR Doc. 96-30031 Filed 11-26-96; 8:45 am]

BILLING CODE 6725-01-P

12 CFR Parts 560, 563, 574, 575, 583, 584

[No. 96-113]

RIN 1650-AB05

Amendments Implementing Economic Growth and Regulatory Paperwork Reduction Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is issuing this interim final rule to implement provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Among other actions, EGRPRA expanded and clarified federal thrifts' lending and investment authority, amended the Qualified Thrift Lender (QTL) test, authorized OTS to grant antitying exceptions to savings associations that conform to those granted to banks by the Board of Governors of the Federal Reserve System (FRB), and modified OTS's oversight authority over bank holding companies that own savings associations. Today's interim final rule implements these statutory changes. OTS is making today's rule effective immediately to enable thrifts to take advantage of the expanded flexibility and burden reduction afforded by EGRPRA. However, OTS will be accepting comment on any issues raised by these newly implemented regulations for the next sixty days.

DATES: This interim rule is effective on November 27, 1996. Comments must be received by January 27, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552. Attention Docket No. 96-113. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT:

William J. Magrini, Senior Project Manager, (202) 906-5744, Supervision Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906-7133, or Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief Counsel's Office. For information about holding company or branching issues,

contact Kevin A. Corcoran, Assistant Chief Counsel, (202) 906-6862, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Summary of Relevant Statutory Changes

Credit card and education lending: Section 2303(b) of the EGRPRA¹ amended section 5 of the Home Owners' Loan Act (HOLA),² to confirm and clarify that federal savings associations may engage in credit card lending without a percentage of assets investment limitation, as OTS has long maintained. Section 2303(b) also amended HOLA section 5 to permit federal thrifts to make education loans without investment restriction. Previously, education loans were limited to 5% of a thrift's total assets.³

Commercial lending: Section 2303(c) of EGRPRA also expanded the small business and agricultural lending authority of federal thrifts. Federal thrifts have long been authorized to make loans secured by business or agricultural real estate in amounts up to 400% of capital,⁴ and to make additional secured and unsecured loans to businesses and farms in amounts up to 10% of total assets.⁵ EGRPRA left the 400% non-residential real estate lending cap intact, but increased the 10% of assets limit to 20% of assets, provided that amounts in excess of 10% of assets may only be used for "small business loans" as that term is defined by the Director of OTS.

Qualified Thrift Lender test: Section 2303(e) and (g) of EGRPRA amended the QTL test in section 10(m) of the HOLA⁶ to provide that investments in educational; small business, credit card, and credit card account loans are includable without limit for purposes of satisfying the QTL test. Under the QTL test, savings associations must hold "qualified thrift investments" equal to at least 65% of their "portfolio assets" as defined by statute.⁷ Before EGRPRA, "qualified thrift investments" (QTI) were defined in a manner that required every savings association to hold a

¹ Pub. L. 104-208, tit. 12, 110 Stat. 3009 (September 30, 1996).

² 12 U.S.C. 1464(c)(1).

³ 12 U.S.C. 1464(c)(3)(A). Federal thrifts continue to be authorized to make other consumer loans in an amount up to 35% of total assets. Credit card loans and education loans do not count against this 35% cap. 12 U.S.C. 1464(c)(2)(D).

⁴ 12 U.S.C. 1464(c)(2)(B).

⁵ 12 U.S.C. 1464(c)(2)(A).

⁶ 12 U.S.C. 1467a(m).

⁷ *Id.*, and 12 CFR 563.50-563.52.

substantial percentage of its assets in mortgage loans and mortgage-related securities. Section 2303 of EGRPA expanded the definition of QTI. Small business loans, credit card loans, and education loans now count as QTI without restriction.⁹ Consumer loans (other than credit cards and education loans) now count as QTI in an amount up to 20% of portfolio assets.⁹

Section 2303(e) of EGRPA also amended the QTL test to give savings associations the option of substituting compliance with the tax code "domestic building and loan association" (DBLA) test for compliance with the amended QTL requirements. (The DBLA test appears to be much more stringent than the amended QTL test.)

As a result of the foregoing statutory reforms, savings associations will now be able to engage in substantial small business, agricultural, credit card, educational, and other consumer lending and remain in QTL compliance. In order to implement these changes, section 2303 of EGRPA requires the Director of OTS to issue regulations defining the terms "credit card" and "small business."

Anti-tying exceptions: Section 2216 of EGRPA amends HOLA section 5(q)¹⁰ to authorize the OTS Director to issue regulations or orders permitting exceptions to the anti-tying prohibitions established in section 5(q) so long as such exceptions are consistent with the purposes of section 5(q) and conform to exceptions granted by the FRB to banks pursuant to section 106(b) of the Bank Holding Company Act (BHCA) Amendments of 1970.¹¹ HOLA section 5(q) prohibits, *inter alia*, a savings association from varying the price charged for a product or service (the tying product) based on whether the customer obtains an additional product or service (the tied product) offered by the association or its service corporation or affiliate unless the additional product or service is a loan, discount, deposit or

⁹ Previously, small business loans counted as QTI only if originated in areas where the credit needs of low and moderate income persons were not being met. As discussed above, HOLA section 5 now imposes a 20%-of-assets cap on small business loans. HOLA section 5 does not limit a federal savings association's credit card and education loans.

¹⁰ The previous limit was 10% of portfolio assets and included credit card and educational loans. When computing the new 20% cap, consumer loans must still be aggregated with certain other categories of loans and investments that are also subject to the 20% cap, e.g., loans for the purchase of community service facilities, home loans sold into the secondary market, Fannie Mae and Freddie Mac stock, and so forth. 12 U.S.C. 1467a(m)(4)(C)(iii) and (iv).

¹¹ 12 U.S.C. 1464(q).

¹² 12 U.S.C. 1972.

trust service ("traditional bank products"). The BHCA contains a similar anti-tying provision applicable to banks and authorizes the FRB to grant exemptions by regulation or order for commercial banks and their affiliates. The FRB has issued various regulatory exceptions in recent years. Prior to EGRPA, the HOLA did not grant similar exemptive authority to the OTS.

Bank holding companies: Section 2203 of EGRPA amends HOLA section 10¹² to eliminate OTS supervision of holding companies that control both a bank and a savings association and are registered as bank holding companies with the FRB under the BHCA of 1956.¹³ Previously bank holding companies that controlled a savings association were supervised by the FRB under the BHCA and also by the OTS under the Savings and Loan Holding Company Act. Dual holding companies are no longer required to file periodic holding company reports with OTS and are no longer subject to OTS examination. OTS, however, will continue to regulate the subsidiary savings association, and the FRB must consult with the OTS on certain specified matters including a bank holding company's acquisition of a savings association, the scope of examination of a bank holding company that controls a savings association, and the coordination of some enforcement actions.

Branching: Section 2303(f) of EGRPA amended HOLA section 5(r)(1)¹⁴ to give federal thrifts greater flexibility in branching by allowing federal associations that are not excepted from the requirements of section 5(r)(1) pursuant to section 5(r)(2) to meet either the Internal Revenue Service's (IRS's) domestic building and loan association (DBLA) test¹⁵ or the amended QTL test in order to establish, retain, or operate out-of-state branches. Previously, non-excepted federal savings associations were required to qualify under the IRS DBLA test or at least meet the asset composition requirement of that test in order to operate out-of-state branches. Section 2303(f) also clarifies the scope of the exemption from the foregoing requirements, set forth at section 5(r)(2)(C), when the law of the state where the branch is located, or is to be located, would permit establishment of the branch if the association was either a savings association or savings bank chartered by the state in which its home office is located. EGRPA's branching

¹² 12 U.S.C. 1467a.

¹³ 12 U.S.C. 1841 et seq.

¹⁴ 12 U.S.C. 1464(r).

¹⁵ 26 U.S.C. 7701(e)(19).

amendments are self-implementing and do not require any regulatory revisions.

II. Description of Final Interim Rule

Section 560.3 Definitions of credit card, credit card account.¹⁶

Section 2303 of EGRPA requires the OTS Director to issue regulations defining the term "credit card" in order to enable thrifts to apply the newly modified QTL test which permits credit card loans to be counted as QTI without restriction pursuant to HOLA section 10(m). Defining "credit card" and "credit card account" will also give thrifts guidance in exercising their authority to "invest in, sell, or otherwise deal in . . . loans made through credit cards or credit card accounts" pursuant to HOLA section 5(c). As noted above, this provision authorizes federal thrifts to engage in credit card lending without any percentage of assets investment limitation.¹⁷ It is a well settled principle of statutory construction that generally "each part or section [of a statute] should be construed with every other part or section so as to produce a harmonious whole."¹⁸ Accordingly, it is appropriate for OTS to consistently define "credit card" and "credit card account" for both section 5(c) and section 10(m) of the HOLA.

According to Black's Law Dictionary, a "credit card" is "[a]ny card, plate, or other like credit device existing for the purpose of obtaining money, property, labor or services on credit."¹⁹ The regulatory definition of credit card established in today's interim rule is based on this plain language definition. OTS seeks comment on whether a different definition would be more appropriate.

OTS has already received some questions regarding whether securities backed by credit card accounts and products such as credit card debt consolidation loans would fall within

¹⁶ OTS's lending and investment regulations contain a table that provides an overview of HOLA's investment authorities. 61 FR 50951, 50973 (September 30, 1996) (to be codified as 12 CFR 560.30). OTS plans to supplement the table in its subsidiaries and equity investment rulemaking, which will be published before the end of the year. The table also needs to be updated to reflect EGRPA's amendments to the investment limits of HOLA. Rather than amending and restating the table twice in several weeks, OTS will restate the table once in the subsidiaries rulemaking. At that time, the EGRPA amendments will be reflected in the table. The changes being made today, however, are sufficient to authorize savings associations to begin using the EGRPA authorities. Savings associations need not await restatement of the table in Part 560.

¹⁷ EGRPA, section 2303(b), amending HOLA section 5(c), to be codified at 5 U.S.C. 1464(e)(1)(T).

¹⁸ 2A Sutherland Statutory Construction section 46.05 (5th ed. 1992).

¹⁹ Black's Law Dictionary 367 (6th ed. 1990).

the confines of "loans made through credit cards or credit card accounts." As for securities backed by credit cards, the HOLA itself specifies that "any reference to a loan [herein] . . . includes an interest in such a loan. . . ."²⁰ Thus, the authorization to invest in "loans made through credit cards" encompasses investments in loan pools that issue securities backed by credit card loans.²¹ As for credit card debt consolidation loans, OTS believes that, because these loans are made for the purpose of funding credit card receivables, they are in economic substance "credit card loans." Today's definition of "credit card account" therefore includes credit card debt consolidation loans and securities backed by credit-card accounts and receivables.

We note that § 560.30 of OTS's regulations, which implements the statutory credit card authority, permits federal thrifts to engage in the full range of credit card operations authorized by HOLA, but provides that OTS reserves the right to establish investment limits on a case-by-case basis if an institution's concentration in credit-card-related loans presents a safety and soundness concern.²²

Institutions that expand their credit card lending (or their consumer, small business, or agricultural lending) pursuant to today's rule must do so in a safe and sound manner. Institutions planning any significant increase in these types of loans should prepare thorough business plans, acquire the necessary personnel and expertise, and establish adequate systems to identify and control risks associated with these products. OTS will monitor these lending activities, utilizing off-site surveillance and the on-site examination process.

Section 560.3 Definitions of Small Business, Small Business Loans

Section 2303(g) of EGRPA requires the OTS Director to issue regulations defining the term "small business" in order to enable savings associations to apply the newly modified QTL test which permits small business loans to be counted as QTI without restriction pursuant to HOLA section 10(m). Section 2303(c) of EGRPA also directs the OTS Director to define the term "small business loans" in connection with newly amended HOLA section 5(c) which expands federal thrifts' commercial lending authority from 10%

²⁰ 12 U.S.C. 1464(c)(6)(B).

²¹ Cf. 12 CFR 560.31(c).

²² 12 CFR 560.30, n.5, 61 FR 50951, 50973 (September 30, 1996).

to 20% of assets so long as the amount in excess of 10% of assets is used solely for small business loans. Once again, OTS believes that a consistent definition of small business for application of both sections of the HOLA is appropriate to promote a harmonious interpretation of the statute.

In this interim final regulation, OTS is tying its definitions of small business and small business loans to the eligibility criteria established by the Small Business Administration (SBA) under section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as implemented by SBA's regulations at 13 CFR Part 121. Most lenders and small businesses are already familiar with SBA's size eligibility standards. However, OTS specifically solicits comment as to whether these SBA standards are the most appropriate basis for OTS's definition of small business or small business loans for HOLA purposes. OTS specifically solicits comment on whether it should, for the sake of simplicity, include a *de minimis* safe harbor providing that any loan to a business with annual sales of less than a specified amount will be deemed a small business loan, regardless what line of business the borrower conducts.²³

Sections 563.50, 563.51, 563.52 Revisions to the QTL Test

As discussed above, section 2303 (e) and (g) of EGRPA amended the QTL test in a number of ways to give thrifts greater lending flexibility. Investments in educational loans, small business loans, and loans made through credit cards and credit card accounts are includable as QTI without limit. Consumer loans now count as QTI in an amount up to 20% of portfolio assets.

Rather than codifying these amendments in the existing QTL regulations, OTS is removing the QTL provisions from its regulations at 12 CFR 563.50-52 and relying directly on the provisions of HOLA section 10(m) to govern this area, except for the two definitions described above. These definitions will appear at 12 CFR 560.3.

This approach is consistent with OTS's effort to streamline its regulations and remove duplicative requirements pursuant to section 303 of the

Community Development and Regulatory Improvement Act of 1994 (CDRIA).²⁴ The QTL provisions of HOLA section 10(m) are very detailed, and OTS provides additional QTL guidance in its Thrift Activities Handbook (Handbook). OTS believes it is unnecessary to reiterate HOLA's statutory QTL provisions in a regulatory format, because the combination of HOLA's statutory requirements and relevant handbook guidance provide adequate direction to the thrift industry and OTS examination staff with respect to QTL compliance. Thus, the only regulatory provisions that address QTL will be the two definitions described above.

Section 563.36 Tying Restrictions

Section 2216 of EGRPA authorizes the OTS Director to issue regulations or orders permitting exceptions to the anti-tying prohibitions established in HOLA section 5(q) provided that such exceptions are not contrary to the purposes of that section and conform to exceptions granted by the FRB to banks pursuant to section 106(b) of the BHCA Amendments. The FRB, by regulation, has created four exceptions from the anti-tying provisions of the BHCA Amendments.

The first FRB regulatory exception provides that a bank holding company, bank, or nonbank subsidiary thereof, may vary the consideration charged for a traditional bank product on the condition or requirement that a customer also obtain a traditional bank product from an affiliate.²⁵ HOLA section 5(q) excepts this type of activity for savings associations, savings and loan holding companies, and their affiliates.²⁶ Accordingly, OTS has determined that a regulatory exception for traditional bank products would be duplicative of the HOLA and is unnecessary.

The second FRB regulatory exception provides that a bank holding company, bank or nonbank subsidiary may vary the consideration charged for securities brokerage services on the condition or requirement that a customer also obtain a traditional bank product from that

²⁴ 12 U.S.C. 4803.

²⁵ 12 CFR 225.7(b)(1) (1996).

²⁶ HOLA section 5(q)(1)(A) explicitly provides that the tying restriction does not apply where the tied product is a traditional bank product of the savings association, a service corporation, or an affiliate. Section 10(n) of HOLA makes that anti-tying exclusion applicable to savings and loan holding companies and affiliates thereof. In contrast, the BHCA Amendments provide an exception in the case of traditional bank products offered by the bank, but do not address traditional bank products offered by bank holding companies or nonbank affiliates. See, 12 U.S.C. 1972(1)(B).

bank holding company or bank or nonbank subsidiary, or from any affiliate of such company.²⁷ Once again, HOLA section 5(q) does not prohibit this type of activity under any circumstances for savings associations, savings and loan holding companies, and their affiliates.²⁸ Accordingly, OTS has determined that it is unnecessary to adopt this second regulatory exception.

The third FRB regulatory exception relates to tying arrangements that do not involve banks. The exception permits bank holding companies or nonbank subsidiaries to vary the consideration for any extension of credit, lease or sale of property of any kind, or service, on the condition or requirement that the customer obtain some additional credit, property or service from itself or a nonbank affiliate.²⁹ This provision is an exception not from any statutory requirement but from the FRB's regulation that generally applies the tying restrictions applicable to banks to bank holding companies and other affiliates. The language applying tying restrictions to savings and loan holding companies and their non-thrift affiliates, which appears in HOLA section 10(n), differs somewhat from the wording of the FRB's tying regulation for bank holding companies and their nonbank affiliates. Section 10(n) of the HOLA applies only when a tying arrangement involves products of a savings and loan holding company or affiliate, and those of an affiliated savings association. Accordingly, tying arrangements involving savings and loan holding companies and/or non-thrift affiliates, but not a savings association, are not restricted under HOLA section 10(n). Therefore, OTS has determined that there is no need to adopt a regulatory exception that is comparable to the third FRB exception.

The fourth FRB regulatory exception permits banks, bank holding companies, or nonbank affiliates to vary the consideration for any product or package of products based on a customer's maintenance of a combined minimum balance in certain products specified by the company varying the consideration (defined as "eligible products"), if (i) that company (if it is a bank) or a bank affiliate of the company offers deposits, and all such deposits are eligible products, and (ii) balances in deposits count at least as much as non-

deposit products toward the minimum balance.³⁰

This fourth FRB regulatory exception permits banks to offer discounts to customers maintaining a combined minimum balance in deposit and non-deposit accounts, including brokerage and mutual fund accounts. As such, this regulatory "safe harbor" authorizes tying arrangements that are currently prohibited for savings associations, because the tied products would not necessarily be traditional bank products. In addition, savings and loan holding companies or affiliates thereof would be prohibited from offering such arrangements where one of the products involved was a savings association product (other than a traditional bank product).

Having reviewed this fourth FRB exception, OTS has determined that it should promulgate a regulation adopting a comparable "safe harbor" for savings associations, savings and loan holding companies, and affiliates.³¹ OTS believes that this exception is not contrary to the purposes of HOLA section 5(q), because it would not present the anti-competitive effects which the HOLA's antitying provisions were intended to eliminate. Rather, this safe harbor would enable savings associations and their affiliates to offer a greater variety of banking products and services to their customers and could potentially enhance competition in the market place. Such an exception would also ensure parity between savings associations and banks, enabling savings associations and banks to offer a comparable range of products and services and further enhance competition among financial institutions consistent with the purposes of HOLA section 5(q) and the BHCA Amendments.

Accordingly OTS is adding a new regulatory antitying exception at 12 CFR 563.36 that conforms to the FRB's "safe harbor" for combined balance discounts. This safe harbor permits savings associations and their affiliates to offer discounts to customers maintaining certain combined minimum balance accounts.³² In addition to this

exception, OTS may permit other exceptions under HOLA section 5(q) on a case-by-case basis upon determination that the exception is not contrary to the purposes of HOLA section 5(q), it conforms to an exception granted by the FRB, and it is consistent with safe and sound practices.

OTS also solicits comment as to whether the agency should adopt regulatory revisions parallel to those proposed, but not yet adopted, by the FRB on September 6, 1996.³³ The FRB proposal would rescind the provision in its current regulations that extends the tying prohibitions to bank holding companies and their nonbank affiliates.³⁴ As noted above, the FRB already permits bank holding companies and their nonbank affiliates to offer discounts on products conditioned on a customer's purchase of another product, provided none of the tied products are those of a bank affiliate. The FRB proposal would, in effect, rescind this proviso, allowing bank holding companies to tie their discounts to the purchase of bank products, provided no anti-trust violations result. The proposal would also enable bank holding companies and their nonbank affiliates to engage in tying practices other than discounting. For example, the availability of a product could be conditioned on the purchase of another product, again provided no anti-trust violation occurs.

OTS requests comment on whether savings and loan holding companies and their non-bank affiliates should also be completely exempted from the tying restrictions. As noted above, the provision of law applying the tying restriction to savings and loan holding companies is statutory, not regulatory (as is the case for bank holding companies). Thus, OTS also requests comment on whether it would have legal authority to grant a complete exemption from HOLA section 10(n).

Sections 574.1, 574.2, 574.3, 575.2, 583.20, 584.2a Holding Company Regulatory Revisions

Section 2203 of EGRPRA exempts bank holding companies that control savings associations from HOLA section 10, thereby eliminating OTS supervision of holding companies that control both

be separately available for purchase. Although this condition currently appears in the FRB safe harbor, 12 CFR 225.7(c)(1)(1996), the FRB has specifically proposed to eliminate this condition. 61 FR at 47284. OTS will examine this issue if the FRB's final rule does not eliminate the condition.

³³ See, 61 FR 47242 (September 6, 1996).

³⁴ Other aspects of the FRB's proposal need not be discussed here because they concern practices not prohibited for savings associations and their affiliates.

a bank and a thrift and are registered as a bank holding company with the FRB under the BHCA of 1956. OTS is making technical changes to its acquisition of control and holding company regulations to conform to EGRPRA's amendments to the Savings and Loan Holding Company Act. OTS has added an exception to its acquisition of control regulations to clarify that where a person acquires control of a bank holding company and the person is required to file a change of control notice with the FRB, no change of control notice is required to be filed with OTS. In addition, OTS is making minor revisions to the Mutual Holding Company regulations to reflect its position that section 2203 of EGRPRA does not affect OTS's authority to regulate mutual holding companies, including mutual holding companies that have acquired a bank. OTS has reached this conclusion for two reasons. First, although section 2203 of EGRPRA exempts bank holding companies from the definition of "savings and loan holding company" in section 10 of HOLA, section 10(o) of the HOLA, pertaining to mutual holding companies, refers to "mutual holding companies" rather than mutual savings and loan holding companies. Second, OTS is the chartering authority for federal mutual holding companies under section 10(o), and section 10(o) provides for a unique relationship between depositors of the subsidiary association and the mutual holding company.

III. Administrative Procedure Act

OTS has determined that advance notice and comment ordinarily mandated by the Administrative Procedure Act (APA), 5 U.S.C. 553(b), are not required in this interim final rulemaking. The APA authorizes agencies to waive notice and comment procedures when the agency "for good cause finds" * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.³⁵ OTS for good cause finds that notice and comment procedures for this rulemaking are impracticable and contrary to the public interest because they would delay implementation of EGRPRA's expanded lending, investment, and other authorities for thrifts. In addition, advance public notice and comment are unnecessary and contrary to the public interest because the interim rule substantially restates the provisions of the statute or makes technical revisions to OTS

³⁵ 5 U.S.C. 553(b)(3).

regulations and reduces regulatory burden.

OTS also has determined that the 30-day delay of effectiveness provisions of the APA may be waived in this rulemaking. Section 553(d) of the APA permits waiver of the 30 day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a restriction. OTS finds that good cause exists for the same reasons stated above. OTS further finds that the 30-day delayed effective date requirement may be waived because this interim final rule relieves various lending, investment, and tying restrictions for thrifts and merely conforms OTS regulations to EGRPRA's statutory changes.

Accordingly, the interim final rule will be immediately effective upon publication in the Federal Register. Nevertheless, OTS seeks the benefit of public comment. Accordingly, OTS invites interested persons to submit comments during the 60-day comment period. OTS will revise the interim final rule as appropriate based on these comments.

IV. Paperwork Reduction Act of 1995

This interim final rule does not impose any collections of information on savings associations. As such, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) does not apply.

V. Executive Order 12866

OTS has determined that this interim final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

VI. Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. The interim final rule does not impose any additional burdens or requirements upon small entities and reduces burdens on all savings associations. The regulatory amendments implement statutory changes to the HOLA that relieve various lending, investment, and tying restrictions on thrifts and otherwise conform OTS regulations to EGRPRA. Accordingly, a regulatory flexibility analysis is not required.

VII. Unfunded Mandates Act of 1995

OTS has determined that the requirements of this interim final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the

Unfunded Mandates Act of 1995, Pub. L. 104-4, 109 Stat. 48 (1995).

VIII. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements take effect on the first date of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective on a day other than the first day of the next quarter. OTS believes that an immediate effective date is appropriate since the interim rule relieves regulatory burden on savings associations. This immediate effective date will permit savings associations to begin exercising their expanding lending, investment, and other authorities pursuant to the amended HOLA. OTS does not anticipate that the immediate application of the rules will present a hardship to institutions. Indeed OTS believes that CDRIA does not apply to this interim rule because it imposes no new burden on thrifts. For these reasons, OTS has determined that an immediate effective date is appropriate for this interim final rule.

List of Subjects

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 583

Holding companies, Savings associations.

12 CFR Part 584

Administrative practice and procedure, holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 580—LENDING AND INVESTMENT

1. The authority citation for part 580 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j-3, 1823, 3803, 3806; 42 U.S.C. 4106.

2. Section 580.3 is amended by revising the introductory text and by adding four definitions in alphabetical order to read as follows:

§ 580.3 Definitions.

For purposes of this part and any determination under 12 U.S.C. 1467a:

Credit card is a card, plate or other credit device that allows the holder to purchase goods or obtain services or cash by charging them to a previously established line of credit with the issuer of the card, plate or device.

Credit card account is a credit account established in conjunction with the issuance of, or the extension of credit through, a credit card. This term includes loans made to consolidate credit card debt, including credit card debt held by other lenders, and participation certificates, securities and similar instruments secured by credit card receivables.

Small business includes a small business concern or entity as defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the regulations of the Small Business Administration at 13 CFR Part 121.

Small business loans includes any loan to a small business concern or entity as defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the regulations of the Small Business Administration at 13 CFR Part 121.

PART 583—OPERATIONS

3. The authority citation for part 583 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

4. Section 583.36 is added to read as follows:

§ 583.36 Tying restriction exception.

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the OTS that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a finding by the OTS that its exercise of this authority is resulting in anti-competitive practices.

§§ 583.50, 583.51, 583.52 [Removed]

5. Sections 583.50, 583.51, and 583.52 are removed.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

6. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831l.

7. Section 574.1 is revised to read as follows:

§ 574.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Bank Control Act, 12 U.S.C. 1817(j) ("Control Act"), and the Savings and Loan Holding Company Act, 12 U.S.C. 1467a ("Holding Company Act"), relating to acquisitions and changes in control of savings associations that are organized in stock form and savings and loan holding companies thereof.

§ 574.2 [Amended]

8. Section 574.2 is amended by revising paragraph (q)(2)(ii) and by adding paragraph (q)(3) to read as follows:

§ 574.2 Definitions.

(q) * * *

(2) * * *

(ii) Is a testamentary trust; and

(3) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association).

9. Section 574.3 is amended by:

a. In paragraph (c)(1)(ii), removing the period at the end of the paragraph and adding a semicolon in its place;

b. Redesignating paragraphs (c)(1)(iii) through (c)(1)(vii) as paragraphs (c)(1)(iv) through (c)(1)(viii);

c. Adding paragraph (c)(1)(iii);

d. Revising paragraph (c)(2)(i);

e. Redesignating paragraphs (c)(2)(iv) and (c)(2)(v) as paragraphs (c)(2)(v) and (c)(2)(vi) and by adding a new paragraph (c)(2)(iv); and

f. In newly designated paragraph (c)(2)(v), removing the period at the end of the paragraph and adding "; and" in its place.

The additions and revisions read as follows:

§ 574.3 Acquisition of control of savings associations.

(c) *Exempt transactions.* (1) * * *

(iii) Control of a savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

(2) * * *

(i) Transactions which are exempt pursuant to paragraphs (c)(1)(iii), (c)(1)(iv), (c)(1)(v), and (c)(1)(vi) of this section;

(iv) Transactions for which a change of control notice must be submitted to the Board of Governors of the Federal Reserve System pursuant to the Change in Bank Control Act, 12 U.S.C. 1817(j);

PART 575—MUTUAL HOLDING COMPANIES

10. The heading for part 575 is revised as set forth above.

11. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2001.

12. Section 575.2 is amended by revising paragraph (h) to read as follows:

§ 575.2 Definitions.

(h) * * *

(h) The term *mutual holding company* means a mutual holding company organized under this part.

PART 583—DEFINITIONS

13. The authority citation for part 583 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

14. Section 583.20 is amended by revising paragraph (b)(2) and by adding paragraph (c) to read as follows:

§ 583.20 Savings and loan holding company.

(b) * * *

(2) Is a testamentary trust; and

(c) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association).

PART 584—REGULATED ACTIVITIES

15. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 584.2a [Amended]

16. Section 584.2a is amended by removing paragraph (e).

Dated: November 20, 1996.

By the Office of Thrift Supervision.

Nicolas P. Rattinas,

Director.

[FR Doc. 96-30112 Filed 11-26-96; 8:45 am]
BILLING CODE 6720-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Currently, the NCUA Rules and Regulations include dividends accrued and posted to share accounts for any prior accounting period as principal for determining the amount of share insurance on insured accounts. To provide equitable treatment, the NCUA Board is amending the regulations to provide authority for the liquidating agent to include dividends earned or accrued in the normal course of business but not posted in the determination of the amount of share

insurance on insured accounts. An outdated reference in the Regulations regarding time computation is updated. **DATES:** The rule is effective on November 27, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. **FOR FURTHER INFORMATION CONTACT:** Jerry L. Courson, Special Assistant to the President, Asset Management and Assistance Center, National Credit Union Administration, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759 or telephone (512) 795-0999 or Allan H. Meltzer, Associate General Counsel, National Credit Union Administration, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

Subpart B of Part 745 of the NCUA Rules and Regulations deals with the payment of share insurance and appeals. Specifically, § 745.200(b) provides that in determining the amount of share insurance, no dividends shall be paid on shares if sufficient undivided and current earnings are not available for such purpose. However, dividends accrued and posted to share accounts for prior accounting periods are considered as principal (regardless of earnings).

In a small number of liquidations, it has been necessary to reconstruct and correct the credit union records. In these liquidation cases, the reconstruction process disclosed situations where dividends were posted to some member accounts and not posted to other member accounts. Under the current regulation, to properly reconstruct these accounts and the dividends that were miscalculated or omitted, the liquidating agent obtained authority from the NCUA Board.

On July 9, 1996, the NCUA Board issued a Notice of Proposed Rulemaking, 61 FR 36863 (July 12, 1996), proposing to amend § 745.200(b) to provide the liquidating agent authority to record unposted dividends to provide for a more equitable treatment of all members. The proposed rule provides discretion for the liquidating agent to correct share accounts by recording dividend payments that were not posted or were incorrectly posted by credit union personnel due to fraud, embezzlement, or accounting errors. Under the proposed rule, dividends not earned in the normal course of business, would not be included in the determination of

insured shares. In addition, the proposed rule provides flexibility in dealing with sufficient earnings. Under the current regulation, dividend payments cannot be considered as principal for insurance purposes if sufficient earnings were not available. The proposed rule is silent on sufficient earnings, but a credit union's earnings could be a factor used by the liquidating agent in determining insured shares.

Under the proposed rule, decisions on unposted dividends can be made without specific NCUA Board action.

In addition to the issue of unposted dividends, the proposed rule also noted a needed change to the reference in § 745.200(d) to § 747.119 of the NCUA Rules and Regulations. This is a reference to the Section in the Regulations on time computation. Section 747.119 no longer exists and the reference is updated to read § 747.12(a).

The Notice of Proposed Rulemaking included a Request for Comments seeking public comment on the proposed changes to Part 745 of the NCUA Rules and Regulations. Five comment letters were received, one from a federal credit union and four from national and state credit union leagues. All commenters expressed unqualified support for the proposed regulation.

Analysis

The final rule is unchanged from the proposed rule that was published on July 12, 1996.

Immediate Effective Date

Since the rule relieves a restriction in that the liquidating agent can pay certain unposted dividends without specific NCUA Board action, the thirty day delay in effective date is not applicable. 5 U.S.C. 553(d)(1).

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions (those under \$1 million in assets). Accordingly, a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The rule does not impose any new paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The changes to § 745.200 will apply to both federal credit unions and federally-insured, state chartered credit unions. The

NCUA Board, pursuant to Executive Order 12612, has determined that the amendment will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 745

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions.

By the National Credit Union Administration Board on November 20, 1996.

Becky Baker,
Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

1. The authority citation for part 745 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789.

2. Section 745.200 is amended by revising paragraphs (b) and (d) to read as follows:

§ 745.200 General.

(b) *Amount of insurance.* The amount of insurance on an insured account shall be determined in accordance with the provisions of Subpart A of this part and the Federal Credit Union Act. For the purpose of determining insurance coverage, dividends earned in the ordinary course of business and posted to share accounts for any prior accounting or dividend period shall be deemed to be principal under this part. Dividends earned or accrued in the ordinary course of business, but not posted to share accounts, may be paid at the discretion of the liquidating agent. In making such determination, the liquidating agent will take into consideration whether the failure to post dividends earned or accrued was due to the fraud, embezzlement or accounting errors of credit union personnel. The liquidating agent may require an accountholder to submit documentation supporting any claim for unposted dividends not otherwise evidenced in the credit union records. However, in no event will dividend amounts be considered as principal for insurance purposes pursuant to this section if not consistent with the amounts paid on similar classes of shares.

(d) *Computing time.* In computing any period of time prescribed by this subpart, the provisions of § 747.12(a) shall apply.

[FR Doc. 96-30267 Filed 11-26-96; 8:45 am]
BILLING CODE 7990-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-AEA-10]

Amendment to Class E Airspace; Penn Yan, NY

AGENCY: Federal Aviation Administration (FAA) DOT.
ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Penn Yan, NY, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 01 at Penn Yan Airport. This amendment also includes the correct geographic position of Penn Yan Airport published in the Notice Of Proposed Rulemaking in the Federal Register October 24, 1996 (61 FR 55121). The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances Jordan, Airspace Specialist, Operations Branch, AEA-530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

History

On October 24, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Penn Yan, NY, (61 FR 55121). This action would provide adequate Class E airspace for IFR operations at Penn Yan Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996,

which is incorporated by reference in 14 CFR 71.1. This Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies Class E airspace at Penn Yan, NY, to accommodate a GPS RWY 01 SIAP and for IFR operations at Penn Yan Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 399; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA NY E5 Penn Yan, NY [Revised]

Penn Yan Airport, NY

(Lat. 42°35'17" N, Long. 77°03'11" W)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Penn Yan Airport, excluding

that portion within the Romulus, NY Class E airspace area.

Issued in Jamaica, New York on November 15, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96-30206 Filed 11-26-96; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AEA-09]

Establishment of Class E Airspace; Montauk, NY

AGENCY: Federal Aviation Administration (FAA) DOT.
ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Montauk, NY. The development of a Very High Frequency Omni-Directional Range (VOR) and Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Montauk Airport, Montauk, NY has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Montauk Airport.
EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT:

Mr. Frances T. Jordan, Airspace Specialist, Operations Branch, AEA-530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

History

On October 7, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace at Montauk Airport, Montauk, NY (61 FR 52399). The development of a VOR/GPS RWY 6 SIAP at Montauk Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a Class E airspace area at Montauk, NY. The development of a VOR/GPS RWY 6 SIAP at Montauk Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the VOR/GPS RWY 6 SIAP at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 399; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA NY E5 Montauk, NY [New]

Montauk Airport, NY

(Lat. 41°04'35" N, Long. 71°55'15" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Montauk Airport and within 4 miles each side of the 062° bearing from the Hampton VORTAC extending from the 6.5-mile radius to 10 miles northeast of the VORTAC and excluding that portion within the Block Island, RI 700 foot Class E Airspace Area and that portion within the East Hampton, NY 700 foot Class E Airspace Area.

Issued in Jamaica, New York on November 15, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96-30207 Filed 11-26-96; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-ANE-23]

Establishment of Class E Airspace; Dexter, ME; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the longitude and latitude coordinates for Dexter Regional Airport (K1B0) in the description of new Class E airspace established to provide for adequate controlled airspace for those aircraft using the new GPS RWY 34 Instrument Approach Procedure.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE-530.6, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7536; fax (617) 238-7596.

SUPPLEMENTARY INFORMATION:

History

On August 19, 1996, the FAA published in the Federal Register (61 FR 42784) a direct final rule establishing Class E airspace at Dexter, ME. That action was necessary to provide adequate controlled airspace for aircraft using the new GPS RWY 34 Instrument Approach Procedure to Dexter Regional Airport (K1B0). The FAA uses the direct final rulemaking procedure for noncontroversial rules when the FAA believes that no adverse public comment will be received. On October 28, 1996, the FAA published in the Federal Register (61 FR 55563) confirmation that the FAA received no adverse comments to this direct final rule, and notice that the original effective date of the rule was extended to December 5, 1996, to allow additional time to coordinate the establishment of

the new instrument approach procedure with other agencies. As a result of that coordination, the FAA finds that this action is necessary to correct the longitude and latitude coordinates for the Dexter Regional Airport that appear in the description of the new Class E airspace at Dexter, ME.

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates of Dexter Regional Airport contained in the description of Class E airspace at Dexter, ME, as published in the Federal Register on August 19, 1996 (61 FR 42784), Federal Register document 96-21093; page 42785, column 1; and the description in FAA Order 7400.9D, dated September 16, 1996, which is incorporated by reference in 14 CFR 71.1; are corrected as follows:

§ 71.71 [Corrected]

Subpart E—Class E Airspace

ANE ME E5 Dexter, ME [Corrected]

Dexter Regional Airport

By removing "(Lat. 45°00'16"N, long. 69°14'12"W)" and substituting "(Lat. 45°00'30"N, long. 69°14'23"W)".

Issued in Burlington, MA, on November 19, 1996.

John J. Boyce,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 96-30216 Filed 11-26-96; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-10]

Establishment of Class E Airspace; Hazen, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Mercer County Regional Airport, Hazen, ND, to accommodate a Non-Directional Radio Beacon (NDB) approach procedure for Runway 32, a Global Positioning System (GPS) approach procedure for Runway 32 and a GPS approach procedure for Runway 14. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in

instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On September 9, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Mercer County Regional Airport, Hazen, ND (61 FR 47486). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Mercer County Regional Airport, Hazen, ND, to accommodate a NDB approach procedure for Runway 32, a GPS approach procedure for Runway 32 and a GPS approach procedure for Runway 14. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action"

under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL ND E5 Hazen, ND [New]

Mercer County Regional Airport, ND

(Lat. 47°17'23"N, long. 101°34'30"W.)

Dickinson VORTAC

(Lat. 46°51'36"N, long. 102°46'25"W.)

Minot Air Force Base

(Lat. 46°24'56"N, long. 101°21'27"W.)

Bismarck VOR/DME

(Lat. 46°45'43"N, long. 100°39'55"W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Mercer County Regional Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the northwest by V-491, on the south by V-510, on the east by V-15, on the southwest by the 25.4-mile arc of the Dickinson VORTAC, on the north by the 47-mile radius of the Minot AFB, and on the southeast by the 36-mile arc of the Bismarck VOR/DME.

Issued in Des Plaines, Illinois on November 13, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96-30369 Filed 11-26-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-14]

Establishment of Class E Airspace; Tomahawk, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tomahawk Regional Airport, Tomahawk, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME-A). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On September 17, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E at Tomahawk Regional Airport, Tomahawk, WI (61 FR 48868). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 200 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996,

and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.7. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Tomahawk Regional Airport, Tomahawk, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME-A). Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL WI E5 Tomahawk, WI [New]

Tomahawk Regional Airport, WI

(Lat. 45°28'10"N, long. 89°48'16"W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Tomahawk Regional Airport.

Issued in Des Plaines, Illinois on November 13, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96-30371 Filed 11-26-96; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 157

[CGD 91-045]

RIN 2115-AE01

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls; Partial Suspension of Regulation

AGENCY: Coast Guard, DOT.

ACTION: Final rule; partial suspension of regulation with request for comments.

SUMMARY: On July 30, 1996, the Coast Guard published a final rule requiring the owners, master, or operators of tank vessels of 5,000 gross tons or more that do not have double hulls and that carry oil in bulk as cargo to comply with certain operational measures. This final rule included a provision requiring owner notification of the vessel's calculated under-keel clearance which is scheduled to go into effect on November 27, 1996. Following issuance of the final rule, the Coast Guard received comments expressing concern on how the owner notification portion of the under-keel clearance provision will be implemented and seeking an additional comment period before the provision is fully enforced. Because the Coast Guard is still developing its own internal guidance on acceptable forms of owner notification and because the public has concerns about how this provision will be implemented, the Coast Guard is suspending the effective date of the owner notification part of this final rule. The Coast Guard requests comments on the under-keel clearance provision.

DATES: 33 CFR 157.455(a) (5) and (6) scheduled to become effective on November 27, 1996, in the final rule published at 61 FR 39770, July 30, 1996.

is suspended as of November 27, 1996. Comments must be received on or before January 27, 1997.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-045), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal Holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Project Development Division, at (202) 267-1492.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for this rulemaking is recounted in the preamble of the final rule entitled "Operational Measures to Reduce Oil Spills from Existing Tank Vessels without Double Hulls" (61 FR 39770; July 30, 1996).

Reason for Suspension of Effectiveness

After publication of the final rule, the Coast Guard received comments and petitions for reconsideration from the International Association of Independent Tanker Owners, the International Chamber of Shipping, and the Baltic and International Maritime Council expressing concern about the implementation of certain minimum under-keel clearance requirements in Section 157.455. The provision relates to owner notification of the calculated anticipated under-keel clearance contained in Section 157.455(a) (5) and (6) of the final rule. The regulated community has requested an additional opportunity to comment on the owner notification provision of the under-keel clearance requirement. The Coast Guard is therefore delaying implementation of 33 CFR 157.455(a) (5) and (6) until further notice and is opening a 60 day comment period on the provision. In addition, the Coast Guard is opening an additional 60 day comment period on the under-keel clearance calculation requirements in Section 157.455(a) (1) through (4).

Request for Comments

The Coast Guard encourages interested persons to submit specific

comments limited to the requirements of 33 CFR 157.455(a). The Coast Guard particularly seeks comments on the owner's responsibility to provide guidance to the master on under-keel clearance or make a determination of adequate under-keel clearance based on input from the vessel's master. The Coast Guard is currently developing implementation guidance on all of the operational measures in the final rule, including examples of company guidance on under-keel clearance. This guidance will be published in a Navigation and Vessel Inspection Circular (NVIC) in the near future. Suggestions on the implementation guidance in the NVIC should be submitted to the Office of Compliance (G-MDC) at 2100 Second Street SW., Washington, DC 20593-0001. The Coast Guard will consider all comments received during the comment period. It may change 33 CFR 157.455(a) based on the comments.

Regulatory Process Considerations

Although the final rule is a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this partial suspension of the final rule as a significant action. This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S. Code).

Any final response to petitions for reconsideration on this final rule will address any economic impacts, including impacts on small businesses.

Dated: November 25, 1996.

R.D. Herr,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 96-30489 Filed 11-25-96; 2:06 pm]
BILLING CODE 4910-44-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document describes the numerous amendments consolidated in the Transmittal Letter for Issue 50 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. These amendments reflect changes in

mail preparation standards and other miscellaneous mailing requirements.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Neil Berger, (202) 268-2859.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains the basic standards of the U.S. Postal Service governing its domestic mail services; describes the mail classes and special services and conditions governing their use; and provides detailed instructions on the standards for rate eligibility and mail preparation. The document is amended and republished about every 6 months, with each issue sequentially numbered.

DMM Issue 50, the current edition of the DMM, was released on July 1, 1996. That issue contains substantive changes to mail preparation standards and mail classification as published in the Federal Register on March 12, 1996 (61 FR 10064-10217). Those standards were approved on March 4, 1996, by the Postal Service to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC 95-1, Classification Reform I. These standards took effect at 12:01 a.m., July 1, 1996. The following excerpt from the Summary of Changes section of the transmittal for DMM Issue 50 covers the minor changes not previously described in that final rule or in other interim or final rules published in the Federal Register. These changes were first announced in various issues of the Postal Bulletin, a biweekly document published by the Postal Service to state or to revise policy and procedure.

Domestic Mail Manual Issue 50 Summary of Changes

Barcoded Mail Preparation

M812.4.2, M812.4.3, and M812.4.4 (renumbered as M891.4); M813.5.3, M813.5.4, and M813.5.5 (M892.5); M814.3.2, M814.3.3, and M814.3.4 (M893.3); M815.4.3, M815.4.4, and M815.4.5 (M894.4); M816.6.3, M816.6.4, and M816.6.5 (M895.6); and M823.5.4 (M897.5) revise preparation of Barcoded rate mail. Effective November 23, 1995; mandatory January 20, 1996 (PB 21907 (11-23-95)).

Delivery Statistics

A930.5.0 includes all post offices with rural delivery, highway contract delivery, and post office box delivery. Effective October 12, 1995 (PB 21904 (10-12-95)).

Expedited Markings

C010.8.2 eliminates the use of markings such as ("RUSH" that improperly imply expedited service. Effective April 25, 1996 (PB 21918 (4-25-96)).

Heavy Letter Mail

C810.1.5. (renumbered as C810.2.3), C810.1.6 (C810.2.3), C810.2.3 (C810.7.5), C840.2.2, M814.1.9 (removed), M815.1.7 (removed), M816.1.7 (removed) provides standards for heavy letter mail. Effective February 15, 1996 (PB 21913 (2-15-96)).

Labeling Lists

L002, L101 (renumbered as L004), L102, L707 (L804), L801 (L897), L802 (L898), L803 (L899), and L804 (L801) reflect changes in mail processing. New L806 (L803) concentrates originating volumes not entered at BMCs or ASFs. Effective November 23, 1995; mandatory January 20, 1996 (PB 21907 (11-23-95)). L707 (L804) shows the change to "MXD HARTFORD CT 060." Effective November 23, 1995; mandatory January 20, 1996 (PB 21906 (12-07-95)). L806 (L803) adds ZIP Codes 420-426 for "MXD LOUISVILLE KY 400." Effective November 23, 1995; mandatory March 23, 1996 (PB 21910 (1-4-96)).

Meter Indicia

Exhibit P030.4.1 adds a new Pitney Bowes meter indicia. Effective March 18, 1996 (PB 21916 (3-28-96)).

Nonprofit Products

E370.5.10 (renumbered as E670.5.10) increases the value of low-cost products available at nonprofit rates. Effective January 1, 1996 (PB 21913 (2-15-96)).

Permit Applications

E060.8.1, E060.11.2, E060.12.3, P023.2.0, P023.3.0, P030.5.1 (new), P040.1.5, S922.2.1, S922.5.14, and S923.2.0 require new Form 3615 for four forms previously used for permit authorizations. Effective October 26, 1995 (PB 21905 (10-26-95)).

Return Receipts

S915.1.4 clarifies that the weight of a return receipt is not included when computing the postage weight of a mailpiece. Effective February 15, 1996 (PB 21913 (2-15-96)).

Stamp Exchanges

P014.1.7 eliminates the postage stamp conversion fee. Effective November 23, 1995 (PB 21907 (11-23-95)).

Tabbing

C810.9.0 (renumbered as C810.7.3) provides an alternative placement of tabs on booklet-type mailpieces. Effective April 25, 1996 (PB 21916 (4-25-96)).

USPS Mail

E060.16 is removed to reflect the discontinuance of the standard penalty (eagle) indicia on USPS official mail. Effective January 1, 1996 (PB 21907 (11-23-95)).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3216, 3403-3406, 3621, 3628, 5001.

2. In consideration of the foregoing, the table at the end of 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

Transmittal letter for issue	Dated	Federal Register publication
50	July 1, 1996	61 FR [insert page number]

Stanley F. Miles,
Chief Counsel, Legislative.
[FR Doc. 96-30073 Filed 11-26-96; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-5644-2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; SO₂; New Manchester-Grant Magisterial District, Hancock County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).
ACTION: Direct final rule.

SUMMARY: EPA is approving a State implementation plan (SIP) revision submitted by the State of West Virginia. This revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides, measured as

sulfur dioxide (SO₂), in the New Manchester-Grant Magisterial District, Hancock County nonattainment area. The implementation plan was submitted by West Virginia to satisfy the requirements of the Clean Air Act (CAA) pertaining to nonattainment areas. This action is being taken under section 110 of the Clean Air Act.

DATE: This action is effective January 27, 1997 unless notice is received on or before December 27, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut

Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and, West Virginia Division of Environmental Protection, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 566-2196.

SUPPLEMENTARY INFORMATION: On February 17, 1995, as amended on May 3, 1996, the State of West Virginia submitted a revision to its State implementation plan (SIP) for sulfur dioxide (SO₂). The revision pertains to the SO₂ nonattainment area in New Manchester-Grant Magisterial District, Hancock County, West Virginia.

Background

The Clean Air Act, as amended in 1977, required EPA to establish the attainment status of areas with respect to the national ambient air quality standards (NAAQS). On March 3, 1978 (43 FR 8962), as amended on September 12, 1978 (43 FR 40502), EPA published the initial attainment designations for each State in Region III. Areas within each State were designated as nonattainment, attainment, or unclassifiable and these designations are depicted in 40 CFR part 61.

As part of EPA Region III's initial designations, the New Manchester-Grant Magisterial District, Hancock County, West Virginia was designated as nonattainment for the primary NAAQS for SO₂. EPA acted on the recommendation of West Virginia to designate this area as nonattainment for SO₂. The basis of the recommendation was ambient air quality monitoring data collected at the New Manchester monitor located in Hancock County that indicated violations of the primary NAAQS for SO₂ in the northern portion of the County.

The cause of the violations of the NAAQS was primarily attributed to Ohio Edison Company's W. H. Sammis Power Plant in nearby Jefferson County, Ohio. On July 24, 1979 (44 FR 43298) and August 14, 1980 (45 FR 54042), EPA proposed and finalized, respectively, a revision to the West Virginia State Implementation Plan (SIP) for SO₂. The revision contained a control strategy and attainment demonstration for the New Manchester-Grant area.

The control strategy indicated that the New Manchester-Grant Magisterial District nonattainment area would attain the NAAQS when the Sammis Power Plant complies with the applicable SO₂ emission limitations of the Ohio SIP. This strategy did not require West Virginia to revise its SO₂ regulations. The control strategy was supported by a modeling demonstration and air quality data which showed that the area would attain the NAAQS if the Sammis Power Plant complied with its SIP emission limitation. Although a SIP revision for the nonattainment area was approved,

the State did not submit a request for redesignation to attainment.

On February 5, 1990, EPA issued a SIP call to West Virginia which, in part, required the submission of a SIP revision to attain and maintain the NAAQS for SO₂ in all of Hancock County, including the New Manchester-Grant nonattainment area. The SIP call was issued because monitored violations of the NAAQS in Hancock County indicated that the current SIP was inadequate. Later that year, the Clean Air Act was amended and provided that any area designated with respect to the NAAQS, as in effect immediately before November 15, 1990, shall retain that designation "by operation of law" (section 107(d)(1)(C)). Therefore, the New Manchester-Grant Magisterial District, Hancock County, West Virginia remained classified as nonattainment for SO₂ by operation of law after November 15, 1990.

Initially, EPA misinterpreted the new requirements of the Clean Air Act as they applied to the New Manchester-Grant nonattainment area. EPA had erroneously informed the State that a SIP revision for the nonattainment area was due by May 15, 1992. On June 13, 1994, EPA informed West Virginia of its misinterpretation of the Act and established, via the SIP call authorities outlined in section 110(k), a SIP submittal due date of December 1, 1994. EPA also explained that section 192(c) is applicable in this situation and it mandates the attainment of the NAAQS within five (5) years from the determination of SIP inadequacy. Therefore, the required SIP must provide for attainment by February 5, 1995.

On February 17, 1995, West Virginia submitted a formal SIP revision for the New Manchester-Grant Magisterial District nonattainment area. The SIP revision contains, among other things, individual consent orders between West Virginia and Quaker State Refinery and Weirton Steel Corporation limiting their SO₂ emissions and allowing for the demonstration of attainment in the New Manchester-Grant nonattainment area. EPA determined that the submittal was

administratively and technically complete. Subsequent to this determination, West Virginia identified potential minor errors with regard to the emissions inventory for a number of sources located in Ohio and the possible amendment of emission limits for two other Ohio sources. On May 3, 1996, West Virginia submitted an amended attainment demonstration that accounts for the identified changes in the Ohio emissions inventory. The consent orders between the State and principle sources did not require revision in order to demonstrate attainment.

It should be noted that the remainder of Hancock County, Clay and Butler Magisterial Districts and the City of Weirton (the "Weirton Area"), was redesignated as nonattainment for SO₂ on December 21, 1993 (58 FR 67334). This action required the State to submit a SIP revision for the Weirton Area by July 20, 1995. On July 21, 1995, EPA received a SIP revision submittal for the Weirton Area and that submittal is currently under Agency review.

Summary of SIP Revision

On February 17, 1995, as amended on May 3, 1996, Mr. Laidley Eli McCoy, Ph.D., Director, West Virginia Division of Environmental Protection submitted to EPA Region III a SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO₂ nonattainment area. The SIP revision consists primarily of consent orders entered into by and between the State of West Virginia and the Quaker State Refinery in Congo, West Virginia and the Weirton Steel Corporation in Weirton, West Virginia. The consent orders establish SO₂ emission limits for numerous emission points at both facilities. The submittal contains an air quality dispersion modeling demonstration that indicates that the allowable emission limits will provide for the attainment of the NAAQS for SO₂ in the New Manchester-Grant area.

The consent orders stipulate the following emission limitations for the Quaker State Corporation refinery and the Weirton Steel Corporation facility:

QUAKER STATE CORPORATION, CONGO REFINERY SO₂ Emission Limits

SO ₂ emission unit	SO ₂ emission limit
Coal-fired, Fluidized-bed Boiler No. 1	1.2 lb-SO ₂ /MMBtu of heat input, at any time.
Coal-fired, Fluidized-bed Boiler No. 2	1.2 lb-SO ₂ /MMBtu of heat input, at any time.
Oil-fired Package Boiler A	1.2 lb-SO ₂ /MMBtu of heat input, at any time.
Oil-fired Package Boiler B	1.2 lb-SO ₂ /MMBtu of heat input, at any time.
Simultaneous operation of Coal-fired, Fluidized-bed Boilers Nos. 1 and 2	192 lb-SO ₂ /hour, each boiler.
Simultaneous operation of Oil-fired Package Boilers A and B	264 lb-SO ₂ /hour, combined.
Simultaneous operation of one Coal-fired, Fluidized-bed Boiler and one Oil-fired Package Boiler.	264 lb-SO ₂ /hour, combined.

QUAKER STATE CORPORATION, CONGO REFINERY SO₂ Emission Limits—Continued

SO ₂ emission unit	SO ₂ emission limit
Process Heaters H-101 and H-102	1.1 lb-SO ₂ /MMBtu.
Process Heaters H-501/6 and H-601/4	0.6 lb-SO ₂ /MMBtu.
Vacuum Fractionator Heater H-701	Shall burn natural gas and/or treated refinery gas that contains ≤10 grains of hydrogen sulfide per 100 dry standard cubic feet of gas, and 0.8 lb-SO ₂ /MMBtu.
Process Heater H-201	Shall burn fuel oil, desulfurized fuel gas and/or natural gas, and 1.1 lb-SO ₂ /MMBtu.
Hydrogen Unit Heater H-605	Shall burn natural gas only.

WEIRTON STEEL CORPORATION, WEIRTON FACILITY SO₂ Emission Limits

SO ₂ Emission Unit	SO ₂ Emission Limit
High Pressure Boilers 1, 2, 3, 4	1.6 lb-SO ₂ /MMBtu and 664 lb-SO ₂ /hour, per boiler. No more than three boilers may be operated simultaneously.
High Pressure Boiler 5	0.8 lb-SO ₂ /MMBtu and 480 lb-SO ₂ /hour.
Sinter Plant	250 lb-SO ₂ /hour.
Slag Granulator	100 lb-SO ₂ /hour.
Basic Oxygen Process Waste Heat Boilers	300 lb-SO ₂ /hour.
Hot Mill Reheat Furnaces, Foster-Wheeler Boilers and combustion sources at the Hydrochloric Acid Regeneration Plant, Continuous Annealing Facility, Jumbo Annealing Facility, and Blast Furnace Stoves.	Shall burn blast furnace gas, mixed gas (approximately 70 percent natural gas and 30 percent air), or natural gas.
Low Pressure Boilers LP1, LP2, LP3, LP4 and LP15	Shall be permanently shut down.

Evaluation of State Submittal

The Clean Air Act requires States to submit implementation plans that indicate how each State intends to attain and maintain the NAAQS. The 1977 Amendments established specific requirements for implementation plans in nonattainment areas in part D, sections 171–178. The 1990 Amendments did not change these requirements in any significant way with regard to SO₂ nonattainment areas and existing guidance remains valid. On April 16, 1992 (57 FR 13498), EPA issued "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" describing EPA's preliminary views on how it intends to interpret various provisions of title I, primarily those concerning revisions required for nonattainment areas.

In order to approve the SIP revision, each of the part D requirements must be evaluated and the revision must ensure that (1) the revised allowable emission limitations demonstrate attainment and maintenance of the NAAQS for SO₂ in the nonattainment area; (2) the emission limitations are clearly enforceable; and (3) that all applicable procedural and substantive requirements of 40 CFR part 51 are met. The following is an evaluation of the part D requirements as described in the "General Preamble"; a more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the ADDRESSES section of this document:

1. Reasonably Available Control Technology (RACT)

West Virginia's SIP revision provides for reasonably available control technology (RACT). The SIP revision indicates that SO₂ emissions are controlled at the Quaker State Corporation facility in Congo, West Virginia and the Weirton Steel Corporation facility in Weirton, West Virginia largely through fuel specification and operations modifications. The revision establishes allowable SO₂ emission limitations at both plants and also defines allowable fuel usage for a number of processes. With regard to Quaker State, the revision includes a schedule for the construction of taller smokestacks for emissions from a number of boilers at the facility. The limits contained in the revision were effective upon execution of the individual consent orders entered into with West Virginia by Quaker State and Weirton Steel on January 9, 1995. The SIP revision provides a demonstration that these limits will provide for the attainment of the NAAQS in the nonattainment area by the statutory attainment date.

2. Reasonable Further Progress (RFP)

West Virginia's SIP revision provides for reasonable further progress (RFP). The SIP revision provides that the allowable emission rates are achievable by the required attainment date.

3. Contingency Measures

West Virginia's SIP revision provides for adequate contingency measures. The SIP revision contains a comprehensive action plan to quickly identify and address SO₂ impacts that may affect attainment of the NAAQS in the New Manchester-Grant area. The State's plan includes the continuous review of air quality monitoring data in the area of concern, including the two monitors located in the nonattainment area. In the event of a certified violation, West Virginia intends to contact all potential contributors to the violations both locally and in neighboring Ohio and Pennsylvania. West Virginia has provided assurances that appropriate mitigation measures will be pursued to remedy the causes of any violations.

4. Stack Height Issues and Remand

West Virginia has adequately addressed any potential stack height issues. The only stack height issues contained in the SIP revision pertain to the construction of new smokestacks at the Quaker State facility. In the consent order with Quaker State, West Virginia requires that any modifications to the existing stacks or replacement of those stacks shall comply with the provisions of federally-approved West Virginia regulation 45CSR20 "Good Engineering Practice as Applicable to Stack Heights". There are no stack height issues at the Weirton Steel facility.

5. Existing Modeling Protocols

West Virginia's SIP revision is supported by a modeling demonstration using regulatory air dispersion models as defined by 40 CFR part 51, appendix W—"Guideline on Air Quality Models (Revised)," (hereinafter, the Guideline). The model protocol employed by West Virginia to perform the attainment demonstration was developed by an EPA contractor. The model protocol was amended and refined by West Virginia and EPA as necessary. As mentioned, the allowable emission limitations established by the SIP revision are supported by Guideline modeling which indicates that the limits are adequate to attain and maintain the NAAQS for SO₂ in the nonattainment area by the statutory attainment date. West Virginia employed the Guideline models Integrated Gaussian Model (IGM) and CTSCREEN, the screening mode of Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). The IGM modeling analysis relied on the predictions of Industrial Source Complex Short Term (ISCST2) for simple terrain and COMPLEX1 and Rough Terrain Dispersion Model (RTDM) for complex terrain predictions. The results of this demonstration will be discussed below.

6. Test Methods and Averaging Times

West Virginia's SIP revision principally relies on the use of continuous emissions monitoring (CEM) as the means of monitoring compliance at the Quaker State and Weirton Steel facilities. The revision stipulates short-term averaging times for determining compliance with the allowable emission limits.

The SIP revision requires the Quaker State facility to operate continuous emissions monitoring (CEM) systems to test for compliance with the applicable SO₂ emission limitations at each of its coal- and oil-fired boilers. The SIP revision stipulates averaging times based on rolling, 3-hour averages for the boilers. For Quaker State's process heaters, fuel sampling and analysis is required to determine compliance. The revision also requires that all refinery fuel gas streams be monitored for hydrogen sulfide concentrations using a CEM system. The SIP revision further stipulates that in the event of CEM malfunction or outage, certain fuel specification requirements and alternative compliance test methodologies must be employed to ensure compliance. All CEM systems must be operated according to the relevant portions of 40 CFR part 60.

At the Weirton Steel facility, the SIP revision also relies heavily on CEM systems as the main test method. The principal emission sources at the plant, the boilers, must operate CEM systems and must assure compliance of the relevant emission limitations based on a rolling, three-hour average. The SIP also provides contingency test methods in the event that the CEM systems are inoperable. For the other emission sources at the facility, the sinter plant and the slag granulator, Weirton Steel must conduct a specified number of emissions tests in accordance with the reference test procedures detailed at 40 CFR part 60, appendix A. Specifically, compliance testing should be conducted according to Methods 6, 6A, 6B, 6C, and 19.

7. Emission Inventory

West Virginia's SIP revision provides an adequate actual emissions inventory from all relevant sources of SO₂ in the nonattainment area. The revision contains a current inventory of actual emissions data and stack parameter information for the Quaker State and Weirton Steel facilities as well as numerous nearby emission sources in West Virginia, Pennsylvania, and Ohio.

Shortly after submitting the February 17, 1995 SIP revision, West Virginia identified what it believed to be erroneous data contained in the emission inventory for certain Ohio emission sources. At this same time, the State of Ohio was pursuing a revision to its SIP with regard to the Sammis Power Plant. The Sammis Power Plant significantly impacts the New Manchester-Grant area. As a result of these two factors, West Virginia acknowledged that the emission inventory for the attainment demonstration would require revision to correct the errors and to reflect any changes to the Ohio SIP with regard to the Sammis Plant and/or any other relevant sources. As part of the May 3, 1996 SIP revision amendment, West Virginia provided the appropriate corrections and amendments to the emission inventory.

8. Attainment Demonstration

West Virginia's SIP revision provides an adequate attainment demonstration, including appropriate air quality dispersion modeling. EPA regulations, 40 CFR 51.112, require nonattainment plans to include a demonstration of the adequacy of the plan's control strategy. The demonstration must employ the applicable air quality models, data base, and other requirements specified at 40 CFR part 51, appendix W—"Guideline on Air Quality Models

(Revised)." This demonstration must include the following information: model selection and descriptions; model application and assumptions made during application of selected models; receptor grids; meteorological data; ambient air monitoring data and background concentration; model source input; and modeling results.

Model Descriptions—The air quality dispersion modeling analysis performed for this demonstration employed the Integrated Gaussian Model (IGM) and screening mode of the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS) named CTSCREEN. Both models are considered recommended models according to Appendix W. IGM is capable of calculating emission concentrations for simple, intermediate and complex terrain situations. IGM is able to execute algorithms from four other Guideline models to predict concentrations: Industrial Source Complex Short Term (ISCST2) for simple terrain and COMPLEX1, Rough Terrain Dispersion Model (RTDM), and SHORT2 for complex terrain. CTSCREEN is a Gaussian model that requires actual terrain feature data as input. CTSCREEN is able to calculate concentrations estimations using a data set of predetermined meteorological conditions as input in lieu of recorded meteorological data.

Model Application—The area contained within the modeling domain, comprising most of Hancock County, can be characterized as primarily rural terrain with some intermediate terrain features. Three model analyses were performed in the modeling domain. A domain-wide application of IGM was used to characterize all non-Quaker State emission sources in the inventory. In this IGM analysis, ISCST2 was employed as the simple terrain model and RTDM or COMPLEX1, as appropriate, was used as the complex terrain model. CTSCREEN was applied in the complex terrain surrounding the Quaker State facility to describe that source's impacts on the domain in complex terrain. CTSCREEN does not predict concentrations at receptors located below stack top, therefore, ISCST2 was run to determine concentrations at those receptors. There were no intermediate terrain receptors in the two Quaker State specific analyses.

Receptor Grids—The principal receptor grid covers the New Manchester-Grant Magisterial District nonattainment area with one-kilometer spacing between each receptor. A more refined receptor grid was developed for the area surrounding the only

significant source located in the defined nonattainment area, Quaker State. This refined grid augmented the one-kilometer grid by using 200-meter receptor spacing. The entire receptor grid consisted of 245 receptors. The overall grid was developed to adequately assess the impacts of the Quaker State facility as well as the other nearby emission sources. The demonstration also included the required terrain arrays employed by RTDM (within IGM) and the digitized terrain profiles required as input for CTSCREEN. West Virginia developed these arrays and profiles according to the appropriate procedures.

Meteorological Data—On-site meteorological data was not available within the modeling domain, therefore, West Virginia relied on data collected at the National Weather Service (NWS) meteorological site located at Pittsburgh International Airport. Appendix W recommends that the five most recent years of NWS data be employed if on-site data is unavailable. West Virginia used data collected from 1989 through 1993. A portion of the data collected in 1988 and 1991 were determined incomplete by EPA. West Virginia replaced the missing data using a substitution procedure approved by EPA.

Background Concentration—The demonstration uses monitored air quality data for determining that portion of the background concentrations attributable to sources other than those nearby that are to be explicitly modeled. Seventeen SO₂ monitoring sites in and around the nonattainment area were available for evaluation. West Virginia employed an appropriate methodology for using the data collected at those monitors for developing hourly background concentration values to be used as model input.

Source Inputs—The source inventory for the demonstration consists of the two major sources of SO₂ located in Hancock County, Quaker State and Weirton Steel, as well as other significant sources located in West Virginia, Ohio, and Pennsylvania. West Virginia explicitly modeled all significant sources of SO₂ located within 50 kilometers of nonattainment area. For all 20 sources included in the emission inventory, model input data were developed for parameters such as stack height, stack temperature, exit velocity, etc. Maximum allowable emission rates were used for each source with continuous operation assumed for evaluation of the short-term standards and actual operation data was used to adjust the emission rates for evaluation of the annual standard.

As mentioned above, certain changes were made to the emission inventory relevant to a number of Ohio sources after initial submittal of the SIP revision on February 17, 1995. Ohio Edison operates the Sammis and Toronto Power Plants in nearby Jefferson County, Ohio. The State of Ohio has recently proposed approval of a revision to its SIP as it applies to these two plants to allow for new allowable SO₂ emission limitations. Ohio has proposed to change the Sammis Plant's allowable emission limits for units 1-4 from 1.61 lb-SO₂/mmBtu and units 5-7 from 4.46 lb-SO₂/mmBtu to a single, plant-wide emission rate of 2.91 lb-SO₂/mmBtu. For the Toronto Power Plant, Ohio has proposed an emission limit reduction from 8.1 lb-SO₂/mmBtu to 2.0 lb-SO₂/mmBtu. While both changes represent gross emission reductions, the change in operating conditions at the Sammis Plant considering the variable stack parameters at each unit requires that the new emission limits be examined for their expected impacts on the New Manchester-Grant nonattainment area. West Virginia revisited its original attainment demonstration to evaluate these revised conditions. West Virginia provides modeling results that reflect both the current SIP allowable conditions and the proposed conditions at the Sammis and Toronto Plants.

Modeling Results—The results of the modeling analyses indicate that no exceedances of the NAAQS for SO₂ are expected in the New Manchester-Grant nonattainment area when the Quaker State and Weirton Steel Corporation facilities are operating at the emission rates contained in their respective consent orders and the other significant sources comply with their allowable emission rates.

The demonstration present results of analyses examining both the current SIP situation for the Sammis and Toronto Power Plants and for the proposed conditions. The emission inventory for all of the other modeled sources remained constant for each scenario. Under both scenarios, the demonstration indicates that the primary NAAQS, the annual (80 µg/m³) and 24-hour (365 µg/m³) standards will be attained under the terms of the SIP revision. The three-hour (1300 µg/m³) standard will also be protected at all receptors under both scenarios.

Discussion of Weirton Area Nonattainment Area

On December 21, 1993, EPA promulgated the redesignation of areas as nonattainment for SO₂ and particulate matter (PM-10). The Federal

Register (58 FR 67324) document identifies the Clay and Butler Magisterial Districts and the City of Weirton in Hancock County, West Virginia, the "Weirton Area", as being redesignated as nonattainment for SO₂ under section 107 of the Clean Air Act. Pursuant to section 191(a) of the Act, the State of West Virginia was required to submit to EPA an implementation plan for this area within 18 months of the effective date of the redesignation to nonattainment. The State submitted a SIP revision for the Weirton Area on July 21, 1995 and the revision is currently under Agency review.

As discussed briefly above, the basis of EPA's determination to redesignate this area as nonattainment for SO₂ was air quality monitor data collected in the late 1980's and early 1990's that indicated violations of the primary and secondary standards in Hancock County. West Virginia and EPA were aware of the air quality issues in the Weirton Area for some time and considered completing a County-wide attainment demonstration and SIP revision. However, certain logistical and technical issues arose such that it was determined that individual SIP revisions for each nonattainment area would be the most prudent course.

It is recognized that many of the sources that influence air quality in the New Manchester-Grant nonattainment area will play a significant role in the Weirton Area. This is particularly true for the Weirton Steel Corporation's facility in Weirton, as well as, the Sammis and Toronto Power Plants. Therefore, the contribution of these sources on the Weirton Area nonattainment area will have to be closely assessed in any attainment demonstration for the Weirton Area. There is a strong potential that emission reductions above and beyond those contained in the consent order in the New Manchester-Grant SIP revision may be required from Weirton Steel in order to demonstrate attainment of the NAAQS in the Weirton Area. It should also be noted that the currently proposed emission limits for the Sammis and Toronto Plants may need to be reconsidered if it is determined that these sources must play a role in any control strategy for the Weirton Area. Based on the modeling that is included in the New Manchester-Grant SIP revision, it is doubtful that the Quaker State facility causes significant impact in the Weirton Area and it is therefore unlikely that its emission limitations will require future amendment. However, all sources in the emission inventory that significantly impact the Weirton Area nonattainment area

should not be excluded from consideration for control strategy purposes. All of these issues will be more fully discussed during the formal review of the Weirton Area SIP revision.

EPA's review of the entire submittal indicates that West Virginia's SIP revision provides for the attainment of the NAAQS for SO₂ in New Manchester-Grant Magisterial District, Hancock County and satisfies the requirements of part D of the Clean Air Act. The revision is supported by a modeling analysis which clearly demonstrates the adequacy of emission limits in providing for the attainment and maintenance of NAAQS for SO₂ in the nonattainment area. The consent orders between West Virginia and Quaker State Corporation and Weirton Steel Corporation at the center of the SIP revision establish enforceable SO₂ emission limits at these two facilities. The submittal clearly fulfills the procedural and substantive requirements of 40 CFR part 51. Therefore, EPA is approving the West Virginia SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO₂ nonattainment area.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 27, 1997 unless, by December 27, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 27, 1997.

Final Action

EPA is approving the West Virginia SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO₂ nonattainment area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for

revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to private sector, of \$100

million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 27, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve a revision to West Virginia's SIP for SO₂ in New Manchester-Grant Magisterial District, Hancock County may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 17, 1996.

Stanley L. Laskowski,
Acting Regional Administrator, Region III.

40 CFR part 52, subpart XX of chapter I, title 40, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(35) to read as follows:

§ 52.2520 Identification of plan.

(c) * * *

(35) Revisions to the West Virginia implementation plan for sulfur dioxide (SO₂) in New Manchester Grant-Magisterial District, Hancock County submitted on February 17, 1995, as amended on May 3, 1996 by West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 17, 1995 from Mr. David C. Callaghan, Director, West Virginia Division of Environmental Protection transmitting a SIP revision for the New Manchester-Grant Magisterial District, Hancock County SO₂ nonattainment area.

(B) Letter of May 3, 1996 from Mr. Laidley Eli McCoy, Ph.D., Director, West Virginia Division of Environmental Protection transmitting an amendment to the February 17, 1995 SIP revision submittal for the New Manchester-Grant Magisterial District, Hancock County SO₂ nonattainment area.

(C) Implementation plan document (as amended, May 3, 1996), entitled "Revision to the West Virginia State Implementation Plan to Achieve and Maintain the National Ambient Air Quality Standards for Sulfur Dioxide in the New Manchester-Grant Magisterial District".

(D) Consent order entered into by and between the State of West Virginia and the Quaker State Corporation on January 9, 1995. The consent order was effective on January 9, 1995.

(E) Consent order entered into by and between the State of West Virginia and the Weirton Steel Corporation on January 9, 1995. The consent order was effective on January 9, 1995.

(ii) Additional material.

(A) Remainder of West Virginia's February 17, 1995 submittal, as amended on May 3, 1996.

[FR Doc. 96-30324 Filed 11-26-96; 8:45 am]
BILLING CODE 6880-50-P

40 CFR Part 300

[FRL-5534-1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Partial Deletion of the Lakewood Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces the deletion of a portion of the Lakewood Site, located in Lakewood, Pierce County, Washington from the National Priorities List (NPL). The portion of the site to be deleted is the soil unit and includes all contaminated soil/sludge related to the site. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is required and that the selected remedy has been protective of public health, welfare, and the environment.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 8th Avenue, ECL-113, Seattle, WA 98101; (206) 553-2739.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is the Lakewood Site located in Lakewood, Pierce County, Washington.

This partial deletion pertains only to the soil unit and includes all contaminated soil/sludge on the Plaza Cleaners property. The soil unit is confined to an area on the Plaza Cleaners property. The Lakewood Site, including the plume of contaminated ground water, is predominantly residential to the north of the Burlington Northern Railroad tracks and commercial/light industrial along Pacific Highway Southwest. Lakewood Water District's two production wells are located within a fenced area immediately across Interstate 5. Residential property lies to the east and McChord Air Force Base to the southeast of the wells.

A plume of contaminated ground water, resulting from former disposal practices at Plaza Cleaners, continues to require treatment via air stripping at the

Lakewood Water District production wells. Therefore, the ground-water unit will remain on the NPL and is not the subject of this partial deletion.

This partial deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55486 (Nov. 1, 1995). A Notice of Intent for Partial Deletion was published September 27, 1996 (61 FR 50768). The closing date for comments on the Notice of Intent to Delete was October 26, 1996. EPA did not receive any comments on the proposed partial deletion and has not prepared a Responsiveness Summary.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site, or portion of a site, deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control.

Dated: November 14, 1996.

Chuck Clarke,
Regional Administrator, U.S. Environmental Protection Agency, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the entry for Lakewood Site, Lakewood County, Washington, and adding in its place an entry for Lakewood, Lakewood/Pierce County, Washington, to read as follows:

Table 1.—General Superfund Section

State	Site name	City/county	Notes
WA	Lakewood	Lakewood/Pierce	P

P—Site with partial deletion(s).

(FR Doc. 96-29926 Filed 11-26-96; 8:45 am)
BILLING CODE 9999-99-2

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

(PP Docket No. 93-253; FCC 96-447)

Interactive Video and Data Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Tenth Report and Order* modifies the competitive bidding rules for the upcoming auction of Interactive Video and Data Service (IVDS) licenses as proposed by the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making*. In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding. Specifically, the rule amendments include eliminating the bidding credits available to women- and minority-owned IVDS applicants and extending bidding credits to small businesses based upon a revised two-tiered small business definition, i.e., providing varying bidding credit amounts to small businesses of different sizes. The *Tenth Report and Order* also clarifies the attribution rules for affiliates of IVDS applicants, and amends the competitive bidding rules to increase the amount of the upfront payments required to participate in the IVDS auction. The intended effect of this action is to establish the competitive bidding rules for the upcoming auction of IVDS licenses.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Howard Griboff or Christina Eads Clearwater, Wireless Telecommunications Bureau, (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Tenth Report and Order* in PP Docket No. 93-253; FCC 96-447, adopted November 15, 1996 and released November 21, 1996. The complete text of the *Tenth Report and Order* is available for

inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Title: In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding

Tenth Report and Order

I. Introduction and Executive Summary

1. In this *Tenth Report and Order*, the Commission modifies its competitive bidding rules for the upcoming auction of Interactive Video and Data Service (IVDS) licenses.¹ Specifically, the Commission amends certain provisions concerning the treatment of small businesses, businesses owned by members of minority groups and women, and rural telephone companies (collectively, "designated entities"), in order to address the legal requirements of the Supreme Court's decisions in *Adarand Constructors, Inc. v. Peña* (*Adarand*)² and *United States v. Virginia* (*VMI*).³ The Commission also increases the upfront payment amounts for bidding on IVDS licenses in order to encourage sincere bidding. By implementing these modifications, the Commission reiterates that it is committed to fulfilling its statutory obligation to ensure that designated entities are afforded opportunities to participate in the provision of spectrum-based services.⁴

2. As it explained in the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (*FNPRM*),⁵ the Commission was prompted to reexamine its race- and gender-based IVDS auction rules by the

¹ IVDS is a point-to-multipoint, multipoint-to-point, short distance communications service. IVDS licenses may provide information, products, or services to individual subscribers located within a service area and subscribers may provide responses. 47 CFR Section 95.803(a).

² U.S. ___, 115 S. Ct. 2097, 132 L.Ed.2d 158 (1995).

³ U.S. ___, 116 S. Ct. 2264, 135 L.Ed.2d 735 (1996).

⁴ 47 U.S.C. Section 309(j)(4)(D).

⁵ Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PP Docket No. 93-253, FCC 96-330, 61 FR 49103 (September 18, 1996). In response to the *FNPRM*, comments were filed by (1) ITV, Inc. and IVDS Affiliates, LLC (ITV/IALC); (2) Interactive America Corporation, Inc. (IAC); (3) Loli, Inc., Trans Pacific Interactive, Wireless Interactive Return Path, L.L.C., and IVDS On-Line Partnership (collectively, "IVDS Licensees"); and (4) Progressive Communications, Inc. (Progressive). Reply comments were filed by IAC.

Supreme Court's decisions in *Adarand* and *VMI*. The Commission initially adopted these race- and gender-based rules in the *Fourth Report and Order* in this docket in order to fulfill its mandate under Section 309(j) of the Communications Act of 1934, as amended ("Communications Act"), to provide opportunities for businesses owned by members of minority groups and women to participate in the provision of spectrum-based services.⁶ After the Commission adopted these rules, however, the Supreme Court held in *Adarand* that any federal program that makes distinctions on the basis of race must satisfy the strict scrutiny standard of judicial review.⁷ More recently, the Supreme Court held in *VMI* that a state program that makes distinctions on the basis of gender must be supported by an "exceedingly persuasive justification" in order to withstand constitutional scrutiny.⁸ Based on the analysis of *VMI* in conjunction with *Adarand*, the Commission concludes that any gender-based preference maintained in the IVDS auction rules must meet the VMI intermediate scrutiny standard of judicial review.

3. Based upon review of the comments submitted in response to the *FNPRM*, the Commission also concludes that the present record is insufficient to support either the race-based IVDS auction rules under the strict scrutiny standard or the gender-based rules under the "exceedingly persuasive justification" standard of intermediate scrutiny. The Commission has considered the need to award the remaining IVDS licenses expeditiously and to promote the rapid deployment of new services to the public without judicial delays,⁹ as well as the statutory objective of disseminating licenses among a wide variety of applicants, including designated entities.¹⁰ Bearing these factors in mind, the Commission concluded that in order to avoid uncertainty and delay that would likely result from legal challenges to the special provisions for minority- and women-owned businesses in its current

⁶ Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order*, PP Docket No. 93-253, 59 FR 24947 (May 13, 1994), 9 FCC Rcd 2330, 2336-40 (1994) (*Fourth Report and Order*).

⁷ *Adarand*, 115 S. Ct. at 2113. *Adarand* explicitly overruled the intermediate scrutiny standard for racial classifications set by the Supreme Court in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 564-65 (1990), which was the standard of review at the time the IVDS rules were adopted. See *Fourth Report and Order*, 9 FCC Rcd at 2336 n.73.

⁸ *VMI*, 116 S. Ct. at 2274-76.

⁹ 47 U.S.C. Section 309(j)(3)(A).

¹⁰ *Id.* Section 309(j)(3)(B).

IVDS rules, it is appropriate to make the IVDS rules race- and gender-neutral.¹¹ The Commission believes that its action here is consistent with its obligations under Section 309(j)(3).¹²

4. As explained in the *FNPRM*, the Commission's experience in conducting the initial IVDS auction also led it to examine other aspects of its rules, and the Commission has determined that it should take certain steps to minimize the possibility of insincere bidding and bidder default. To achieve these goals, the Commission amends its rules to raise the initial upfront payment for participation in the IVDS auction to \$9,000 per Metropolitan Statistical Area (MSA) license and \$2,500 per license for Rural Service Area (RSA) markets, for the maximum number of licenses on which the applicant wishes to bid.

5. Finally, a number of the comments addressed other issues which are not within the scope of this proceeding. The Commission defers decisions on those matters until they can be addressed in the appropriate context.

II. Rules Affecting Designated Entities

A. Meeting the Constitutional Standards

6. *Background.* In the *FNPRM*, the Commission explained the history of its race- and gender-based IVDS rules, the statutory objectives they were designed to promote, and the impact of the Supreme Court's decisions in *Adarand* and *VMI*. As discussed, an intermediate scrutiny standard of review was applied to federal race- and gender-based programs at the time the IVDS rules were adopted.

7. In *Adarand*, the Supreme Court held that all racial classifications, whether imposed at the federal, state or local government level, must be analyzed by a reviewing court under a strict scrutiny standard of review. This standard requires such classifications to be narrowly tailored to further a compelling governmental interest.¹³ In *VMI*, the Supreme Court reviewed a state program containing gender classification and held it was

¹¹ See Amendment of Parts 20 and 24 of the Commission's Rules, *Report and Order*, WT Docket No. 96-69, 61 FR 51233 (October 1, 1996), 11 FCC Rcd 7824 (1996) (*DEF Report and Order*), which modified the designated entity provisions of the broadband Personal Communications Services (PCS) F block rules to make them race- and gender-neutral; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Sixth Report and Order*, PP Docket No. 93-253, 60 FR 37786 (July 21, 1995), 11 FCC Rcd 136 (1995), *aff'd sub nom. Omnipoint Corp. v. FCC*, 78 F.3d 620 (D.C. Cir. 1996), which modified the designated entity provisions of the broadband PCS C block rules to make them race- and gender-neutral.

¹² 47 U.S.C. Section 309(j)(3).

¹³ *Adarand*, 115 S. Ct. at 2113.

unconstitutional under an intermediate scrutiny standard of review. This standard requires that "[p]arties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action."¹⁴ Under this test, the government must show "at least that the [challenged] classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.'"¹⁵ While the Supreme Court has not directly addressed constitutional challenges to federal gender-based programs since *Adarand* and *VMI*,¹⁶ a review of the relevant broad language in *VMI* indicates that the Court does not differentiate between federal and state official actions in its equal protection analysis.¹⁷ Similarly, the *Adarand* decision definitively eliminated any distinction between federal and state race-based programs in setting its strict scrutiny standard of judicial review.¹⁸ Therefore, the Commission concludes that any gender-based preference maintained in the IVDS auction rules would need to meet the VMI intermediate scrutiny standard of review.

8. In the *FNPRM*, the Commission noted that judicial precedent indicates that only a record of discrimination against a particular racial group would support remedial measures designed to benefit that group and that generalized

¹⁴ *VMI*, 116 S. Ct. at 2274 (citing *J.E.B. v. Alabama ex rel. T. B.*, 511 U.S. 127, 136-37 & n.6 (1994) and *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982)).

¹⁵ *Id.* at 2275 (quoting *Mississippi Univ. for Women*, 458 U.S. at 724 (quoting *Wengler v. Druggists Mutual Ins. Co.*, 446 U.S. 142, 150 (1980))).

¹⁶ But see *Lamprecht v. FCC*, 958 F.2d 382, 391, 393 n.3 (D.C. Cir. 1992), a pre-*Adarand/VMI* decision in which Justice Thomas (a member of the D.C. Circuit panel to which the case was presented) invokes the "exceedingly persuasive justification" standard in striking down a federal gender-preference policy. As the dissent in *Lamprecht* confirmed, Justice Thomas applied "the more exacting scrutiny of Justice O'Connor's dissent (in *Metro*, 497 U.S. at 602-31)." *Id.* at 404 (Mikva, C.J., dissenting), which formed the core of Justice O'Connor's majority opinion in *Adarand*.

¹⁷ Since *Reed v. Reed*, 404 U.S. 71 (1971), the Court has repeatedly recognized that neither federal nor state government acts compatibly with the equal protection principle when a law or official policy denies "equal opportunity." *VMI*, 116 S. Ct. at 2275 (emphasis added); "To summarize the Court's current directions for cases of official classification based on gender: . . . the reviewing court must determine whether the proffered justification is 'exceedingly persuasive.'" *Id.* (emphasis added). See also *Heckler v. Matthews*, 465 U.S. 728, 744-45 (1984) (reviewing a federal statute containing gender classification under the same standard the Court used to review the state statute in *Mississippi Univ. for Women*); *Califano v. Westcott*, 443 U.S. 76, 85 (1979) (same).

¹⁸ *Adarand*, 115 S. Ct. at 2113.

assertions of discriminations are inadequate.¹⁹ The Commission tentatively concluded that, although it has some general evidence of discrimination against certain racial groups, the evidence in the record to date does not appear adequate to satisfy the strict scrutiny standard of review. The Commission requested comment on this tentative conclusion. The Commission also requested comment on a number of questions related to this analysis, including whether compensating for discrimination in lending practices in the communications industry constitutes a compelling government interest. The Commission also asked interested parties to comment on other objectives that could be furthered by the minority-based provisions and whether they could be considered compelling governmental interests, such as increased diversity in ownership and employment in the communications industry or increased industry competition. The Commission asked commenters to submit statistical data, personal accounts, studies, or any other data relevant to the entry of specific racial groups into the field of telecommunications, and whether its race-based provisions are narrowly tailored to serve the interests that commenters assert to be compelling governmental interests. In the *FNPRM*, the Commission also tentatively concluded that the present record in support of its gender-based IVDS rules may be insufficient to satisfy the intermediate scrutiny standard and asked commenters to submit evidence relating to the entry of women into the field of telecommunications. The Commission asked interested parties to comment on whether there are any other goals that would satisfy the "important government objective" requirement of the intermediate scrutiny standard, such as increased participation of women in the FCC-licensing process for auction spectrum, and whether its gender-based IVDS rules are "substantially related" to the achievement of such objectives.

9. In the *FNPRM*, the Commission also tentatively concluded that it should not delay the IVDS auction for the amount of time it would take to adduce sufficient evidence to support the race- and gender-based IVDS provisions. The Commission also concluded that proceeding with the IVDS auction with these rules intact would not serve the public interest because it might result in litigation that ultimately would further

¹⁹ *FNPRM* (citing *Richmond v. J.A. Croson Co.*, 488 U.S. 460, 498 (1989) (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 257, 276 (1986))).

delay the award of the IVDS licenses and postpone the introduction of new competition to the marketplace.²⁰ The Commission tentatively concluded that in order to meet its Congressional mandate and expeditiously proceed to auction the remaining IVDS licenses, it should adopt race- and gender-neutral IVDS auction provisions, but continue to maintain the provisions for small businesses which it believes adequately benefit most of the businesses owned by minorities and/or women.

10. *Discussion.* Upon review of the record before it, the Commission revises the IVDS rules to make them race- and gender-neutral, particularly since most of the commenters support this action.²¹ The other commenters failed to provide any specific anecdotal or statistical evidence to supplement the record supporting race-based or gender-based IVDS auction rules. IAC takes the position that, because there is a lack of available equipment for constructing IVDS systems, the Commission is moving too quickly in eliminating minority- and gender-based preferences.²² IAC proposes that the Commission allow parties additional time to establish a full record upon which to decide whether the race- and gender-based preferences should be eliminated.²³ However, IAC does not present any support for the proposition that a record could be developed in this proceeding if more time was available, nor do any of the other commenters. Accordingly, the Commission concludes that making the IVDS auction rules race- and gender-neutral will serve the public interest by enabling it to expeditiously auction the remaining IVDS licenses. Other commenters also requested that the Commission delay the IVDS auction, but not for the purpose of establishing a record to support race- and gender-based rules.²⁴ The Commission denies

²⁰Id. The Commission observes that the D.C. Circuit Court of Appeals stayed the C block auction under an intermediate scrutiny standard on the basis of race- and gender-based provisions similar to those adopted in the IVDS rules. *Telephone Electronics Corp. v. FCC*, No. 95-1015 (D.C. Cir. Mar. 15, 1995) (order granting stay).

²¹See, e.g., Progressive Comments at 1; ITV/IALC Comments at 4.

²²IAC Comments at 5-7.

²³Id.; IAC Reply Comments at 1-2.

²⁴IVDS Licensees request that the Commission delay the auction until certain technical, regulatory, and administrative issues are resolved. IVDS Licensees Comments at 4-6. ITV/IALC request that the auction not be held until resolution of all auction default issues and action has been taken on the petitions for reconsideration of the Commission's decision in Amendment of Part 96 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers, *Report and Order*, WT Docket No. 95-47, 61 FR 32710-01 (June 25, 1996), 11 FCC Rcd 6610 (1996). ITV/IALC Comments at 7-

these requests to delay the auction, and notes that applicants should factor the obligations and uncertainties attendant to the auction process into their decision to participate and the amount to bid.²⁵

11. While the Commission eliminates the race- and gender-based provisions of the IVDS auction rules, it will retain provisions for small businesses, as agreed to by all commenters.²⁶ The Commission concludes that nothing in the *Adarand* or *VMI* decisions calls its small business provisions into question. Moreover, by retaining small business preferences, the Commission believes it will continue to fulfill the mandate under Section 309(j) to provide increased opportunities for minority- and women-owned businesses.²⁷ Because many minority- and women-owned entities are small businesses who therefore will qualify for the same special provisions that would have applied to them under the previous rules.²⁸

12. The Commission also has initiated a comprehensive rule making proceeding to gather evidence regarding market barriers to entry faced by minority- and women-owned firms as well as small businesses.²⁹ If a sufficient record is adduced that will support race- and gender-based provisions that will satisfy judicial scrutiny, it will consider race- and gender-based provisions for future auctions. Toward this end, the Commission will continue to request bidder information on the

²⁵See also IAC Reply Comments at 4-5 (agreeing with IVDS Licensees and ITV/IALC on these points).

²⁶See Requests for Waivers in the First Auction of Interactive Video and Data Service (IVDS) Licenses, *Memorandum Opinion and Order*, 11 FCC Rcd 6213, 6213 (1996).

²⁷IVDS Licensees Comments at 2 (in light of the elimination of race- and gender-based provisions, the small business preferences provide "one of the few avenues remaining for minority- and women-owned businesses to enter the communications industry"); IAC Comments at 8 (preferences for small businesses should be retained to fulfill the Commission's statutory obligations under Section 309(j)); ITV/IALC Comments at 4 (preferences should be based on a party's lack of economic strength); Progressive Comments at 1 (small business provisions will give "equal status to all small business enterprises").

²⁸47 U.S.C. Section 309(j)(3).

²⁹See generally 1992 Survey of Minority-Owned Business Enterprises, Agriculture and Financial Statistics Division, Bureau of the Census, U.S. Department of Commerce (December 11, 1995); 1992 Survey of Women-Owned Businesses, Agriculture and Financial Statistics Division, Bureau of the Census, U.S. Department of Commerce (January 20, 1996).

³⁰See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, *Notice of Inquiry*, GN Docket No. 96-113, 61 FR 33066 (June 26, 1996), 11 FCC Rcd 6280 (1996) (Section 257 Notice of Inquiry). See also 47 U.S.C. Section 257.

IVDS short-form filings as to minority and/or women-owned status. In analyzing the applicant pool and the auction results, the Commission will monitor whether it has accomplished substantial participation by minorities and women through the broad provisions available to small businesses. This will also assist the Commission in preparing its report to Congress on the success of designated entities in auctions.³⁰

B. Special Provisions for Designated Entities

1. Small Business Definition

13. *Background.* In the current IVDS rules, the Commission adopted a definition of "small business," that requires an entity to demonstrate that, together with its affiliates, its net worth is not more than \$6 million, and its annual profits are not more than \$2 million for the previous two years. In the *FNPRM*, the Commission stated its belief that the gross revenues of the applicant and its affiliates is a more accurate indicator of its size than is its net worth or annual profits, and the Commission proposed to revise the IVDS definition of small business to match the three-year gross revenues test that it has used to define "small business" for other auctions.³¹ The Commission further stated that, because it expects that the capital requirements for IVDS will be relatively low (as compared to, for example, broadband PCS), IVDS may attract greater participation by smaller businesses who lack access to capital. The potential in IVDS for greater participation by smaller businesses also justifies special provisions based on the size of the bidding entity, such as a tiered bidding credits. Therefore, the Commission proposed to redefine a "small business" as an entity with average gross revenues not to exceed \$15 million for each of the preceding three years. The Commission also proposed to add a second tier of small businesses, referred to as "very small businesses," and defined as entities with average gross revenues of not more than \$3 million for each of the preceding three years. The Commission requested comment on these revised definitions. It also requested comment on whether to implement a five percent

³⁰See 47 U.S.C. Section 309(j)(12)(D).

³¹*FNPRM* (citing 47 CFR Sections 24.320, 24.720, 90.912(b), 90.814(b)(1)). See also Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Order on Reconsideration and Seventh Report and Order*, PR Docket No. 96-553, PP Docket No. 93-253, GN Docket No. 96-252, 60 FR 48913 (September 21, 1996), 11 FCC Rcd 2636, 2700-01 & n.320 (1996) (900 SMR Auction Report and Order).

attribution threshold for purposes of determining an entity's eligibility as a small business. Alternatively, the Commission sought comment on whether it should only count the gross revenues of the controlling principals in the applicant and its affiliates for purposes of determining small business status. Finally, the Commission sought comment on its tentative conclusion to use a multiplier similar to the one adopted in the *CMRS Third Report and Order* for the spectrum aggregation cap to determine attribution when IVDS licensees are held indirectly through intervening corporate entities.³²

14. *Discussion.* Based upon its experience with spectrum auctions, the Commission believes that gross revenues-based definitions are a more accurate indicator of an entity's size than the net worth/annual profit definition which was previously used. Therefore, the Commission will redefine a "small business" as an entity with average gross revenues not exceeding \$15 million for each of the preceding three years, and a "very small business" as an entity with average gross revenues not exceeding \$3 million for each of the preceding three years. IVDS Licensees and ITV/IALC support small business definitions based upon gross revenues,³³ and only Progressive takes the position that the Commission should retain the previous small business definition.³⁴ The Commission further notes that the creation of a subcategory of very small businesses enables it to tailor benefits to better meet the needs of the smaller business entities likely to participate in the IVDS auction. As discussed below, the Commission finds that its goals can best be served by offering varying bidding credits tailored to the applicant's size. The Commission also believes that the \$15 million/\$3 million gross revenue financial thresholds are appropriate and are consistent with the carefully-analyzed approach it took in the auction of 900 MHz Specialized Mobile Radio (SMR) licenses.³⁵ Indeed, in this auction, the Commission expects participation by a comparable group of smaller businesses that participated in the 900 MHz SMR auction. Because the

³²Id. (citing Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, *Third Report and Order*, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 96-553, 59 FR 59945 (November 21, 1996), 9 FCC Rcd 7988, 8114-15 (1994) (*CMRS Third Report and Order*)).

³³See, e.g., IVDS Licensees Comments at 1-2; ITV/IALC Comments at 4-5.

³⁴Progressive Comments at 1 (contending that differing categories of small businesses will create problems for the Commission in the future).

³⁵900 SMR Auction Report and Order, 11 FCC Rcd at 2700.

Commission believes these are appropriate thresholds, it declines to adopt the higher thresholds proposed by ITV/IALC.³⁶

15. In determining whether an entity qualifies as a small business at either threshold, the Commission will consider the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant. Specifically, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant.³⁷ At ITV/IALC's request,³⁸ the Commission clarifies that personal net worth is not included in the determination of eligibility for bidding as a small business.³⁹ In addition, the Commission will use the multiplier adopted in the *CMRS Third Report and Order* for the spectrum aggregation cap to determine when IVDS licensees are indirectly held through intervening corporate entities.⁴⁰ The Commission thus chooses not to impose specific equity requirements on the controlling principals that meet the small business definition.⁴¹ However, the Commission will still require that, in order for an applicant to qualify as a small business, qualifying small business principals must maintain "control" of the applicant. The term "control" would include both *de jure* and *de facto* control of the applicant.⁴² While the

³⁶ITV/IALC Comments at 4-5 (proposing small business average gross revenues eligibility threshold of \$16 million and very small business average gross revenues eligibility threshold of \$5 million because IVDS licensees will more likely be financing their systems from equity sources rather than debt).

³⁷Both commenters addressing this issue supported the use of gross revenues of controlling principals as the determinant of small business status. See IVDS Licensees Comments at 2; ITV/IALC Comments at 5 n.5.

³⁸ITV/IALC Comments at 5 n.5.

³⁹See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 59 FR 63210 (December 7, 1994), 10 FCC Rcd 403, 421 (1994) (*Competitive Bidding Fifth Memorandum Opinion and Order*).

⁴⁰*CMRS Third Report and Order*, 9 FCC Rcd 7988, 8114-15. IVDS Licensees supports this proposal. IVDS Licensees Comments at 2.

⁴¹IVDS Licensees alternatively proposes a twenty-five percent equity exception similar to that adopted in the Commission's broadband PCS rules. 47 CFR Section 24.709(b)(3). IVDS Licensees Comments at 2.

⁴²Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) the entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that

Commission is not imposing specific equity requirements on the small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business.

16. On a related matter, ITV/IALC seeks clarification in its comments that once an entity qualifies as a small business, it would not lose its status through financial growth in subsequent years,⁴³ and thereby lose its ability to make installment payments as a small business under 47 CFR Section 95.816(d)(2). The Commission addressed this concern in its broadband PCS rules. There it emphasized its strong interest in seeing small businesses grow and succeed in the wireless marketplace and stated that growth of the licensee's gross revenues and assets, or growth as a result of a licensee acquiring additional licenses, generally would not jeopardize continued eligibility for designated entity preferences.⁴⁴ The Commission believes this policy equally should apply to IVDS licensees and, therefore, incorporates this concept into its IVDS rules.⁴⁵

2. Bidding Credits

17. *Background.* Under the current IVDS rules, businesses owned by members of minority groups or women are granted a 25 percent bidding credit. In the *FNPRM*, the Commission proposed to eliminate race- and gender-based bidding credits in its IVDS rules and sought comment on whether it should extend a single bidding credit to all small businesses and, if so, the magnitude of that credit. The Commission asked whether it should offer tiered bidding credits for small businesses of different sizes, e.g., a 15 percent bidding credit for very small businesses and a 10 percent bidding credit for small businesses. The Commission tentatively concluded that given the relatively low bids that IVDS garnered in the July 1994 auction, IVDS may attract smaller businesses, thus justifying tiered bidding credits.

control the day-to-day activities of the licensee; and (3) the entity plays an integral role in all major management decisions. See *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 447.

⁴³ITV/IALC Comments at 5 n.4.

⁴⁴*Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 420. See also 47 CFR Section 24.711(c)(2) ("A licensee (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments . . . , debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.")

⁴⁵47 CFR Section 95.816(e)(2) (as revised).

18. *Discussion.* The Commission will maintain bidding credits for small businesses and will adopt a tiered bidding credit approach, as supported by several commenters.⁴⁶ The Commission agrees with IVDS Licensees that preservation of the bidding credit is consistent with its obligations under Section 309(j) to "promote economic opportunity for a wide variety of applicants, including small businesses and businesses owned by minorities and women."⁴⁷ Furthermore, the Commission believes that a tiered approach, which enhances the discounting effect of bidding credits because not all entities receive the same benefit, will encourage smaller businesses to participate in the provision of IVDS services.⁴⁸ The Commission also believes that the 15 percent bidding credit for very small businesses and a 10 percent bidding credit for small businesses are appropriate and consistent with the thresholds used in the 900 MHz SMR auctions.⁴⁹ As noted above, the Commission expects auction participation by a group of smaller businesses comparable to those that participated in the 900 MHz SMR auction. Moreover, the Commission does not believe a greater bidding credit is justified here as it was for certain highly capital intensive services, like broadband PCS. Therefore, the Commission declines to adopt the higher bidding credits proposed by IVDS Licensees and ITV/IALC.⁵⁰ The two tiered approach and the magnitude of the bidding credits the Commission adopts here are reasonable and equitable and meet the concerns of the commenters. These credits are narrowly tailored to the varying abilities of businesses to access capital and also take into account that different small businesses will pursue different strategies.

III. Upfront Payments

19. *Background.* The Commission recognized in the *FNPRM* that in order to deter insincere, speculative bidding and guard against the substantial number of defaults that occurred after the July 1994 auction, it needs to obtain a higher upfront payment from IVDS

bidders than the upfront payment currently required by the rules (*i.e.*, \$2,500 for every five licenses a bidder desires to win). In response to several *ex parte* filings from IVDS bidders supporting increased upfront payments, the Commission proposed to increase the initial upfront payment to \$9,000 per MSA license and \$2,500 per RSA license,⁵¹ for the maximum number of licenses on which the applicant wishes to bid.

20. *Discussion.* Based upon the record regarding IVDS upfront payment amounts,⁵² the Commission adopts the proposed upfront payment amounts and will amend Section 95.816(c)(3) of the Commission's Rules. Specifically, the Commission raises the initial upfront payments for participation in the IVDS auction to \$9,000 per MSA license and \$2,500 per RSA license, for the maximum number of licenses on which an entity wishes to bid. The Commission believes that this action is consistent with the underlying purpose for upfront payments—to deter insincere and speculative bidding and to ensure that bidders have the financial capability to build out their systems.⁵³ The Commission also believes that the revised upfront payments will continue to attract as many qualified bidders, while providing an adequate deterrent against frivolous bidding. Thus, the Commission declines to adjust the upfront payment amounts as proposed by ITV/IALC.⁵⁴

IV. Other Issues

21. Several commenters raise issues beyond the scope of the *FNPRM*. For example, Progressive and IAC request that the Commission revise the length of the IVDS license terms from 5 to 10 years.⁵⁵ This proposal requires formal rule making procedures and is beyond the scope of this proceeding. Similarly, ITV/IALC seeks an exception to the cross-ownership rule.⁵⁶ Again, this type of relief falls outside the scope of this proceeding. Finally, a number of policy questions were raised in the comments

⁵¹ IVDS Licensees Comments at 3; IAC Comments at 9; ITV/IALC Comments at 6-7; *FNPRM* at n.140 (list of *ex parte* filings supporting increased upfront payments).

⁵² See, e.g., *DEF Report and Order*, 11 FCC Rod at 7800.

⁵³ ITV/IALC Comments at 6-7 (proposing that the MSA payment be an even multiple of the RSA payment, e.g., per-market payments of \$7,500.00 for MSA's and \$2,500.00 for RSA's, to reduce computational complexity in figuring bidding eligibility as the auction proceeds and to avoid "stranding" MSA upfront payments with no ability to apply the entire amount to an RSA license).

⁵⁴ Progressive Comments at 1; IAC Reply Comments at 4.

⁵⁵ ITV/IALC Comments at 3-5.

regarding default issues.⁵⁶ The Commission notes that it will be addressing default issues in a future proceeding regarding the general competitive bidding rules.

V. Procedural Matters and Ordering Clauses

22. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. Section 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM*. The Commission sought written public comments on the expected impact of the rule changes proposed in the *FNPRM* on small entities, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Tenth Report and Order* conforms to the RFA, 5 U.S.C. Section 604, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104-121, 110 Stat. 847 (1996).⁵⁷

A. Need for and Objective of the Rules

23. This *Tenth Report and Order* adopts rule changes regarding the Commission's auction of IVDS licenses. The rule changes are appropriate because laws have changed since the rules were originally adopted. The Supreme Court's decisions in *Adarand*⁵⁸ and *VMI*⁵⁹ raised questions about the level of legal scrutiny that must be met by some of the designated entity provisions in the Commission's rules which take race and gender into account. The objective of the rule changes in the *Tenth Report and Order* primarily is to ensure that the competitive bidding rules comply with the appropriate legal standards by making the rules race- and gender-neutral, while at the same time instituting further rule changes that continue to promote participation of small businesses in auctions for licenses to provide spectrum services. Further, a secondary objective of some of the rule changes, such as the small business definition, availability of bidding credits, and increased upfront payments, is to apply the benefit of the

⁵⁶ IAC Comments at 7-8 (request not to reauction defaulted licenses before the defaulting party's administrative and judicial remedies are exhausted); *id.* at 9 (request the Commission clarify how it evaluates requests for waiver of payment deadlines and other IVDS auction-related rules); ITV/IALC Comments at 2 (request that defaulting parties should not be eligible for future IVDS auctions); IAC Reply Comments at 2-4 (opposition to ITV/IALC's request).

⁵⁷ Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. Section 601, *et seq.*

⁵⁸ 115 S. Ct. 2097.

⁵⁹ 116 S. Ct. 2264.

Commission's experience from the first IVDS auction to subsequent IVDS auctions, and to increase the flexibility and opportunities available to small businesses to participate in the provision of the services.

B. Summary of Issues Raised by Public Comment on the Initial Regulatory Flexibility Analysis

24. There were no petitions or comments which solely discussed or addressed the IRFA. However, a number of commenters raised and discussed issues affecting small businesses in their comments on the *Tenth Report and Order*. Those comments are addressed and discussed, where applicable, in the detailed sections below.

C. Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

25. The small businesses which choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses (or very small businesses), just as was required by the prior rules. The changed rules will include more businesses in the category of small businesses, which will be eligible for designated entity preferences such as bidding credits and installment payment plans. Any small business applicant wishing to avail itself of those provisions will need to make the general financial disclosures, as well as applicant and affiliate disclosures, necessary to establish that the small business is in fact small (or very small). The changed rules have eliminated the requirements that small businesses owned by women or minorities demonstrate that their owners are women or minorities. However, the Commission requests voluntary reporting of minority and women ownership to comply with its mandate to report its efforts to Congress. Accordingly, there are no additional reporting or recordkeeping requirements being imposed by these rules.

D. Description and Estimate of Small Entities Subject to the Rules

26. The Commission is directed by the Communications Act of 1934, 47 U.S.C. section 309(j), to make provisions to ensure that smaller businesses, and other designated entities, have an opportunity to participate in the auction process. To fulfill this statutory mandate and comply with the current legal standards, these rule changes are designed to ensure compliance with the new legal standards while promoting participation by small entities, including minorities, women, and rural

telephone companies. The small businesses who will be subject to the rules would be those which choose to operate IVDS, a class of wireless communications services with a wide variety of uses. The services will generally be offered to consumers who wish to subscribe to those services.

27. IVDS is a communications-based service subject to regulation as a wireless provider of pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services.⁶⁰ The U.S. Small Business Administration (SBA) defines small businesses in SIC 4841 as businesses with annual gross revenues of \$11 million or less. 13 CFR section 121.201. In this *Tenth Report and Order*, the Commission extends special provisions to small businesses with annual gross revenues of \$15 million or less and additional benefits to very small businesses with annual gross revenues of \$3 million or less. The Commission observes that this rule change is consistent with its approach in other wireless services, e.g., the 900 MHz specialized mobile radio service, and is narrowly tailored to address the lower capital requirements for IVDS. SBA approval for the small business definitions is pending for this and other auctionable services.

28. The Commission's estimate of the number of small business entities subject to the rules begins with the Bureau of Census report on businesses listed under SIC 4841, subscription television services. The total number of entities under this category is 1,788.⁶¹ There are 1,463 companies in the 1992 Census Bureau report which are categorized as small businesses providing cable and pay TV services.⁶² The Commission knows that many of these businesses are cable and television service businesses, rather than IVDS licensees. Therefore, the number of small entities currently in this business

⁶⁰ Generally, IVDS services will be subscriber-based services providing video communications which could be described as a form of subscription television service.

⁶¹ U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 4841 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

⁶² The Census table divides those companies by the amount of annual receipts. There is a dividing point at companies with annual receipts of \$10 million. The next increment is annual receipts of \$17 million, a category that greatly exceeds the SBA definition of small businesses that provide subscription television services. However, there are 17 firms in this category, with revenues between \$10-\$17 million. Approximately 1,400 SIC 4841 category firms have annual gross receipts of \$15 million or less. Only a small fraction of those 1,400 firms provide interactive video and data services.

which will be subject to the rules will be less than 1,463.

29. The first IVDS auction resulted in 170 entities winning licenses for 594 MSA licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the Commission defined a small business as an entity, together with its affiliates, that has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.⁶³ In the upcoming IVDS re-auction of approximately 100 licenses in MSA markets and auction of 856 licenses in RSA markets (two licenses in each of 428 markets), while the Commission makes the rules race and gender-neutral, it also modifies its definition of small business to include a second tier of very small businesses, adopts tiered bidding credits, and continues to include provisions for installment payments in its rules to encourage participation by small and very small businesses. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the rules. Given the success of small businesses in past IVDS auctions, and that small businesses comprise over 80 percent of firms in the subscription television services industry, the Commission assumes for purposes of this FRFA that all of the licenses may be awarded to small businesses, which would be affected by the rule changes it has made. Some companies may win more than one license, as was the situation in the earlier IVDS auction.

30. Applicants seeking to participate in the auction also will be subject to these rule changes. It is impossible to accurately predict how many small businesses will apply to participate in the auction. In the last IVDS auction, there were 289 qualified applicants. The Commission does not anticipate that there will be significantly more participants in the subsequent IVDS auction. However, because of the lower capital requirements for IVDS in general, there may be a greater number of very small businesses participating.

E. Steps Taken to Minimize the Burdens on Small Entities

31. The changes made in the *Tenth Report and Order* are designed to ensure compliance with the current legal standards applicable to federal programs implemented to benefit minority and women-owned businesses, while minimizing burdens on small

⁶³ Fourth Report and Order, 9 FCC Rod at 2336.

businesses and promoting participation of small businesses in spectrum auctions. The extension of a two-tiered definition for small businesses, as well as the provision for tiered bidding credits will assist businesses owned by women and minorities. Based upon experience to date, most of the businesses owned by women and minorities which have participated in the Commission's auctions are small businesses or very small businesses which, in the end, will benefit from these rule changes. As discussed below, the Commission considered and rejected alternatives, such as providing parties additional time to supplement the record or to afford the industry more time to develop technology and equipment, because there is no evidence that, given additional time, the record will be sufficiently supplemented or the industry will develop the technology any faster. While some may argue that the increase in upfront payments may raise some entry barriers, such concerns are outweighed by the need to maintain the integrity of the auction process to ensure sincere bidders and, thus, create increased opportunities for sincere small business bidders. Furthermore, the rule change increasing the upfront payment amounts will ultimately benefit the entities participating in the IVDS auctions, by ensuring that the participants have the financial ability to pay for the licenses for which they bid.

F. Significant Alternatives Considered and Rejected

Eliminating the Race and Gender-Based Provisions

32. In the *Tenth Report and Order*, the Commission concludes that the possibility of legal challenges to the rules due to the race and gender-based provisions could cause lengthy delays in issuing licenses in this service and, therefore, revises those provisions in its competitive bidding rules to make them race and gender-neutral. The Commission has not been able to consider other alternatives to the rule changes given that no alternatives were proposed by any of the commenters, and the record was not supplemented during this proceeding with any additional evidence of market entry barriers, anecdotal or statistical evidence or any other factors which directly adversely affect small businesses owned by minorities and/or women. Although one commenter requested that the Commission provide parties with additional time to supplement the record, and another requested that the Commission delay any rule making determinations to afford the industry

additional time to develop equipment and technology for implementing IVDS, the Commission rejected these requests, because there is no evidence the record will be sufficiently supplemented or the industry will develop the technology any faster. The Commission notes that it is currently gathering evidence, through a *Notice of Inquiry* proceeding pursuant to the Telecommunications Act of 1996, on barriers to market entry for small businesses, including those owned by women and minorities.⁴⁴ The Commission believes that the rule changes discussed below (for example, offering bidding credits based upon an entity's size) will more than adequately benefit small businesses that are owned by minorities or women.

Adoption of Two-Tiered Definition for Small Businesses

33. The *Tenth Report and Order* adopts a two-tiered definition to define small businesses: (1) a small business is a business with average gross revenues for each of the preceding three years that do not exceed \$15 million, and (2) a very small business is one which has less than an average of \$3 million in gross revenues in each of the last three years. The Commission adopts this two-tiered definition because its ongoing experience with spectrum auctions has affirmed its belief that gross revenue-based definitions are a more accurate indicator of size than a net worth/annual profit definition. Also, this definition is consistent with the carefully-analyzed approach used in other auctionable mobile radio services such as 900 MHz SMR services.⁴⁵ Although one commenter suggested altering the financial thresholds for determining whether an entity is a "small business" or "very small business" under the proposed definition, the Commission believes that the adopted two-tiered definition is appropriate given the likely participants in this auction and the Commission's desire to maintain consistency between auctions. In determining whether an entity qualifies as a small business under either tier, the Commission will attribute the gross revenues of all controlling principals, as well as the gross revenues of affiliates of the applicant. Also, the Commission will use the multiplier adopted in the *CMRS Third Report and Order* for the spectrum aggregation cap to determine when IVDS licensees are indirectly held through corporate entities. While the Commission chose not to impose specific equity requirements on the

⁴⁴ Section 257 Notice of Inquiry.

⁴⁵ 900 SMR Auction Report and Order.

controlling principals of qualifying small businesses, it will still require that qualifying small businesses are actually "controlled" by their principals.

Adoption of Tiered Bidding Credits

34. The Commission adopted tiered small business bidding credits for the upcoming IVDS auction as follows: (1) 10 percent bidding credits for small businesses and (2) 15 percent for very small businesses. Although a few commenters proposed higher percentages for each tier of bidding credits offered (for example, 15 percent for small businesses and 25 percent for very small businesses), the Commission declines to adopt their proposals because it does not believe a greater bidding credit is justified here as it was for certain highly capital intensive services, like broadband PCS. The Commission believes the extent, magnitude and range of the bidding credits adopted meet the varying needs of small and very small businesses who will participate in the IVDS auctions.

Increase in Upfront Payment Amounts

35. The *Tenth Report and Order* adopts increased upfront payment amounts of \$9,000 per MSA license and \$2,500 per RSA license for businesses participating in IVDS auctions. These increased amounts are designed to maintain the integrity of the auction by minimizing the adverse impact of participation by speculators and other frivolous bidders in the IVDS auction. Commenters agree that the previous upfront payment was too low, and no other alternatives were suggested to deter speculative or frivolous bidders who do not meet the commitments they make in bidding in IVDS auctions. Based upon the record regarding IVDS upfront payment values, the Commission believes that the revised upfront payment values are set at appropriate levels and provide an adequate deterrent against frivolous bidding, and therefore, the Commission declined to adopt the approach of one commenter who suggested it modify the multiplier for the MSA payment to an even multiplier of the RSA payment. Moreover, the impact that increased upfront payments may have on designated entities will be offset by the fact that eligible entities may elect to make payments for their licenses via installment payments, which eligibility shall not be jeopardized due to normal projected growth of gross revenues and assets.

G. Commission's Outreach Efforts to Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. Section 609

36. The Commission sought specific comments regarding the views of small entities with respect to the changes being made through solicitation of comments and reply comments to its *FNPRM*, and the *IRFA* that was contained therein. Although there were no comments on the *IRFA*, there were a number of comments received in connection with the *FNPRM* as noted herein. Further, the Commission's Office of Communications and Business Opportunities has undertaken additional outreach efforts through newsletters and other mailings to learn of the views of, and respond to, small entities.

H. Report to Congress

37. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Tenth Report and Order*, in a report to Congress pursuant to the SBREFA, 5 U.S.C. Section 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the Federal Register.

38. Authority for issuance of this *Tenth Report and Order* is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r) and 309(j).

39. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r), and 309(j), this *Tenth Report and Order* is adopted, and Part 95 of the Commission's Rules IS AMENDED as set forth below.

40. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE December 27, 1996.

41. For further information concerning this proceeding, contact Howard Griboff or Christina Eads Clearwater at (202) 418-0660 (Auctions Division, Wireless Telecommunications Bureau).

List of Subjects in 47 CFR Part 95

Communications equipment, Radio.
Federal Communications Commission
William F. Caton,
Acting Secretary.

Rule Changes

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.816 is amended by revising paragraphs (c)(3) and (d)(1), adding new paragraph (d)(4), redesignating paragraph (e) as paragraph (e)(1) and revising it, and adding new paragraph (e)(2) to read as follows:

§ 95.816 Competitive bidding proceedings.

(c) * * *

(3) *Upfront payments.* Each eligible bidder in the IVDS auction will be required to submit an upfront payment of \$9,000 per MSA license and \$2,500 per RSA license for the maximum number of licenses on which it intends to bid pursuant to section 1.2106 of this chapter and procedures specified by Public Notice.

(d) * * *

(1) *Bidding credits.*

(i) A winning bidder that qualifies as a small business (as defined in 95.816(d)(4)(i) of this section) may use a bidding credit of 10 percent to lower the cost of its winning bid.

(ii) A winning bidder that qualifies as a very small business (as defined in 95.816(d)(4)(ii) of this section) may use a bidding credit of 15 percent to lower the cost of its winning bid.

(4) Definitions.

(i) *Small business.* A small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than \$15 million for the preceding three years.

(ii) *Very small business.* A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than \$3 million for the preceding three years.

(iii) *Gross revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application

(Form 173). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(iv) *Controlling interest shall be attributable.* Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(v) *Multiplier.* Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(e) Unjust enrichment.

(1) Any business owned by minorities and/or women that has obtained a IVDS license in the IVDS auction held in July 1994 through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and/or women, this paragraph shall not apply; provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

(2) A licensee's (or other attributable entity's) increased gross revenues due to nonattributable equity investments (i.e., from sources whose gross revenues are not considered under 95.816(d)(4)(iv) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for preferences as a small business or very small business under this section.

[FR Doc. 96-30356 Filed 11-26-96; 6:45 am]

BILLING CODE 5715-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket PS-150, Notice No. 6]

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations Alcohol Misuse Prevention Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of lower random drug testing rate.

SUMMARY: RSPA has received and evaluated the 1995 Management Information System (MIS) Data Collection forms for the drug testing of pipeline industry personnel. The RSPA determined that the random positive drug testing rate for pipeline industry for the period of January 1, 1995, through December 31, 1995, was 0.8 percent. Since this is the second year that data has been collected and the random positive rate for the second year is less than 1 percent, the random testing rate for RSPA is being reduced from 50 percent to 25 percent for calendar year 1997. This means that for calendar year 1997, the operator must randomly select a minimum 25 percent of their covered employees to be tested. **EFFECTIVE DATE:** January 1, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Office of Pipeline Safety, Compliance and State Programs, (DPS-23), Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590, telephone (202) 366-6199.

SUPPLEMENTARY INFORMATION: In a final rule published on December 23, 1993 (58 FR 68257), RSPA announced that it would require operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas facilities, who are subject to 49 CFR parts 192, 193, and 195, to implement, maintain, and submit an annual report on drug testing program data. Any operator with 51 or more covered employees must submit this information on an annual basis. Operators with 50 or fewer covered employees must maintain this information, and RSPA randomly selected 100 operators in this category to submit their data. The drug testing statistical data is essential for RSPA to analyze its current approach to deterring and detecting illegal drug abuse in the pipeline industry, and, as

appropriate, to plan a more efficient and effective approach. The data collected in 1995 was the second year that the data was submitted. Now that RSPA has received two consecutive years of MIS Data Collection forms and the positive random testing rate has been less than 1 percent industry-wide, RSPA announces that in accordance with § 199.11(c)(3) the minimum random drug testing rate is lowered to 25 percent of covered pipeline employees for the period of January 1, 1997, through December 31, 1997.

MIS reports must be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, DPS-23, Room 2335, 400 7th Street SW., Washington, DC 20590, not later than March 15 of each calendar year. A notice of statistical data will be published in the future to report results of each calendar year's MIS Data Collection results. RSPA will also publish whether or not the random rate will be reduced or increased for the pipeline industry pursuant to § 199.11.

Issued in Washington, DC on November 21, 1996.

Richard B. Felder,
Associate Administrator for Pipeline Safety.
[FR Doc. 96-30317 Filed 11-26-96; 8:45 am]
BILLING CODE 4910-20-2

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 103]

RIN 2127-AG14

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Final rule.

SUMMARY: As one method of reducing the adverse effects of air bags, especially for children, NHTSA is requiring new, attention getting labels. This rule requires vehicles with air bags to bear three new warning labels. Two of the labels replace existing labels on the sun visor. The third is a temporary label on the dash. These new labels would not be required on vehicles having a "smart" passenger-side air bag, i.e., an air bag that would automatically shut off or adjust its deployment so as not to adversely affect children. This rule also requires rear-facing child seats to bear a new, enhanced warning label to replace the existing label. The labels will help reduce the adverse effects by increasing the number of people who read and

understand the message of the warning labels.

DATES: Effective Date: The amendments made in this rule are effective December 27, 1996.

Compliance Dates: Passenger cars, light trucks, and vans that are equipped with passenger air bags that do not qualify as "smart" air bags that are manufactured on or after February 25, 1997 must include the new, attention-getting labels specified in this rule.

Child restraint systems that can be used in a rear-facing position and are manufactured on or after May 27, 1997 must include the new, attention-getting label specified in this rule.

Manufacturers may voluntarily substitute the new labels for the currently required labels prior to these dates.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than January 13, 1997.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Mary Versailles, Office of Safety Performance Standards, NPS-31, telephone (202) 366-2057, facsimile (202) 366-4329, electronic mail "mversailles@nhtsa.dot.gov".

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC-20, telephone (202) 366-2992, facsimile (202) 366-3820, electronic mail "eglancy@nhtsa.dot.gov".

SUPPLEMENTARY INFORMATION:

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I. Background

On August 6, 1996, NHTSA published a notice of proposed rulemaking (NPRM) on Standard No. 208, "Occupant Crash Protection," (49 CFR 571.208) and Standard No. 213, "Child Restraint Systems," (49 CFR 571.213). The NPRM proposed several amendments to these standards to reduce the adverse effects of air bags, especially those on children. One of the proposed steps involved new, attention-getting warning labels for vehicles without smart passenger-side air bags¹ and for rear-facing child seats.

II. Current and Proposed Vehicle Labels

NHTSA's current vehicle labeling requirements for vehicles with air bags require the following information, coupled with the signal phrase "CAUTION, TO AVOID SERIOUS INJURY," to be labeled on the sun visors:

For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child restraints in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

The standard allows the word "WARNING" to be used in lieu of "CAUTION." In addition, the owner's manual must include appropriate additional information in each of these areas. The coloring of the lettering must contrast with the background of the label. No minimum size dimensions are specified.

¹ The NPRM identified three types of smart passenger-side air bags: (1) systems that provide an automatic means to ensure that the air bag does not deploy when a child seat or a child with a total mass of 30 kg or less is present on the front outboard passenger seat, (2) systems using sensors, other than or in addition to weight sensors, which automatically prevent the air bag from deploying in situations where it might have an adverse effect on children, and (3) systems designed to deploy in a manner that does not create a risk of serious injury to children very near the bag.

In addition, NHTSA requires an "air bag alert label" if the sun visor warning label is not visible when the sun visor is in its stowed position. The air bag alert label can either be on the air bag cover or on the side of the sun visor visible when the visor is in the stowed position. To the best of the agency's knowledge, to date, all manufacturers have placed the alert label on the visible side of the sun visor. This alert label must read, "Air bag. See other side." Again, the coloring of the lettering must contrast with the background of the label. No minimum size dimensions are specified.

NHTSA proposed four new labels for vehicles without smart passenger-side air bags. Two of the proposed labels would replace the currently required labels. One of the new labels would be a permanent label on the passenger-side end of the vehicle dash or on the adjacent area of the door panel. The other new label would be a temporary label on the middle of the vehicle dash.

A. Labels on Sun Visor

NHTSA proposed to enhance the warning labels currently required on sun visors for vehicles which lack smart passenger-side air bags. The current warning labels on sun visors would no longer be required. In their place, enhanced alert labels and warning labels would be required. Manufacturers would continue to be permitted to provide a warning label only, if that label is visible when the sun visor is in its stowed position.

For the alert label, NHTSA proposed to require that a new permanent label be affixed to the side of the visor that is visible when the visor is in its stowed position. The label would be required on that side of the visor above every seating position equipped with an air bag. The label would have a black background. On the left side of the proposed alert label would be a pictogram showing an inflating air bag striking a rear-facing child seat, with a red slash through that. On the right side of the proposed alert label would be yellow letters reading "AIR BAG WARNING." Underneath that warning, in much smaller yellow letters, would appear text reading "FLIP VISOR OVER." The agency proposed that all the new labels, including the alert label, be at least at least 140 mm long and 65 mm high. However, NHTSA asked for comments on labels that were 75 percent, 50 percent, and 25 percent of the proposed size.

For the warning label to be permanently affixed on the side of the visor visible when the visor was turned down in the deployed position (unless

the manufacturer chooses to place the warning label on the side of the visor visible in its stowed position), NHTSA proposed there would be a white pictogram on a black background in the lower left corner of this label. The pictogram would be a representation of a belted adult occupant in front of a deploying air bag. The background for the rest of the proposed label would be yellow. In red across the top of the label would appear a triangle with an exclamation mark inside it followed by the word "WARNING" in large type. In smaller red type beneath that heading, the phrase "Severe injury or death can occur" would appear. Beneath that, in black type, would appear the phrase "Air bags need room to inflate." Beneath that, the proposed label would have had four bullets in black type reading:

- Never put a rear-facing child seat in the front.
- Unbelted children can be killed by the air bag.
- Don't sit close to the air bag.
- Always use seat belts.

For vehicles with a manual cutoff switch, the first bullet on the label for the stowed side of the sun visor would be modified to read "Never put a rear-facing child seat in the front UNLESS the air bag is off."

The agency also proposed to carry forward the current prohibition against sun visors showing any other information about air bags or the need to wear seat belts, except for air bag maintenance information and the utility vehicle label required by NHTSA's consumer information regulations. Finally, the agency asked whether a sun visor label should be required for vehicles with smart passenger-side air bags.

B. Label on Passenger-Side End of Vehicle Dash or on Door Panel

NHTSA currently has no requirements for any safety labels in these locations. However, the International Organization for Standardization (ISO) has a proposed label featuring a pictogram showing a rear-facing child seat positioned in front of an air bag, with a red slash through the visual. The proposed location is on the passenger-side end of the dash, which is visible only when the passenger door is opened. An alternative location is on the door panel in a location that is also visible only when the door is opened.

NHTSA proposed to require a label either on the passenger-side end of the dash or on the door panel, for vehicles which lack smart passenger-side air bags. The proposed label would have

been identical to the label proposed for child seats (see below in section III). It would be a permanent label with the same minimum dimensions, the same yellow and red colors, and the same content, including the visual with the red slash through it. If the vehicle had a manual cutoff switch for the passenger air bag, the label would be modified to read "Danger! Do not place rear-facing child seat on front seat with air bag UNLESS the air bag is off."

C. Label in the Middle of the Dash Panel

NHTSA currently has no requirements for a safety label in this location. The label NHTSA proposed was a very visible label to be placed in the middle of the dash of all new vehicles equipped with air bags, if they lack smart passenger-side air bags. However, this label would have been permitted to be readily removable. If removable, the label would have been required on new vehicles when they are delivered to consumers, but could have then been removed by consumers after they have had a chance to read it. As proposed, the top half of this label would have a yellow background with the phrase "Make sure all children wear seat belts" in red type. The bottom half of this label would have a white background. In black type, the bottom half of the proposed label would say, "Unbelted children and children in rear-facing child seats may be KILLED or INJURED by passenger-side air bag." To make the proposed label as effective as possible, the signal word "WARNING" would be placed at the beginning of the label to highlight the importance of the message.

III. Current and Proposed Labels on Rear-Facing Child Seats

NHTSA currently requires a warning to be labeled on each child restraint that can be used in a rear-facing position. Specifically, S5.5.2(k)(ii) of Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) requires:

Either of the following statements, as appropriate, on a red, orange, or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear-facing child restraint system in the front passenger seat:

WARNING: WHEN YOUR BABY'S SIZE REQUIRES THAT THIS RESTRAINT BE USED SO THAT YOUR BABY FACES THE REAR OF THE VEHICLE, PLACE THE RESTRAINT IN A VEHICLE SEAT THAT DOES NOT HAVE AN AIR BAG, or

WARNING: PLACE THIS RESTRAINT IN A VEHICLE SEAT THAT DOES NOT HAVE AN AIR BAG.

NHTSA proposed to move and enhance the warning label currently required on child restraint systems that can be used in a rear-facing position. As proposed, a new permanent label would be affixed to each child restraint system that can be used in a rear-facing position. The label would be located in the area where a child's head would rest. This new label would have a yellow background for the text portion. On that yellow background, there would first appear a heading in red that said "DANGER!" Under that heading, the text of the proposed label would appear in black as:

DO NOT place rear-facing child seat on a vehicle seat with air bag.
DEATH or SERIOUS INJURY can occur.

Opposite the text, this warning label would have a pictogram showing an inflating air bag striking a rear-facing child seat, with a red slash through that.

IV. Summary of Comments on Proposal

Over 50 of the comments received in response to the NPRM addressed labeling issues. Except for General Motors (GM), vehicle manufacturers were not strongly opposed to the concept of labels. However, nearly all manufacturers asked NHTSA to specify the exact language and content of labels, but to allow flexibility in other areas. Manufacturers also raised concerns about adhesive residue from the temporary label and leadtime.

In general, child seat manufacturers had stronger objections to the labeling proposal, feeling that they and child seat purchasers would bear a disproportionate share of the economic burden when the air bag, not the child seat, was the hazard. Some child seat manufacturers expressed concerns with the proposed location for the label, citing visibility, durability, and child comfort concerns. Some child seat manufacturers also were concerned that the proposed format and location might falsely lead users to conclude that this warning was more important than other warnings.

Insurance groups, consumer advocacy groups, and parents generally supported more conspicuous labels. Some of these commenters felt the proposed labels were not conspicuous enough. Some of these commenters also were concerned that proposed labels did not make it clear that all children should be in the rear seat.

Finally, comments were received concerning harmonization with a proposed symbol from the International Organization for Standardization (ISO) and with the series of Z535 standards

from the American National Standards Institute (ANSI).

V. Focus Groups

The labels proposed in the NPRM were developed in part based on the results of six focus groups the agency conducted in March 1996. GM in particular criticized the agency's reliance on the results of focus groups. GM requested an analysis of the proposed labels from Dr. Jane T. Welch, a human factors and communications consultant, and attached a copy of her report to the GM comment. The report states, "NHTSA has seen fit to toss aside 20 years of research in favor of the opinions of 54 naive lay people."

Much of GM's criticism of the labeling proposal is an incorrect impression that NHTSA believes improved labels guarantee that all people would act correctly in response to the warning. Dr. Welch referred to 20 years of human factors studies reportedly demonstrating that warning labels on products have produced "very little reduction in accident rates." NHTSA does not believe that labels by themselves will solve the adverse effects of air bags. In its August 6 proposal, NHTSA acknowledged that no label works perfectly for all people and that different people prefer different label concepts. However, even if GM and Dr. Welch are correct in their assertion that labels will produce only a "very little" reduction in fatalities and injuries, NHTSA believes it should do all it can to present a "warning" message frequently and prominently so as to achieve whatever reduction is possible.

Further, the agency stated in the August 6 proposal that it had used the "focus groups with the aim of designing a label which would improve substantially the likelihood that people will read the label and understand its message." NHTSA recognized that even if motorists received the message, there was not any assurance that people would act on the message. GM and Dr. Welch concede that some people will act on the message. The agency has used focus groups to help ensure the label will be conspicuous enough to attract more people's attention and the message will be clear and powerful enough to increase the likelihood that more people will act in accordance with the message.

Finally, NHTSA appreciates the inputs from GM and other commenters about the content of the labels. The agency has used the public's inputs to help it modify and better define the message these labels will convey. NHTSA agrees that human factors knowledge is extremely valuable in deciding whether a label can be used to

help address a problem and what the message and purpose of the label should be. However, once these decisions have been made, NHTSA believes that focus groups are a valid and helpful technique to see if a proposed label design is effective; i.e., whether the label design succeeds in attracting the user's attention and whether the label clearly conveys the intended message.

Consistent with this belief, NHTSA has conducted six more focus groups in three cities to test consumer reaction to fine tuning changes suggested by the comments on the proposed labels. The contractor's final report on the second focus group study has been placed in the docket for this rulemaking. What follows is a brief overview of the second study.

Focus groups were conducted in San Diego, CA on October 29, 1996, in Chicago, IL on October 30, 1996, and in Baltimore, MD on November 4, 1996. The study involved six focus groups. The Baltimore, MD groups each had eight participants, the San Diego groups each had nine participants, and the Chicago groups had nine and ten participants, for a total of 53 participants. The composition of the groups reflected the population as a whole in terms of gender, ethnic background, and level of education. All participants had at least one child under 13, made several trips per week with one or more children in the car, drove at least 7,500 miles per year, were 25-45 years of age, had no connection with the automotive industry or with market research, and had not participated in a focus group during the preceding six months.

The focus groups lasted approximately two hours. The first half-hour of each focus group was spent discussing their current actions and beliefs regarding children riding in cars, use of seat belts, air bags, and awareness of any warning labels currently in vehicles. Most of the remaining time was devoted to evaluating three different sets of prototype labels. The San Diego and Chicago groups evaluated a total of 12 labels, while the Baltimore groups evaluated a total of 15 labels.

For the sun visor warning label, the San Diego and Chicago groups evaluated the currently required label, the proposed label, and three new labels based on the comments. The new labels used the proposed pictogram, the ISO pictogram, and a pictogram included in Chrysler's comments. The colors tested were the colors specified in the ANSI standards (see below), except that both yellow and orange headings were tested. The text of the new labels was also revised from the proposal. The

Baltimore group also evaluated two additional labels, based on results from the first two focus groups. One of the these labels had the heading in red on a yellow background. This color combination was preferred by both the San Diego and Chicago focus groups instead of the heading in black on the yellow background, as specified by ANSI labeling guidelines. Both of these additional labels had new, more specific text.

For the temporary label on the middle of the dash, the groups evaluated the proposed label and three new labels. The colors of the new labels were those specified in the ANSI standards, except that both yellow and orange headings were tested. The text of the new labels was also revised. The text of one of the new labels was further modified for the Baltimore group to give more specific advice concerning the age below which children are at special risk from deploying air bags.

For the child seat label, the San Diego and Chicago groups evaluated the proposed label and two new labels. The new labels include the new pictograms and the new color combinations of the previous labels, and revised text. The Baltimore group tested an additional new label with an all yellow background.

In general, there were not major differences among the six groups. Generally, the members were well-informed and very interested in automobile safety. Every group had heard that the rear seat was the safest place for children. Almost every participant had heard of the dangers to children from air bags. However, the groups did indicate that most of their information was from the media and that they were interested in obtaining information from the government and the motor vehicle industry. The participants indicated that they would be very interested in receiving clear, unambiguous statements of the risks from the government and industry, along with guidance on how to minimize those risks. The reactions of the focus groups to specific labels or label features are discussed later in this notice.

VI. General Issues Applicable to all Labels

A. Vehicles With Smart Passenger-Side Air Bags or Manual Cutoff Switches for Passenger-Side Air Bags

As an incentive for vehicle manufacturers to equip their vehicles with smart passenger-side air bags, the agency proposed to limit the

requirement for the new labels to vehicles lacking such air bags.

The public comments focused on the proposed definition for "smart passenger air bag." A definition is needed if the labeling requirement is to be limited to vehicles without smart bags. Many commenters argued that the proposed definition was not specific enough, and that test procedures should be specified. IIHS, however, stated that the agency should not develop a definition so as not to restrict developments in technology. Commenters raised a variety of concerns about the portion of the definition associated with weight suppression, which specified that the air bag be suppressed "when a child seat or child with a total mass of 30 kg or less is present on the front outboard passenger seat." GM, for example, argued that the definition is ambiguous and does not provide sufficient information. That company stated that some child seats and booster seats with children would exceed the 30 kg minimum and that, assuming a 20 percent sensor error, a person with a standing weight of 152 pounds could suppress the air bag. Various commenters addressed the different levels of effectiveness that might occur for simpler versus more advanced smart systems, and limitations associated with simpler systems. AAMA expressed concern that use of the term "smart air bag" could mislead the public into believing they have no responsibility in the performance of restraint systems.

In the absence of significant adverse comments about excepting vehicles with smart passenger-side air bags from the requirements for new labels, the agency is adopting that exception. Absent any evidence that warnings are necessary for vehicles with smart air bags, or what those warnings would be, NHTSA is not specifying any warning labels for vehicles with smart passenger-side air bags. Manufacturers may provide any information or warnings that would be appropriate for their smart air bag designs. NHTSA recognizes that the term "smart air bag" is still very general. The issue of more specific criteria and other issues relating to smart air bags will be addressed in a rulemaking in the near future.

In recognition of the fact that some vehicles are currently permitted to have manual cutoff switches for the passenger-side air bag, NHTSA is specifying optional label language for those vehicles. The absolute language about never placing a rear-facing child restraint in the front seat is not necessary for a vehicle in which the passenger-side air bag can be turned off.

The optional language for those vehicles is as follows: "NEVER put a rear-facing child seat in the front unless air bag is off."

B. Flexibility

NHTSA's proposal would have required labels to conform in content, format, size, and color to the proposed labels. Manufacturers agreed that NHTSA should specify the label content and prohibit additional labels. However, they asked for more flexibility in the areas of format and size. Manufacturers also asked to be allowed to present the label text not only in English, but also in other languages.

Generally, manufacturers asked for flexibility to rearrange the information to fit tight spaces in the vehicle interior. For example, manufacturers asked to be able to make the label vertical rather than horizontal, with the pictogram above the message, or to round the corners and make the label oval.

The purpose of the enhanced labels is to make them more noticeable and more explicit. NHTSA believes that arrangement and shape of the labels is irrelevant to these purposes, and therefore, is amending the regulatory language to allow such changes.

The proposal specified rectangular labels with a minimum size of 140 x 65 mm. The NPRM asked for comments on labels that were 75%, 50%, and 25% of the proposed size. Most commenters said the proposed labels were larger than needed to be more conspicuous than existing labels, and larger than practicable, given space considerations at some locations. A visor supplier and some vehicle manufacturers asked NHTSA to specify a 75% label. One manufacturer asked for a 50% label. Other manufacturers asked NHTSA to specify a minimum area for the pictogram and a minimum area for text, to allow the manufacturer flexibility in the overall shape and layout of the label.

NHTSA has re-examined the labels, and the proposed vehicle locations for the labels, and agrees that there would be issues at some locations about the sufficiency of the space for the placement of labels of the proposed size. With the exception of the air bag alert label discussed below, NHTSA has decided to reduce the size of the labels to 75% of the proposed size because this size is still conspicuous. Consistent with the above decision on format, NHTSA has also decided to adopt the suggestion to specify the minimum areas of the message text and pictogram only. To determine the size, NHTSA measured the size of these areas on a label that was 75% of the proposed size. Based on these measurements, NHTSA

is specifying that the pictogram must be a minimum of 30 mm in diameter, and the English text must be minimum of 30 square cm.

With respect to the size of the text, NHTSA learned from the focus groups that the public generally prefers larger fonts in label text because it is easier to read. This helps ensure the labels will effectively convey the message to the reader. NHTSA considered mandating a minimum font size for the text, but has not done so for two reasons. First, it is hard to specify a single font size that would assure ease of reading with all possible typefaces. Second, NHTSA does not think it is necessary to specify a regulatory requirement for font size to assure that manufacturers will make the message large enough to be easily read. The agency expects that manufacturers will ensure the English text of each label fills the 30 square cm text area, instead of using smaller font size and leaving most of the text area blank (white).

NHTSA did not intend to reverse its current policy of allowing a required message to be stated in additional languages once the required English language message was provided. In a March 10, 1994 notice, NHTSA stated:

NHTSA interprets the labeling requirements . . . as requiring manufacturers to supply the information in English. Once this requirement is met, manufacturers may supply the same information in other languages, so long as it does not confuse consumers. As long as the non-English language label is a translation of the required information, NHTSA does not interpret it to be "other information." (59 FR 11200, at 11201-202).

The proposed sun visor label language also included the prohibition about "other information." NHTSA would again not consider translations of the required label message to be "other information." However, all the requirements for the English label message must be met, including size. The proposed provisions regarding the other proposed labels did not include a prohibition against other information; therefore, it would be permitted.

C. Headings

As proposed, three of the labels would use the word "warning," while two (the label for the child seat and the end of the dash) would use the word "danger." Commenters pointed out that the labels should use only one of these words. Other commenters asked to be allowed the option to continue using either "warning" or "caution." Two commenters also asked for the agency to harmonize the proposed labels with ANSI standards.

The ANSI standards specify the use of various words in the heading of a label based on the degree of hazard and risk (ANSI Z535.4-1991, section 4.15). The word "danger" should be used when there is an imminent hazard that could result in death or serious injury. The word "warning" should be used when there is a potential hazard that could result in death or serious injury. The word "caution" should be used when there is a potential hazard that could result in minor or moderate injury. The ANSI standards also specify that, when multiple hazards are being addressed by a label, the word for the highest level of hazard among those hazards should be used (ANSI Z535.4-1991, section 5.3). Finally, the ANSI standards allow the use of an "alert symbol" in the heading (ANSI Z535.4-1991, section 7.2). The symbol is a triangle with an exclamation point inside, as shown on the proposed sun visor warning label.

NHTSA originally allowed either "warning" or "caution" on the current label because either word would achieve the goal of attracting attention to the label (59 FR 11200, at 11202; March 10, 1994). NHTSA continues to believe that the word choice for the heading will not change the effectiveness of the label. However, a recent Federal law encourages agencies to harmonize their standards with existing standards (Pub.L. 104-113; March 7, 1996). One of the stated purposes of the ANSI standards is "to achieve application of a national uniform system for the recognition of potential personal injury hazards for those persons using products" (ANSI Z535.4-1991, section 2.2). Given the Federal law and this purpose, and absent strong evidence that argues against following the ANSI standards, NHTSA has decided to adhere to them with respect to the heading.

Under the ANSI standard, the hazards associated with air bags are appropriately classified as potential hazards, since they only exist if there is a crash of sufficient severity to cause the air bags to deploy. For children, the risk associated with the hazard is clearly death or serious injury. Therefore, NHTSA will require that all labels use the word "warning." NHTSA will also specify the use of the alert symbol allowed by the ANSI standards (i.e., an exclamation mark inside a triangle, preceding the text of the heading). Participants in the recent focus groups noted that this symbol was very effective in drawing attention to the label, and also made the warning appear more official.

D. Color

Two commenters again asked NHTSA to harmonize the colors with the ANSI standards (ANSI Z535.4, section 7). Commenters also raised concerns about the readability of certain color combinations for persons with vision difficulties. In particular, commenters noted that black was easier to read than red on a yellow background, or that black was easier to read on white background rather than a yellow background. Other commenters, though, specifically stated that it was the colorfulness of the proposed labels that contributed to their effectiveness.

The ANSI standards specify that, when "warning" is used in the heading, the background color should be orange, the text black, and the alert symbol should be a black triangle with an orange exclamation point. Pictograms should be black on white, with occasional uses of color for emphasis. Message text should be black on white. The color yellow used in NHTSA's proposed labels is associated with the word "caution" in the ANSI standards.

Yellow was the overwhelming color preference of the participants in the focus groups. Only two of the 53 participants preferred orange. Participants generally stated that yellow was more eye-catching than orange. Participants also noted that red (stop) and yellow (caution) had meaning to them, but not orange. Participants in San Diego and Chicago preferred the red on yellow headings in some of the tested labels, because they were very eye-catching. However, the participants in Baltimore preferred the black headings, as recommended by ANSI, on a yellow background, stating that this color combination was easier to read. Participants in San Diego and Chicago also indicated that the all yellow labels were more eye-catching than labels in which the message text had a white background. However, the Baltimore participants thought the all yellow labels were "too much" and suggested that the color on the heading was sufficient to attract their attention.

NHTSA is requiring that all pictograms be black on a white background with a red circle and slash. While some of the proposed labels were white on black background, NHTSA believes that the two versions are equally visible, and therefore, is harmonizing with the ANSI standards. NHTSA is also requiring that the message text be black on white. This color combination is consistent with ANSI standards. NHTSA agrees this may be easier to read for some people.

However, NHTSA has decided not to follow the ANSI standards with respect to the background color for the heading "Warning." Instead of the orange specified in the ANSI standards, NHTSA is requiring that yellow be used as the background for the heading. The focus group evidence overwhelmingly suggests that yellow would be a more effective color than orange for attracting attention to the label. As noted above, 51 participants said yellow was significantly more eye-catching and effective than orange, while only 2 participants said orange was more effective than yellow. NHTSA takes very seriously the importance of making sure these labels do all they can to help avoid preventable deaths. Given the importance of this task and the focus group results, NHTSA has concluded that it should specify that the background color for the header of these labels be yellow.

E. Pictogram

The proposed labels included two pictograms: one showing an adult and an inflating air bag, and the other showing a rear-facing child seat being impacted by an air bag surrounded by a red circle with a slash across it. Commenters criticized the first pictogram for representing an adult (instead of a child) and for the lack of a visible shoulder belt. Transport Canada asked if the agency had considered the proposed ISO pictogram for the child seat pictogram, and asked if the agency would consider proposing its pictogram to ISO for use internationally. Other commenters also asked the agency to harmonize with the proposed ISO pictogram. Commenters criticized the proposed-child pictogram because there was too little of the vehicle to give a context for the picture, because there was no visible seat belt, and because the lines around the child's head looked like the rays of the sun. Chrysler's comment included some suggested labels which used a different, but similar, child pictogram. The Chrysler pictogram modifies the proposed pictogram by showing more of the vehicle seat for context, by having the child seat broken by the inflating air bag, and by having the air bag bending around the child seat. Finally, many commenters noted that the red slash went in different directions on different labels and asked the agency to specify the standard upper left-to-lower right orientation.

The participants in the second round of focus groups examined the proposed child pictogram, the ISO pictogram, and the Chrysler pictogram. The participants indicated that a pictogram was

important to attract attention, and that even a bad pictogram would get them to read the label. The ISO pictogram was the least liked by these groups. Participants indicated that it was too peaceful, and didn't convey a sense of danger. One of the Chicago groups also indicated that the pictogram was misleading, as it suggested that a fully inflated air bag never touched a rear-facing child seat. Of the remaining two pictograms, the Chrysler pictogram was preferred. However, some participants found this pictogram too graphic and harsh. Others indicated that it was one of the most effective pictograms they had seen because it enabled the viewer to understand the harm without reading the text. The one change suggested by the focus groups was to increase the relative size of the child seat in the pictogram, similar to the proposed pictogram.

Because the most serious air bag side effects relate to infants and children, NHTSA is amending the labels to require a child (infant) pictogram on all labels. However, at least one participant in five of the six focus groups expressed concern that pictogram showing air bag danger to infants in rear-facing child seats might imply that an air bag poses no danger to children in forward-facing seats, booster seats, or children using vehicle belts. These participants were concerned that a pictogram focusing entirely on infants in rear-facing child seats would mislead the public with regard to the hazards of current air bag designs.

NHTSA agrees this is a legitimate concern. However, after further agency analysis of this area, NHTSA has decided to keep a pictogram showing an infant in a rear-facing child seat. First, it would place an extraordinary burden on a pictogram to rely exclusively on it to show all possible hazards instead of using the pictogram to communicate some hazards and the accompanying text to communicate others. For instance, the recognized symbol for "no smoking" shows a lit cigarette with a red slash through it. One might misinterpret this symbol to mean no cigarette smoking, but that smoking a cigar or a pipe is permitted by the symbol. One of the participants in a Chicago focus group commented that the concerns about the infant pictogram are demanding too much of a pictogram. According to this participant, the job of the pictogram is simply to attract the reader's interest and attention to the text of the warning label.

NHTSA agrees with the participant's judgment that one significant purpose of the pictogram is to attract the reader's attention. In addition to this, NHTSA

expects a good pictogram to identify a significant portion of the hazard and to depict that portion accurately. The agency concludes that the pictogram showing the hazard posed by an air bag to a child in a rear-facing child seat meets all of these purposes. While the pictogram does not depict the larger group at risk, the focus groups all found that the pictogram of the child in the rear-facing seat would be effective at attracting people's attention to the label and getting them to read the label. Again, based on the focus group results, NHTSA believes the language of the labels makes it very clear that a larger group of children are at risk.

NHTSA is not adopting the ISO pictogram for its label. NHTSA thoroughly examined the ISO pictogram when developing the proposed pictograms. NHTSA decided to propose its pictogram, which the agency believes represents a significant improvement to the ISO pictogram by making the diagram more dynamic and by depicting the harm more clearly. NHTSA tested the ISO pictogram in its second round of focus groups and found that only one out of 53 participants liked it. More significantly, most of the participants did not understand what it was attempting to show and most said it would not attract their attention to the label. Given these results, NHTSA does not believe it would be appropriate to use the ISO pictogram. NHTSA staff are involved with the ISO committee working on this pictogram. The agency representatives will suggest that the ISO committee consider replacing its current pictogram with the pictogram NHTSA is requiring on its labels.

NHTSA was impressed by the pictogram included with the comment from Chrysler, as were the recent focus groups. Participants in the focus groups preferred the Chrysler pictogram by a substantial margin. Some participants even said the Chrysler pictogram was "perfect," and that "you understand the problem before you've read one word of the label." This was not a universally shared sentiment. Some participants said the Chrysler pictogram was "too harsh," "too violent," and "too scary." However, even those participants who said it was too graphic agreed that it was very effective at drawing attention to the label. Therefore, NHTSA is specifying this pictogram for use on the air bag warning labels. In addition, this rule corrects the slash on the air bag alert label pictogram so that it follows the standard convention.

VII. Sun Visor Alert Label

NHTSA proposed an alert label for the side of the sun visor visible when the

visor is in the stowed position. A manufacturer did not have to provide this label if the other proposed sun visor warning label were placed by the manufacturer so that it is visible when the visor is in the stowed position. Ford commented that manufacturers would only use one sun visor label unless the alert label were smaller than the warning label. Manufacturers also pointed out that there were additional size concerns with this side of the visor as it was the most common location used for another mandatory warning label in utility vehicles. Some manufacturers wanted to keep the current alert label.

NHTSA has decided that the alert label can be reduced to 50% of the proposed size, rather than to 75% as for other labels. Because this label has fewer words than other labels, it will still be very visible. This should alleviate some of the concerns about space for other required labels. In addition, because the new labels are so colorful, NHTSA is concerned about public objections if manufacturers were to place the warning label so that it was visible for extended periods of time. To be consistent with other size changes, NHTSA is specifying that the pictogram have a minimum diameter of 20 mm, and the text area be no smaller than 20 square cm.

The new alert label replaces the current alert label. NHTSA believes that the addition of the pictogram and the word "warning" are more likely to attract the attention of vehicle occupants and induce them to look for the label on the other side of the visor.

VIII. Sun Visor Warning Label

The proposed sun visor warning label stated, "Unbelted children can be killed by the air bag." Commenters said that this statement was too narrow, since improperly belted, and perhaps even some properly belted, children can be injured or killed by the air bag. The proposed label stated, "Never put a rear-facing child seat in the front." Again, commenters said this statement was too narrow, that all children should be in the rear seat. The proposed label stated, "Don't sit close to the air bag." Commenters preferred the current statement, "Do not sit or lean unnecessarily close to the air bag," because people may believe that it is unnecessary to worry about leaning or being thrown forward so long as their seat is moved back from the air bag. Finally, some commenters said that air bags have adverse effects for adults and that the label placed too much emphasis on children.

NHTSA believes that many of the suggestions regarding wording changes have merit, and is making some changes to the labels. NHTSA tested some of the recommendations in the focus groups. After reviewing the comments and the focus group results, NHTSA has decided that the message of the new label will read:

DEATH or SERIOUS INJURY can occur.

- Children 12 and under can be killed by the air bag.
- The BACK SEAT is the SAFEST place for children.
- NEVER put a rear-facing child seat in the front.
- Sit as far back as possible from the air bag.
- ALWAYS use SEAT BELTS and CHILD RESTRAINTS.

The addition of the sentence that all children are safest in the back reflects the emphasis of the agency's public education campaign. NHTSA has removed the modifier "unbelted" in front of children. NHTSA agrees that this statement was too narrow. Focus group participants generally asked for guidance about when occupants are no longer to be regarded as "children." This rule responds to this concern by adding the age range "12 and under." Finally, focus group participants found the statement "don't sit close to the air bag" vague and asked for more guidance about how close was too close. In response to these concerns, NHTSA provided the Baltimore focus groups with labels containing the following guidance: "sit as far back as possible from the air bag." The participants found this much more helpful.

Accordingly, this rule makes the same change to the sun visor warning label.

NHTSA is not changing the emphasis on children. The primary thrust of the proposed changes was the adverse effects on children. NHTSA believes this focus is necessary as long as the current threat to children remains as serious as it is now. Both the first and second rounds of focus groups indicated that they were much more likely to read and heed a label that tells them of a hazard to children and how to protect children than they would be to read a general hazard warning. Thus, the focus on children helps make the label more effective in communicating warnings relevant to adults as well as children. NHTSA notes that the advice in the last two bullets of this label is applicable to anyone, and would reduce the risk for those occupants. The focus groups correctly understood that these last two bullets applied to all occupants, not just children. Thus, there was no indication in the focus groups that the label's

emphasis on children leaves the public with the erroneous impression that only children face risks from air bags or that the general occupant safety messages in the last two bullets are limited to children.

IX. Label on Passenger-Side End of Vehicle Dash or on Door Panel

As discussed in the NPRM, none of the 66 participants in the original focus groups noticed this label on the vehicle they were shown. This was the proposed label that generated the most comments on size concerns from manufacturers. Manufacturers noted that the available space was very small on some vehicles, and that the area sometimes has vents or access panels. Manufacturers also asked that the label be harmonized with the proposed ISO label. General Motors stated that the agency should only require one new label. Finally, Advocates for Highway and Auto Safety stated that the label was likely to be ineffective and should not be required.

NHTSA has decided not to require this label. The agency's focus groups provided no indications that a label in this location would be effective. In addition, NHTSA agrees that too many labels can reduce the impact of all the labels. Not including the end-of-dash label in the final rule will help address concerns expressed in the comments about the number of new labels NHTSA is requiring and the potential conflict if ISO adopts its proposed end-of-dash label.

X. Label in the Middle of the Dash Panel

As proposed, this label was to be a temporary label. Many advocacy groups and individuals stated that this should be a permanent label. Manufacturers expressed concerns with adhesive residue marring the vehicle surface, and asked for alternatives such as hang tags from the mirror or other non-adhesive labels. Manufacturers also stated that the middle of the dash could have instruments which would make it difficult to place even a temporary label there, and asked if the label could be placed on other areas of the dash such as the glove compartment door.

NHTSA is not making this label permanent. NHTSA does not want the labels to become a source of irritation to consumers. The label in the middle of the dash is an additional means to reach a new vehicle buyer and ensure that the buyer knows that the vehicle has air bags and that there are warnings associated with this equipment. Since air bags are still a new feature for many buyers, NHTSA believes this additional

reminder will be useful. However, this is not the only, or even the primary, means to warn consumers about the adverse effects of air bags. Indeed, the permanent sun visor warning label contains the warning that "Children 12 and under can be killed by air bag."

NHTSA is relaxing the location requirements for this label. NHTSA proposed the middle of the dash to ensure the label was in a highly visible location. NHTSA agrees that there are other very conspicuous locations in a vehicle, and will allow the label to be anywhere on the dash or the steering wheel hub where the label will be clearly visible to the driver. NHTSA is not allowing the label to be a hang tag from the rearview mirror, however. NHTSA is concerned that this location would cause visibility concerns during a test drive and the label would very likely be removed from the vehicle before it reaches the purchaser.

NHTSA is also relaxing the requirement that the label be "affixed," so that manufacturers do not need to use adhesives. Manufacturers would be allowed to use other means of attaching the label to the dash, such as clips in available openings.

After reviewing the comments and the second round of focus group results, the agency has decided that the text of the new removable label will read:

Children Can be KILLED or INJURED by Passenger Air Bag.

The back seat is the safest place for children 12 and under.

Make sure all children use seat belts or child seats.

The second round of focus groups examined three alternative versions of removable labels that differed in some respect from the text of the proposed label. For two of the new alternatives, the changes moved the statement "make sure all children wear seat belts" to the end of the label and added the phrase "or child seats." Some commenters indicated that the original statement might lead people to use seat belts for children that should be in child seats. The message was changed so that the warning about the possibility of death or injury is not limited to unbelted children or children in rear-facing child seats. Finally, a statement that the back seat is safest was added. The third alternative removable label tested in these focus groups used the language suggested by the Parent's Coalition for Air Bag Warnings ("WARNING. Do not seat children in the front passenger seat. Air bag deployment can cause serious injury or death to children.").

The focus groups preferred the label design that began, "WARNING—

Children can be KILLED or INJURED by Passenger Air Bag." The participants indicated that this was "more informative" than the proposed removable label and that the message was "quick and to the point." Again, some participants thought this language was "strident" and "scary," but the participants nearly unanimously agreed that this opening would induce people to read the rest of the label to learn more about the problem. NHTSA is adopting this as the first line of the removable label required by this rule.

The next line of this removable label explains that "The back seat is the safest place for children 12 and under." This language was suggested in the comments of National Safe Kids Campaign. NHTSA has added an age definition to more clearly explain the meaning of the word "children," as suggested by the focus groups in San Diego and Chicago. The final line in the label advises "Make sure all children use seat belts or child seats."

The label suggested by the Parents' Coalition was the second choice of the focus group participants. It was the preferred choice for those participants who found the "children can be killed" message too strident. However, a number of participants reacted by saying the opening "Do not seat children in the front passenger seat" was "too preachy" and that they "didn't like someone telling them what to do." Others observed that they might not even read the second sentence about air bags causing serious injury or death, because the opening sentence here does not "draw you into" the label. The participants agreed that both the Parents' Coalition label and the label required in this rule convey essentially the same message. However, the focus group participants found the required label conveyed the message more effectively for them.

XI. Child Seat Label

NHTSA proposed to require the enhanced warning label on a rear-facing child seat to be affixed in the area where a child's head would rest. Many commenters stated that this location would not be so visible as the area on the cushion adjacent to where the head would rest. Commenters noted that many parents place the child in the seat before placing the seat in a vehicle, and therefore the warning would not be visible when placing the seat in the vehicle. Commenters also expressed concern with durability in this area or with the possibility that the label could irritate a child's head. Child seat manufacturers were also concerned that the prominence of this label would lead

users to conclude "falsely" that this warning was more important than other warnings.

NHTSA is requiring that an enhanced child seat warning label be placed on the upper portion of the child seat cushion. While NHTSA agrees that other issues are important, at this time, the air bag warning is the most important issue to communicate to consumers. However, NHTSA will allow some flexibility in the location on the cushion. The label can be either where the child's head rests or adjacent to that area. The purpose of the new location is to ensure that parents see the label each time they place the seat in a vehicle. This modification may make the label more visible and will ease some of the burden on child seat manufacturers.

The recent focus groups tested new versions of this label. The focus groups tested two new labels: (1) a label with the ISO pictogram, and the ANSI color scheme, except that the heading had a yellow background, and (2) a label with the Chrysler pictogram, the ANSI color scheme, and an additional line of text that the back seat is the safest place for children. The focus groups preferred the latter version of the label, if the heading were yellow instead of orange.

Based on the comments and focus groups results, the message of the new label will read:

WARNING:
DO NOT place rear-facing child seat on front seat with air bag.
DEATH OR SERIOUS INJURY can occur.
The back seat is the safest place for children 12 and under.

XII. Letters to Owners of Existing Vehicles

NHTSA is aware that some manufacturers intend to send letters to current owners of vehicles with passenger-side air bags. These letters may include copies of the new warning labels. NHTSA encourages manufacturers to do this.

The warning labels now on vehicles were put on in compliance with Standard No. 208. Thus, vehicle owners or others might wonder whether placing a new warning label over the existing warning label would be a violation of the statutory prohibition against "making inoperative" items, including labels, installed in compliance with a safety standard. NHTSA would like to assure the public that no statutory prohibition would be violated by placing a new warning label over an existing warning label. Obviously, there is no violation if a person decides to do this to his or her own vehicle, because the Federal prohibition does not apply

to owners of vehicles, but only to commercial businesses like manufacturers, dealers, and repair businesses. If a manufacturer, dealer, or repair shop were to place a new warning label over the existing warning labels, that act would not constitute a "making inoperative" violation. NHTSA has long said that, with respect to a safety standard requirement that has changed since a vehicle was manufactured, modifying the vehicle so that it no longer complies with the requirement in effect when the vehicle was manufactured is not a violation of this prohibition if the modification brings the vehicle into compliance with the requirement currently in effect. Thus, commercial businesses do not need to be concerned about potential violations of this prohibition.

The NHTSA focus groups indicated that the inclusion of a label in a letter from a vehicle manufacturer would increase significantly the likelihood that they would read the letter. Based on this, NHTSA strongly encourages manufacturers to consider including labels with any letters they may send existing owners. The letter will give the manufacturers an additional opportunity to inform the public about this problem and to offer more detailed advice than can be expressed on a label.

XIII. Leadtime and Costs

NHTSA proposed to require the new or enhanced vehicle labels for vehicles manufactured on or after a date 60 days after publication of the final rule. The agency also proposed that enhanced labels be affixed to all child restraints that can be used in a rear-facing position and that are manufactured on or after a date 180 days after publication of the final rule. This longer lead time for child seat manufacturers was an acknowledgment that these manufacturers will have to change their manufacturing process to include some means of permanently labeling the padding or cushion, something they do not do presently, to the best of the agency's knowledge.

No child seat manufacturers asked for longer leadtime. Therefore, NHTSA is adopting the proposed leadtime of 180 days after publication of this final rule.

Most vehicle manufacturers asked for longer leadtime, ranging from 90 to 180 days. NHTSA has decided to allow 90 days leadtime for vehicle labels. The proposed 60 day leadtime reflected NHTSA's desire for expedited action on this issue. Both suppliers and manufacturers have said that 60 days is not feasible. The adopted leadtime is at the low end of the estimates of feasible leadtime from the commenters. Because

NHTSA has decided not to adopt one of the proposed labels, the leadtime needed by manufacturers should be reduced. In view of the immediate need to alert the public to the adverse effects of air bags on children, NHTSA finds that a lead time of less than 180 days is in the public interest.

Finally, to encourage the earliest possible installation of the new enhanced labels, NHTSA is allowing manufacturers to install the new labels before the required date.

NHTSA estimates that the total incremental costs of the vehicle labels will be \$0.11 to \$0.35 per vehicle. Based on an estimated 15 million passenger cars and light trucks sold annually, the cost of this rule will be \$1.65 to \$5.25 million. For the child seat label, NHTSA estimates that the total incremental costs will be \$0.30 to \$0.60 per child seat. Based on an estimate that 3.9 million of the 5.1 million child restraints sold annually are capable of being used rear-facing, the annual cost of this rule will be \$1.17 to \$2.34 million. Thus, the total cost of this rule is estimated to be \$2.82 to \$7.59 million annually. A complete discussion of the agency's cost estimate can be found in the Final Regulatory Evaluation placed in the docket for this rulemaking.

XIV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures. This action is considered significant because of the degree of public interest in this subject. This action is not economically significant. The total cost of this rule is estimated to be \$2.82 to \$7.59 million annually. A complete discussion of the agency's cost estimate can be found in the Final Regulatory Evaluation placed in the docket for this rulemaking.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects motor vehicle manufacturers and child seat manufacturers. Almost all motor vehicle manufacturers do not qualify as small

businesses. The agency knows of eight manufacturers of child seats, two of which NHTSA considers to be small business. However, since this rule involves only labeling changes, the rule will not have any significant economic impact.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this final rule.

D. National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by redesignating S4.5.1(e) as S4.5.1(f), by

revising S4.5.1, S4.5.1(b) and S4.5.1(c), and by adding a new S4.5.1(e) and a new S4.5.5, to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

S4.5.1 Labeling and owner's manual information. The labels specified in S4.5.1(b), (c), and (e) of this standard are not required for vehicles that have a smart passenger air bag meeting the criteria specified in S4.5.5 of this standard.

(a) * * *

(b) *Sun visor warning label.*

(1) *Vehicles manufactured before February 25, 1997.* Each vehicle shall comply with either S4.5.1(b)(1)(i) or S4.5.1(b)(1)(ii), and with S4.5.1(b)(1)(iii). At the manufacturer's option, the vehicle may comply with the requirements of S4.5.1(b)(2), instead of the requirements of S4.5.1(b)(1).

(i) Each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for that seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(1)(v), this label shall read:

CAUTION—TO AVOID SERIOUS INJURY:
For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child seats in any front passenger seat position.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

(ii) If the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(1)(v), this label shall read:

CAUTION—TO AVOID SERIOUS INJURY:
For maximum safety protection in all types of crashes, you must always wear your safety belt.

Do not install rearward-facing child seats in any front passenger seat position, unless the air bag is off.

Do not sit or lean unnecessarily close to the air bag.

Do not place any objects over the air bag or between the air bag and yourself.

See the owner's manual for further information and explanations.

(iii) The coloring of the label shall contrast with the background of the label.

(iv) If the vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the statement "Do not install rearward-facing child seats in any front passenger seat position" may be omitted from the label.

(v) At the manufacturer's option, the word "warning" may replace the word "caution" in the labels specified in S4.5.1(b)(1)(i) and S4.5.1(b)(1)(ii).

(2) *Vehicles manufactured on or after February 25, 1997.* Each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 9a or 9b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iii).

(i) The heading area shall be yellow with the word "warning" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

(3) Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, no other information shall appear on the same side of the sun visor to which the sun visor warning label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, or in a utility vehicle label that contains the language required by 49 CFR 575.105(c)(1), no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

(c) *Air bag alert label—*(1) Vehicles manufactured before February 25, 1997. If the label required by S4.5.1(b)(1) for a sun visor (other than the sun visor for the driver seating position) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed either to that visor so that the label is visible when the visor is in that position or to the cover of the air bag for that seating position, at the option of the manufacturer. An air bag alert label affixed to an air bag cover pursuant to this paragraph shall read "Air Bag. See Sun Visor." An air bag alert label affixed to a sun visor pursuant to this paragraph shall read "Air Bag. See Other Side." The color of the label shall contrast with the background of the label. If a manufacturer chooses to comply with

the requirements of S4.5.1(b)(2) rather than the requirements of S4.5.1(b)(1), the air bag alert label shall comply with the requirements of S4.5.1(c)(2).

(2) Vehicles manufactured on or after February 25, 1997. If the label required by S4.5.1(b)(2) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in Figure 6c of this standard, and shall comply with the requirements of S4.5.1(c)(2)(i) and S4.5.1(c)(2)(ii).

(i) The message area shall be black with yellow text. The message area shall be no less than 20 square cm.

(ii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

(e) *Label on the dash.* Each vehicle manufactured on or after February 25, 1997 that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 7 of this standard, and shall comply with the requirements of S4.5.1(e)(2)(i) and S4.5.1(e)(2)(ii).

(i) The heading area shall be yellow with the word "warning" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

S4.5.5 *Smart passenger air bags.* For purposes of this standard, a smart passenger air bag is a passenger air bag that:

(a) Provides an automatic means to ensure that the air bag does not deploy when a child seat or child with a total mass of 30 kg or less is present on the front outboard passenger seat, or

(b) Incorporates sensors, other than or in addition to weight sensors, which automatically prevent the air bag from deploying in situations in which it might have an adverse effect on infants in rear-facing child seats, and unbelted or improperly belted children, or

(c) Is designed to deploy in a manner that does not create a risk of serious injury to infants in rear-facing child seats, and unbelted or improperly belted children.

3. Section 571.208 is amended by adding new figures 6a, 6b, 6c, and 7 at the end of the section as follows:

BILLING CODE 4810-99-P

Label Outline, Vertical and Horizontal Line Black

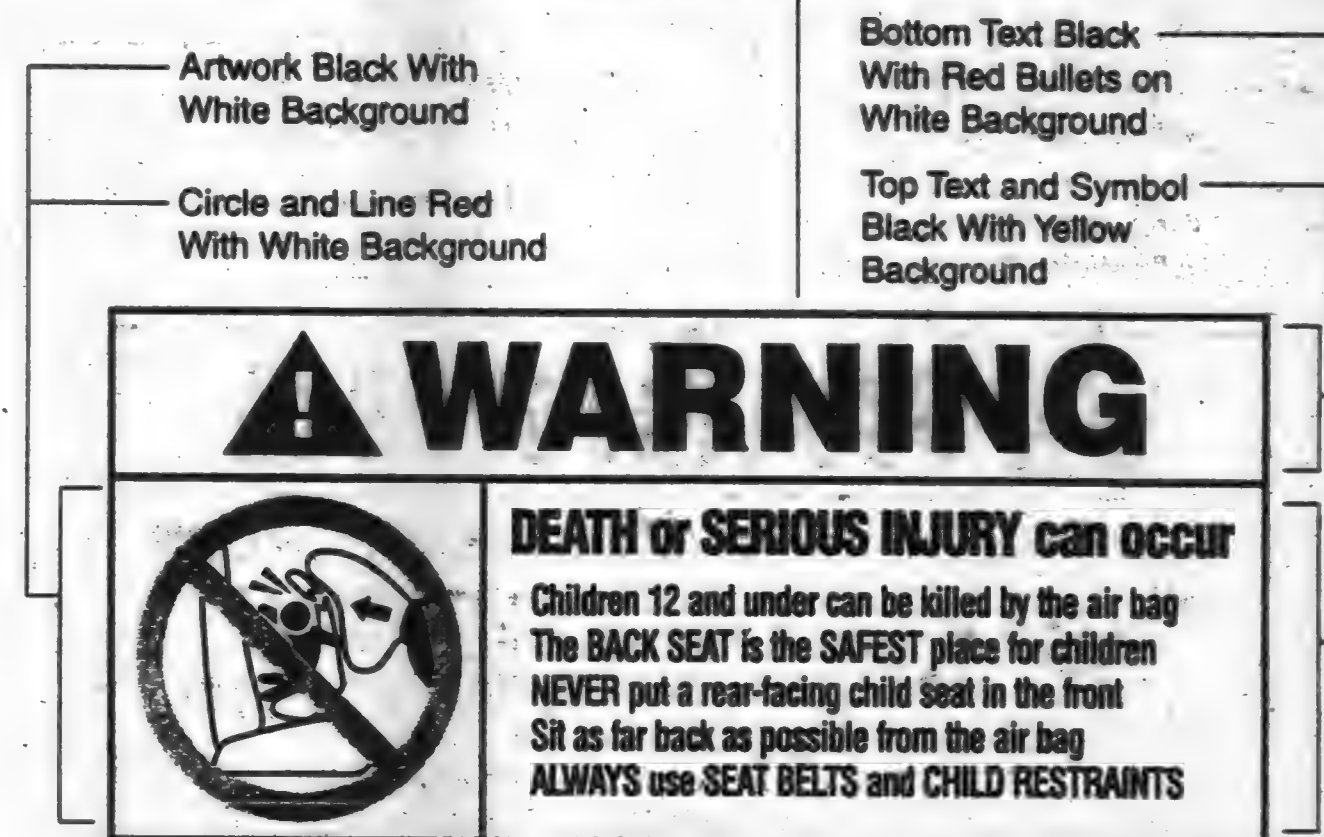


Figure 6a. Sun Visor Label Visible When Visor is in Down Position.

Label Outline, Vertical and Horizontal Line Black

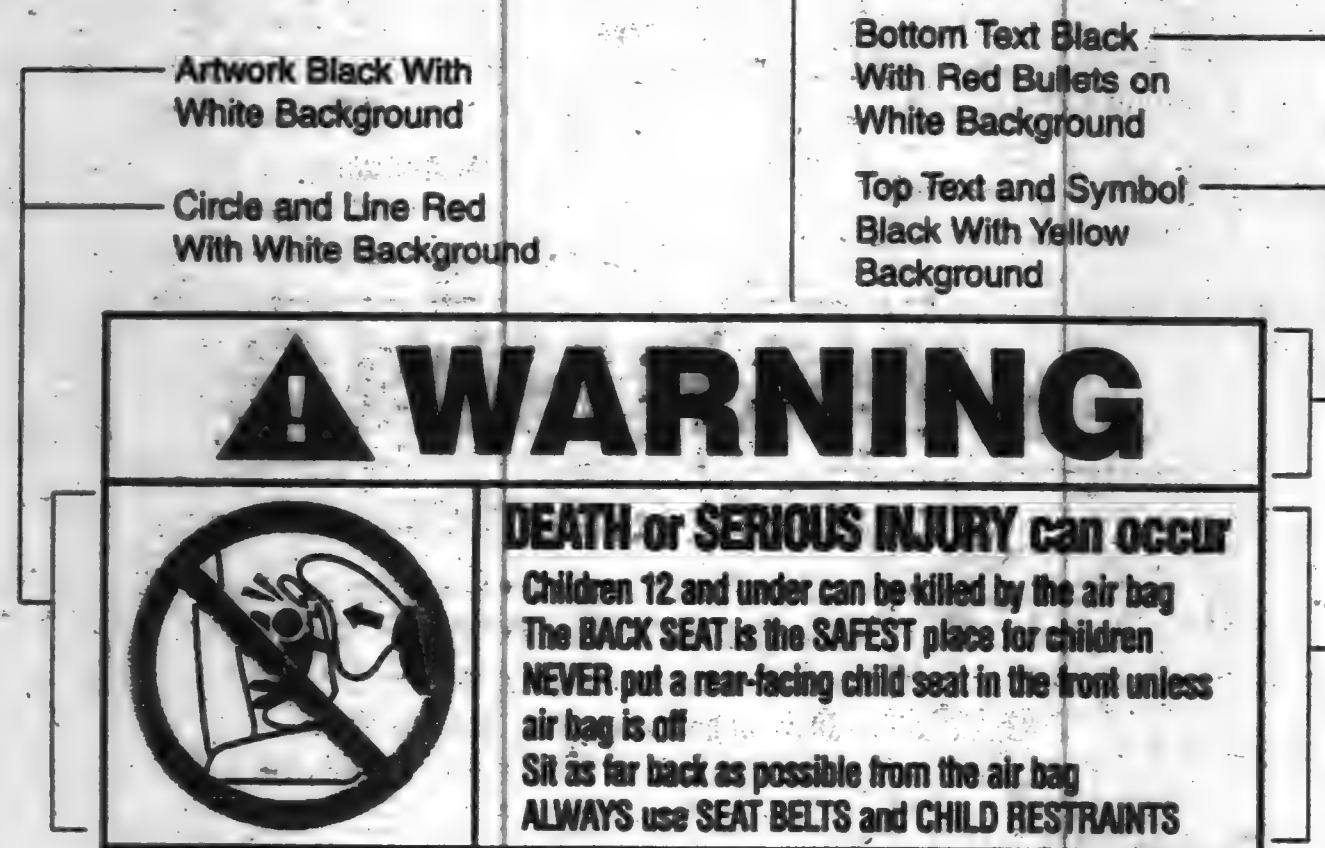


Figure 6b. Sun Visor Label Visible When Visor is in Down Position.

Circle and Line Red
 With White Background

Text Yellow With
 Black Background

Artwork Black With
 White Background



Figure 6c. Sun Visor Label Visible When Visor is in Up Position.

Label Outline and Horizontal Line Black

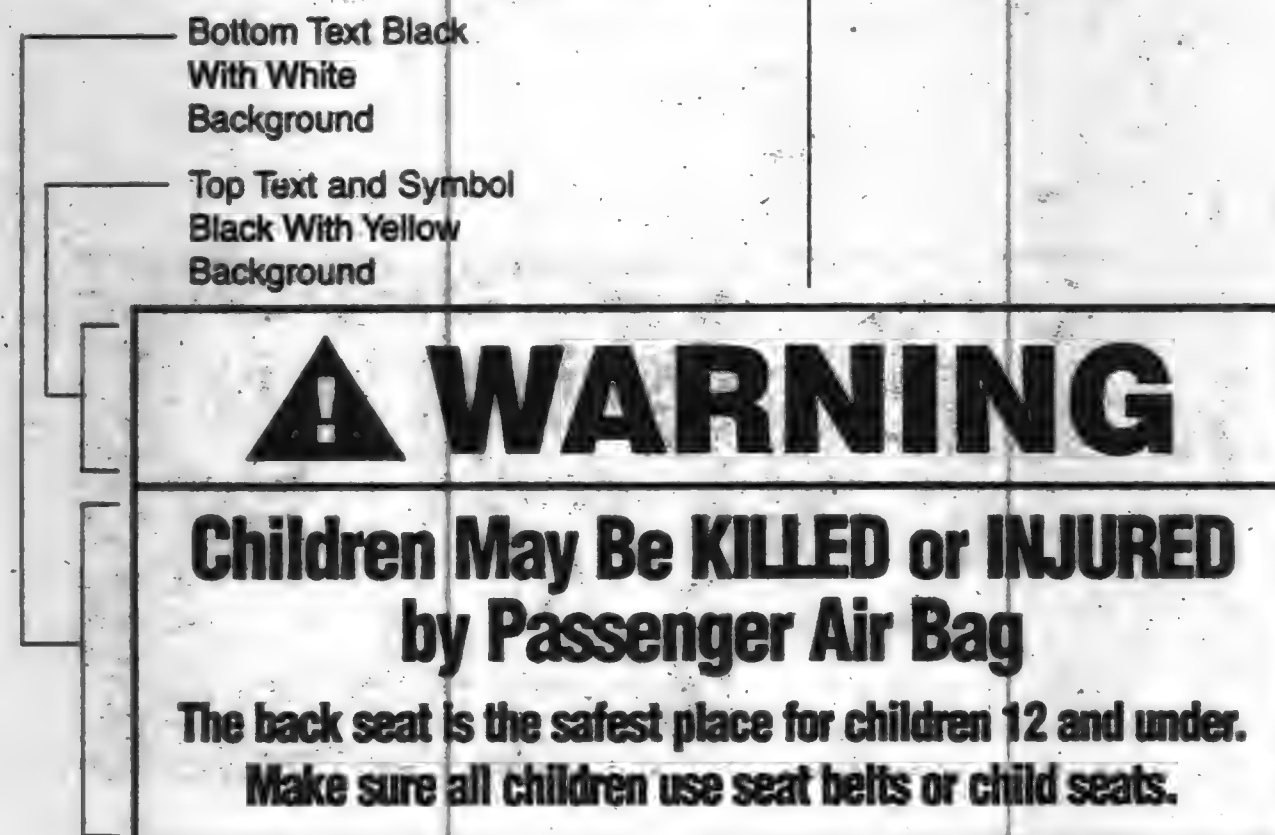


Figure 7. Removable Label on Dash.

BILLING CODE 4910-55-C

4. Section 571.213 is amended by adding S5.5.2(k) introductory text and adding a new section S5.5.2(k)(4) to read as follows:

§ 571.213 Standard No. 213, Child restraint systems.

* * * * *

S5.5.2

* * * * *

(k) At the manufacturer's option, child restraint systems that can be used in a rear-facing position may comply with the requirements of S5.5.2(k)(4), instead of the requirements of S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii).

(i) * * *

* * * * *

(4) In the case of each child restraint system that can be used in a rear-facing position and is manufactured on or after May 27, 1997, instead of the warning specified in S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii) of this standard, a label that conforms in content to Figure 10 and to the requirements of S5.5.2(k)(4)(i) through S5.5.2(k)(4)(iii) of this standard shall be permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would rest, so that the label is plainly visible and easily readable.

(i) The heading area shall be yellow with the word "warning" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

5. Section 571.213 is amended by adding a new figure 10 at the end of the section as follows:

BILLING CODE 4910-55-P

Label Outline, Vertical and Horizontal Line Black

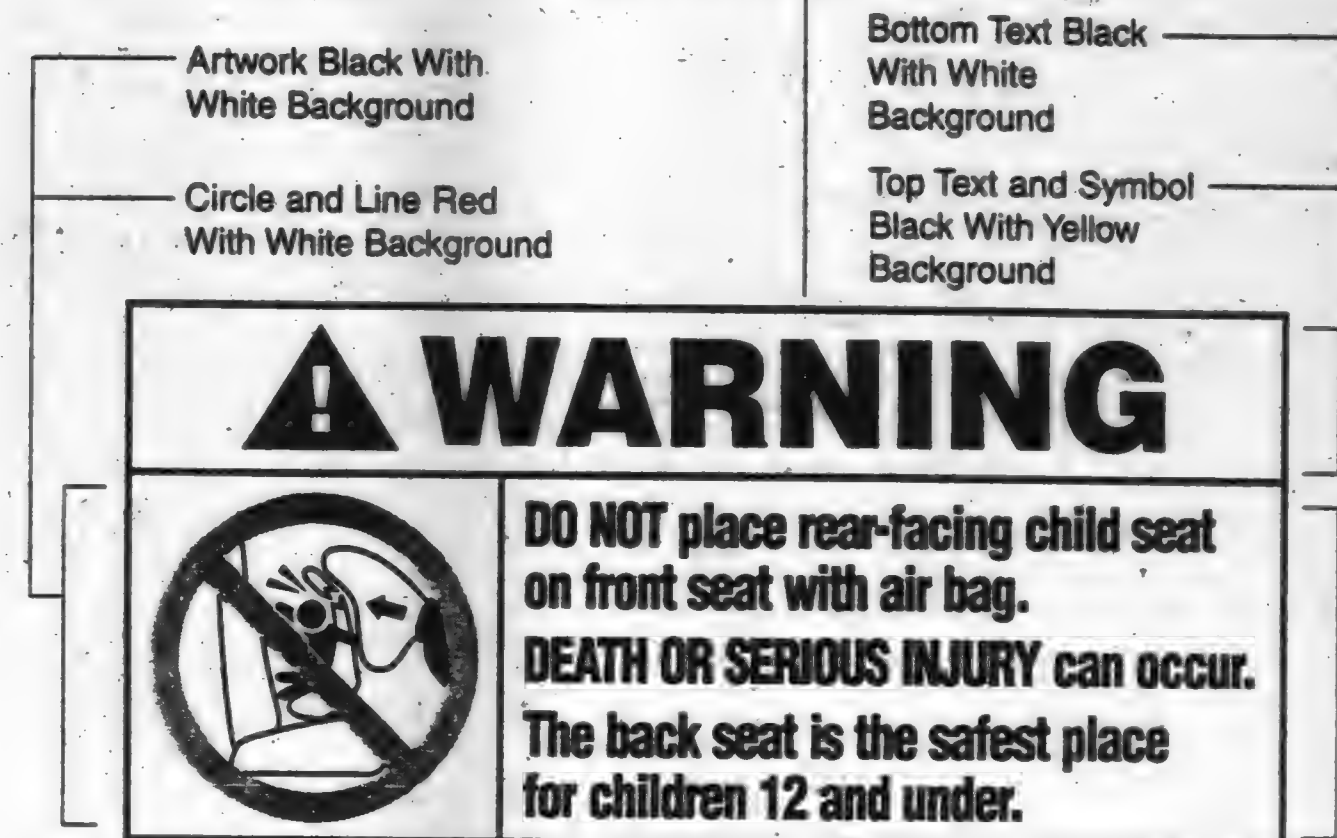


Figure 10. Label on Child Seat Where Child's Head Rests.

Issued on November 22, 1996.

Ricardo Martinez,
Administrator.

[FR Doc. 96-30362 Filed 11-22-96; 4:01 pm]

BILLING CODE 4910-55-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

(D. 111996A)

Atlantic Tuna Fisheries; Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota transfer; closure.

SUMMARY: NMFS has projected that the Atlantic bluefin tuna (ABT) incidental category quota, as previously adjusted, will be attained shortly. Therefore, NMFS further adjusts the quota for the incidental category by transferring 20 metric tons (mt) from the General

category. Consequently, the General category fishery will be closed effective at 11:30 p.m. on November 26, 1996. This action is being taken to prevent overharvest of the total U.S. ABT quota.

EFFECTIVE DATES: The quota adjustment for the incidental category is effective November 22, 1996 until December 31, 1996. The General category closure is effective 11:30 p.m. local time on November 26, 1996, until June 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347, or Mark Murray-Brown, 508-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the

catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

Incidental Category Transfer

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 110 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the incidental category quota during calendar year 1996. Inseason actions decreased the quota to 69 mt (61 FR 48640, September 16, 1996; 61 FR 53677, October 15, 1996). In making such inseason reallocations, NMFS is required under the regulations to consider the following factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin

tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

The inseason transfers from the Incidental category were made to extend scientific data collection on certain size classes of ABT while preventing overharvest of the adjusted subquotas for the General and Angling fishing categories. Subsequent to those adjustments, fishery conditions have changed relative to catch and effort. ABT have largely migrated south and hook-and-line catch has essentially ceased in the traditional fall fishing areas of southern New England and the New York Bight. Conversely, current fishery conditions are likely to result in increased catch by longline vessels operating in the mid-Atlantic region, around Cape Hatteras, and in the Gulf of Mexico.

In November and December 1995, the Atlantic swordfish fishery was closed due to attainment of the directed fishery quota (60 FR 46775, September 8, 1995). In response to the economic hardship precipitated by this protracted closure during a prime market season, NMFS adjusted the swordfish fishing year to start the semiannual quota periods on June 1 and December 1 each year (61 FR 27304, May 31, 1996). Thus, longline fishing effort is likely to increase in December 1996 relative to this same period in recent years. Currently, less than 7 mt of ABT remain in the Incidental longline category while approximately 22 mt of ABT remain in

the General category. Given the low probability of additional hook-and-line catch in traditional fishing areas and the likelihood of increased ABT interaction rates with longline gear, it is necessary to transfer ABT to the Incidental category.

A transfer of 20 mt, 10 mt each to the northern and southern longline subcategories, meets the criteria for inseason transfers as specified in the regulations. After extended reopenings, the hook-and-line categories likely will not take the remaining quota. Without a transfer, unavoidable bycatch by longliners will result in unnecessary discard waste and loss of scientific information on the distribution of ABT during the southerly migration.

General Category Closure

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 541 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during calendar year 1996. Inseason actions increased the quota to 593 mt (61 FR 50765, September 27, 1996; 61 FR 53677, October 15, 1996). This current transfer of 20 mt to the Incidental category leaves approximately 2 mt of ABT in the General category allocation.

Based on reported catch and effort, NMFS projects that the revised General category quota will be reached shortly. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT under the General category quota must cease at 11:30 p.m. local time November 26, 1996.

This closure affects all areas including the New York Bight set-aside. Although established in October (61 FR 50765, September 27, 1996), the New York Bight set-aside was no longer necessary when subsequent quota transfers led to the reopening of the General category fishery in all areas. In recent weeks, the bluefin tuna have moved to the south and catch rates are increasing in North Carolina, while no bluefin landings have been reported from the New York/New Jersey area since November 4, 1996. Given the likelihood of increased catch rates as the bluefin concentrate in the coastal waters off North Carolina, the fishery must be closed to prevent the remaining General category quota from being exceeded.

The General category closure is effective in all areas of the Atlantic ocean. However, anglers may continue to fish for ABT 27 inches (69 cm) or greater under the NMFS tag and release program (50 CFR 285.27). This closure does not affect the Incidental category, which will remain open until the adjusted quota is reached.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: November 22, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 96-30340 Filed 11-22-96; 2:16 pm]

BILLING CODE 3510-22-F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0942]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update provides guidance on issues relating to the treatment of certain fees paid in connection with mortgage loans. It addresses new tolerances for accuracy in disclosing the amount of the finance charge and other affected cost disclosures. In addition, the proposed update discusses issues such as the treatment of debt cancellation agreements and a creditor's duties if providing periodic statements via electronic means.

DATES: Comments must be received on or before January 6, 1997.

ADDRESSES: Comments should refer to Docket No. R-0942, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens or James A. Michaels, Senior Attorneys, or Sheila A. Goodman or

Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD) only, contact Dorothea Thompson at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226). The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1997; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 1997, the effective date for mandatory compliance.

On September 19, 1996, the Board published amendments to Regulation Z (61 FR 49237) implementing the Truth in Lending Act Amendments of 1995 ("1995 Amendments," Pub. L. 104-29, 109 Stat. 271). The amendments clarify the treatment of fees typically associated with real estate-related lending, and revise tolerances for finance charge calculations for loans secured by real estate or dwellings. In the same rulemaking, the Board also addressed the treatment of fees charged in connection with debt cancellation agreements. In large measure, the proposed commentary incorporates the supplementary information accompanying that rulemaking.

Federal Register

Vol. 61, No. 230

Wednesday, November 27, 1996

II. Proposed Revisions

Supplement I—Official Staff Interpretations

Introduction

Comment 1-5 updates the reference to the regulation's appendices.

Subpart A—General

Section 226.2—Definitions

2(a)(25) Security Interest

Comment 2(a)(25)-6 refers to model form H-9, which was revised in the September 1996 rulemaking. The comment reflects changes to the form's text.

Section 226.4—Finance Charge

4(a) Definition

Comments 4(a)-3 and -4 are deleted, and subsequent comments redesignated, in accord with the revision and reorganization of § 226.4(a) in the September 1996 rulemaking.

Paragraph 4(a)(1) Charges by Third Parties

Comment 4(a)(1)-1 retains the example of third-party charges currently in comment 4(a)-3.i. The example illustrates that amounts charged by a third party are included in the finance charge if the creditor requires the use of the third party, even if the consumer may choose the service provider.

Comment 4(a)(1)-2 addresses the treatment of annuity premiums associated with some reverse mortgages. The Board proposes to treat the cost of the premiums as a finance charge when the purchase of an annuity is effectively required incident to the credit.

4(a)(2) Special rule; closing agent charges

Proposed comment 4(a)(2)-1 retains the substance of the guidance currently in comment 4(a)-4; that is, charges by a third-party closing agent are finance charges only if the creditor requires the particular charge or service, or to the extent the creditor retains any portion of the fee (unless the charge is otherwise excluded). Technical amendments conform the text to new § 226.4(a)(2)—such as replacing "settlement agent" with "closing agent"—without any substantive change. The comment also clarifies that the special rule applies only to the third party serving as a closing agent for the particular loan. Charges by a third party who is not the

closing agent for the loan but who provides services typically performed by closing agents (recording the mortgage, for example) are covered by the general rule for third-party charges in paragraph 4(a)(1).

Paragraph 4(a)(3) Special Rule: Mortgage Broker Fees

Comments 4(a)(3)-1 and -2 address the treatment of mortgage broker fees. Under the 1995 Amendments, mortgage broker fees paid by the borrower are finance charges (unless otherwise excluded). Comment 4(a)(3)-1 clarifies that mortgage broker fees may be excluded from the finance charge if the fee would be excluded when charged by the creditor. The comment also provides that if the mortgage broker charges an application fee, the fee may be excluded from the finance charge if the broker charges the fee to all applicants, whether or not credit is extended.

Proposed comment 4(a)(3)-2 discusses the scope of the special rule for mortgage broker fees. It addresses the treatment of compensation paid by the creditor to a mortgage broker in addition to—or substitution for—compensation paid by the consumer to the broker.

4(b) Examples of Finance Charges

Paragraph 4(b)(10) Debt Cancellation Fees

Proposed comment 4(b)(10)-1 clarifies that for purposes of Regulation Z, the term "debt cancellation agreement" includes a specialized type of agreement known as guaranteed automobile protection or "GAP" agreements.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(5)

Numerous creditors have asked for additional guidance on certain finance charges paid by a noncreditor seller on a consumer's behalf before loan closing. Comment 4(c)(5)-2 currently states that these payments, such as for mortgage insurance premiums, should be excluded from the finance charge as seller's points. The proposal clarifies the standards for determining when to exclude such amounts from the finance charge.

Section 226.17(c)(1) states that disclosures must be based on the consumer's legal obligation. Comment 17(c)(1)-3 provides guidance for disclosing the effect of payments by a seller or another third party that reduce, for example, a consumer's interest rate. Disclosures should reflect the payment only if the consumer is no longer legally bound to the creditor for the amount

paid. Comment 4(c)(5)-2 would be revised to clarify that the same standard applies for amounts paid by noncreditor sellers.

4(d) Insurance and Debt Cancellation Coverage

Paragraph 4(d)(3) Voluntary Debt Cancellation Fees

Proposed comment 4(d)(3)-1 clarifies that fees for GAP agreements must be disclosed in accord with paragraph 4(d)(3) rather than the property insurance provisions of paragraph 4(d)(2). Proposed comment 4(d)(3)-2 clarifies that creditors may characterize debt cancellation fees as insurance premiums in their TILA disclosures only if the debt cancellation coverage constitutes insurance under state law.

4(e) Certain Security Interest Charges

Section 226.4(e) excludes certain security interest charges paid to public officials from the finance charge if the amounts are itemized and disclosed. As an example, comment 4(e)-1 lists a tax imposed solely on the creditor that is charged to the consumer. To ease compliance, the proposed revision also provides a cross reference to comment 4(a)-7 (to be redesignated as 4(a)-5), which also addresses the treatment of taxes.

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

Paragraph 5(b)(2)(ii)

Comment 5(b)(2)(ii)-3 responds to technological developments in the way credit transactions are conducted via electronic means; it provides guidance on when periodic statements may be provided electronically, for example, via home banking systems. The proposal is part of a general review that will seek to adapt current rules to the way electronic disclosures may be provided and retained. For example, the Board has addressed similar issues in recent proposed amendments to Regulation E (Electronic Fund Transfers, 12 CFR Part 205, 61 FR 19696, May 2, 1996) and Regulation CC (Expedited Funds Availability, 12 CFR Part 229, 61 FR 27802).

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(2)(ii)

Proposed comment 17(c)(2)(ii)-1 addresses the new rule applicable to the disclosure of per-diem interest charges. Under the rule, any numerical disclosure affected by the per-diem interest charge is considered accurate if it is based on the information known to the creditor at the time the disclosure is prepared, whether or not the disclosure of per-diem interest is accurate when it is received by the consumer. The proposed comment clarifies that in such cases, the resulting finance charge is considered accurate without regard to the tolerance for errors under § 226.18(d)(1). The Board requests comment on whether a conforming comment to paragraph 31(d)(3) is necessary.

17(f) Early Disclosures

Paragraph 17(f)(2)

The Board proposes to reorganize comment 17(f)-1 and to add proposed comment 17(f)(2)-1 to conform to the new regulation. Comment 17(f)-1 includes an additional example relating to mortgage loans. The revision also clarifies that for purposes of determining if redisclosure is required, the changed terms must be redisclosed according to the rules for accuracy in paragraph 17(f) rather than the tolerances in § 226.18(d) or 226.22(a).

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

Comment 18(c)-4 provides that in transactions subject to the Real Estate Settlement Procedures Act (RESPA), no itemization of the amount financed is required with the early TILA disclosures if the creditor complies with the good faith estimate requirements of RESPA. The comment would be amended to clarify that in such transactions, if redisclosure is required under § 226.19(a)(2), no itemization need be provided if, at or prior to consummation, the consumer receives a settlement statement that conforms with the substantive requirements of RESPA.

The Department of Housing and Urban Development (HUD) recently solicited comment on whether creditors, in transactions subject to RESPA, should be allowed to show only the total amount collected for escrow on the settlement statement, rather than itemizing these amounts. Comment

18(c)(1)(iv) would be revised and expanded to address how creditors can determine the portion of the total amount collected for an escrow account that is a prepaid finance charge, if any.

18(d) Finance Charge

Paragraph 18(d)(2)

Proposed comment 18(d)(2)-1 incorporates the guidance formerly found in comment 18(d)-2 that was removed as part of the recent reorganization of § 226.18(d).

Paragraph 18(n) Insurance and debt Cancellation

Proposed comment 18(n)-2 provides guidance for disclosing debt cancellation fees under § 226.4(d)(3). The proposed comment clarifies that creditors may disclose debt cancellation fees as insurance premiums only if the coverage is insurance under state law, consistent with proposed comment 4(d)(3)-2.

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

Paragraph 19(a)(2) Redisclosure Required

Comment 19(a)(2) is revised for consistency with proposed comment 17(f)(2)-1.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

Paragraphs 22(a)(4) and (a)(5)

Sections 226.22(a)(4) and (a)(5) provide two additional APR tolerances for mortgage loans when the finance charge has been misstated but is considered accurate. The proposed comments provide specific examples of these tolerances.

Section 226.23—Right of Rescission

23(g) Tolerances for Accuracy

Paragraph 23(g)(2) One Percent Tolerance

Proposed comment 23(g)(2)-1 clarifies that the phrase "new advance" has the same meaning in paragraph 23(g)(2) as it has in comment 23(f)-4. Both rules address rescission rights when home-secured loans are refinanced.

Paragraph 23(h) Special Rules for Foreclosures

Proposed comment 23(h)-1 clarifies that the special rules for foreclosures under paragraph 23(h) only apply to transactions that were originally subject to rescission under paragraph 226.23(a)(1).

Paragraph 23(h)(1)(i)

Proposed comment 23(h)(1)(i)-1 clarifies that a consumer may rescind a loan in foreclosure if a mortgage broker fee is omitted or understated, without regard to the dollar amount involved. An example illustrates the rule.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of disclosures

Section 226.31(c) discusses the timing rules for providing disclosures to consumers for transactions covered by § 226.32 (§ 226.3(c)(1)) and reverse mortgages (§ 226.31(c)(2)). Comment 31(c)(1)-1, which states that disclosures are furnished when received by the consumer, is redesignated as comment 31(c)-1 to reflect that the rule applies to all transactions covered by § 226.31(c).

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(b) Definitions

Paragraph 32(b)(1)(i)

Comment 32(b)(1)(i)-1 is revised to clarify that per diem interest, typically paid in a lump sum at closing, is nonetheless interest, and is not a component of "points and fees" under paragraph 32(b)(1).

32(c) Disclosures

32(c)(3) Regular payment

Balloon payments are prohibited in loans that are covered by § 226.32 and have a term of less than five years. Proposed comment 32(c)(3)-2 clarifies that if a loan with a term of five years or more provides for a balloon payment, the balloon payment must be disclosed under this paragraph.

Section 226.33—Requirements for Reverse Mortgages

33(a) Definition

Paragraph 33(a)(2)

Under § 226.33, a reverse mortgage can become due and payable only after the consumer dies, the dwelling is transferred, or the consumer ceases to occupy the dwelling as a principal dwelling. Some states require mortgages to have a definite maturity date. The proposed comment clarifies how a transaction can comply with those laws and have a definite maturity date while remaining a reverse mortgage under § 226.33.

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

Comment app. G and H-2 would be revised, consistent with comments

4(d)(3)-1 and 18(n)-2, to reflect that creditors should not characterize debt cancellation fees as insurance premiums unless such coverage is insurance under state law.

Appendix H—Closed-End Model Forms and Clauses

The Board modified the current model form H-9 in the September 1996 rulemaking. Proposed comment app. H-11 would clarify that the revised H-9 is substantially similar to the current H-9, and creditors may continue to use the prior version. Creditors are encouraged to use the revised version when reordering or reprinting forms.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-0942, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½-inch or 5¼-inch computer diskettes in any IBM-compatible DOS-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new Federal Register publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Introduction*, the last sentence in paragraph 5. would be revised to read as follows:

Supplement I—Official Staff Interpretations

Introduction

5. Comment designations.

Comments to the [The] appendices may be cited [The], for example, [The] as Comments app. A-1 [The] [through]-2.]

3. Supplement I to Part 226, under Section 226.2—Definitions, under paragraph 2(a)(25), is amended by removing the last two sentences of the second undesignated paragraph of paragraph 6.

4. In Supplement I to Part 226, under Section 226.4—Finance Charge, the following amendments would be made:

a. Under 4(a) Definition., paragraphs 3. and 4. would be removed and paragraphs 5. through 7. would be redesignated as paragraphs 3. through 5., respectively, and new paragraphs 4(a)(1), 4(a)(2), and 4(a)(3) would be added preceding 4(b);

b. Under 4(b) Examples of finance charges., a new paragraph 4(b)(10) would be added;

c. Under 4(c) Charges excluded from the finance charge., under 4(c)(5) paragraph 2. would be revised;

d. Under 4(d), the paragraph heading would be revised, and a new paragraph 4(d)(3) would be added; and

e. Under 4(e) Certain security interest charges., paragraph 1.i. would be revised. The additions and revisions would read as follows:

Subpart A—General

Section 226.4—Finance Charge

4(a) Definition.

Paragraph 4(a)(1) Charges by third parties.

1. Choosing the provider of a required service. An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. Annuities associated with reverse mortgages. Some creditors may offer annuities in connection with a reverse mortgage transaction. The amount of the premium is a finance charge if the creditor in effect requires the purchase of the annuity incident to the credit. Examples include the following:

- The credit documents reflect the purchase of an annuity from a specific provider or providers.
- The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.
- The annuity is intended to supplement or replace the creditor's payments to the consumer either immediately or at some future date.

Paragraph 4(a)(2) Special rule; closing agent charges.

1. General. This rule applies to charges by a third party serving as the closing agent for the particular loan. Unless a charge is otherwise excluded (for example, a real estate-related closing cost under § 226.4(c)(7) or a fee paid in a comparable cash transaction), a fee charged by a third-party closing agent is included in the finance charge if the creditor requires the imposition of the charge or the provision of the service, or to the extent the creditor retains any portion of the charge. For example, a courier fee charged by a third-party closing agent is a finance charge if the creditor requires the use of a courier.

Paragraph 4(a)(3) Special rule; mortgage broker fees.

1. Special rule—mortgage broker fees. A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. To exclude an application fee from the finance charge, a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. Compensation by lender. Compensation paid by a creditor to a mortgage broker under an arrangement between those parties is not included in the finance charge. For example, where a consumer is obligated to pay points to the creditor and a fee to a mortgage broker, those charges must be disclosed as finance charges. Under a separate arrangement between the creditor and the broker, the creditor may also agree to compensate the broker, such as in "yield spread premiums" or "back points." This compensation paid by the creditor to the broker is not a finance charge.

4(b) Examples of finance charges.

Paragraph 4(b)(10) Debt cancellation fees.

1. Definition. The term "debt cancellation agreement" refers to a contract between a borrower and a creditor providing for satisfaction of all or part of the debt when a specified event occurs. The term includes guaranteed automobile protection or "GAP" agreements, which cancel the remaining debt after property insurance benefits are exhausted.

Paragraph 4(c)(5).

2. Other seller-paid amounts.

Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. [In such cases the] The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably

available, as called for by the estimate provisions of the regulation].

4(d) Insurance and debt cancellation coverage.

Paragraph 4(d)(3).

1. General. Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection or "GAP" agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. Disclosures. Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation coverage whether or not the agreement is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

4(e) Certain security interest charges.

1. Examples.

i. Excludable charges. Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e)(1). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, and similar documents, as well as intangible property or other taxes imposed by the state solely on the creditor (and payable by) and charged to the consumer (if the tax must be paid to record a security interest). (See comment 4(a)-5 (formerly 4(a)-7) regarding the treatment of taxes, generally).

5. In Supplement I to Part 226, under Section 226.5—General Disclosure Requirements, under Paragraph 5(b)(2)(ii), paragraph 3. would be revised to read as follows:

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(b) Timing of disclosures.

5(b)(2) Periodic statements.

Paragraph 5(b)(2)(ii).

3. Calling for periodic statements. The creditor may permit consumers to call for their periodic statements, but may not require them to do so. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement (including a statement provided by electronic means) must be made available in accordance with the 14-day rule.

6. In Supplement I to Part 226, under Section 226.17—General Disclosure Requirements, the following amendments would be made:

a. Under 17(c) Basis of disclosures and use of estimates, a new paragraph 17(c)(2)(ii) would be added; and

b. Under 17(f) Early disclosures, paragraphs 1. introductory text, 1. i., the last sentence of 1. ii., and 1. iii. would be revised and a heading would be added to paragraph 1. ii.; and a new paragraph 17(f)(2) preceding 17(g) would be added. The additions and revisions would read as follows:

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(c) Basis of disclosures and use of estimates.

Paragraph 17(c)(2)(ii).

1. Per-diem interest. This paragraph applies to any numerical disclosure (such as the finance charge or annual percentage rate) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and the affected disclosures are also considered accurate. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by \$200, the disclosed finance charge is considered accurate even though the understatement is not within the \$100 tolerance of § 226.18(d)(1). In this example, if in addition to the understatement related to the per-diem interest, a \$90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of \$290, the finance charge is considered accurate because the \$90 fee is within the tolerance in § 226.18(d)(1).

17(f) Early disclosures.

1. Change in rate or other terms.

Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in this section, even if the initial disclosures would be considered accurate under the tolerances in §§ 226.18(d) or 226.22(a). [§ 226.22(a) (1/8 of 1 percentage point in regular transactions and 1/4 of one percentage point in irregular transactions. Redisclosure is also required, even if the annual percentage rate is within the permitted tolerance, if the disclosures were not based on estimates in accordance with § 226.17(c)(2) and labeled as such.] To illustrate:

i. General. A. If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor

must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction, if early disclosures are marked as estimates and the disclosed annual percentage rate is within 1/4 of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

ii. Nonmortgage loan. (See § 226.18(d)(2) [and footnote 41] of this part.)

iii. Mortgage loan. At the time TILA disclosures are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. Assuming there were no other changes requiring redisclosure, the creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time. [If early disclosures are marked as estimates and the disclosed annual percentage rate is within tolerance at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).]

Paragraph 17(f)(2).

1. Irregular transactions. For purposes of this paragraph, a transaction is deemed to be "irregular" according to the definition in footnote 46 of § 226.22(a)(3).

7. In Supplement I to Part 226, under Section 226.18—Content of Disclosures, the following amendments would be made:

a. Under 18(c) Itemization of Amount Financed., paragraph 4. would be revised;

b. Under 18(c)(1)(iv), paragraph 2. would be revised;

c. Under 18(d) Finance charge., a new paragraph 18(d)(2) Other credit, would be added after paragraph 1; and

d. Under 18(n) Insurance., the heading would be revised and paragraph 2. would be added.

The revisions and additions would read as follows:

Section 226.18—Content of Disclosures

18(c) Itemization of amount financed.

4. RESPA transactions. The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. Transactions subject to RESPA are exempt from the requirements of

§ 226.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. [requirement.]

The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of § 226.18(c) and 19(a)(2) [requirement]. If the settlement statement is substituted for the itemization when redisclosure is required under § 226.19(a)(2), it must be delivered to the consumer at or prior to consummation.

Paragraph 18(c)(1)(iv).

[2. Prepaid mortgage insurance premiums. RESPA requires creditors to give consumers a settlement statement disclosing the costs associated with mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement that are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1002 on HUD-1 or HUD-1-A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.]

2. Escrow items. RESPA requires creditors to give consumers a good faith estimate and settlement statement disclosing the costs associated with mortgage loan transactions. Included in these disclosures are amounts which are paid at or before consummation and placed in an escrow or impound account. Typically some, but not all, of the escrow items are prepaid finance charges, such as mortgage insurance premiums.

Regardless of how the escrow amounts are shown on the good faith estimate or settlement statement for RESPA purposes, creditors must be able to identify the amount attributable to finance charges in order to calculate the total prepaid finance charge under § 226.18(c)(1)(iv).

i. Itemized amounts. If the amounts paid into escrow are individually itemized on the good faith estimate and the settlement statement, the creditor may use the itemized amount even if the actual amount collected at settlement varies because of RESPA's escrow accounting rules. For example, if the itemized amount on the settlement statement includes mortgage insurance, creditors may rely on the amount listed on line 1002 of the HUD-1 or HUD-1-A, even though an adjustment to the aggregate amount of the escrow items may be shown on another line in the 1000 series. If an itemized escrow amount that is a finance charge is disclosed in conformance with RESPA, it shall be deemed to be accurate for purposes of Regulation Z.

ii. Lump-sum amounts. If an amount paid into escrow is listed as a lump sum on the good faith estimate and the settlement statement, and if that amount includes some costs that are finance charges, the creditor

must identify the amount attributable to finance charges to calculate the total prepaid finance charge under § 226.18(c)(1)(iv). To determine the amount attributable to the finance charge, creditors must use single-item accounting, as defined under RESPA (24 CFR §§ 3500.17(b) and (d)(2)). Alternatively, creditors may treat the entire amount paid into escrow as a prepaid finance charge. ◀

18(d) Finance charge.

▶ Paragraph 18(d)(2) Other credit.

1. **Tolerance.** When a finance charge error results in a miscalculation of the amount financed, or of some other numerical disclosure for which the regulation provides no specific tolerance, the miscalculation does not violate the act or the regulation if the finance charge error is within the permissible tolerance under this paragraph. ◀

Paragraph 18(n) Insurance and debt cancellation. ◀

▶ 2. **Debt cancellation.** Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. Otherwise, they may provide a parallel disclosure that refers to debt cancellation coverage. ◀

8. In Supplement I to Part 226, under Section 226.19—*Certain Residential Mortgage and Variable-Rate Transactions*, under 19(a)(2) *Redisclosure required*, the first sentence of paragraph 1. would be revised to read as follows:

Section 226.19—*Certain Residential Mortgage and Variable-Rate Transactions*

Paragraph 19(a)(2) *Redisclosure required*.

1. **Conditions for redisclosure.** Creditors must make new disclosures if the annual percentage rate at consummation differs from the estimate originally disclosed by more than 1/4 of 1 percentage point in regular transactions or 1/4 of 1 percentage point in irregular transactions, as defined in footnote 46 of § 226.22(a)(3). ◀

9. In Supplement I to Part 226, Section 226.22—*Determination of the Annual Percentage Rate*, would be amended by adding new paragraphs 22(a)(4) and 22(a)(5) to read as follows:

Section 226.22—*Determination of the Annual Percentage Rate*

22(a) **Accuracy of the annual percentage rate.**

▶ Paragraph 22(a)(4) *Mortgage loans*.

1. **Example.** If a creditor improperly omits a \$75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under § 226.18(d)(1), and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside

the tolerance of 1/4 of 1 percent provided under § 226.22(a)(2). In that case, an annual percentage rate corresponding to a \$100 understatement of the finance charge would not be considered accurate.

Paragraph 22(a)(5) *Additional tolerance for mortgage loans*.

1. **Example.** This paragraph contains an additional tolerance for a disclosed annual percentage rate that is incorrect but is closer to the actual annual percentage rate than the rate that would be considered accurate under the tolerance in § 226.22(a)(4). To illustrate: in an irregular transaction subject to a 1/4 of 1 percent tolerance, if the actual annual percentage rate is 9.00 percent and a \$75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate under § 226.22(a)(4), a disclosed APR of 8.65 percent is within the tolerance in § 226.22(a)(5). In this example of an understated finance charge, a disclosed annual percentage rate below 8.50 or above 9.25 percent will not be considered accurate. ◀

10. In Supplement I to Part 226, Section 226.23—*Right of Rescission* would be amended by adding new 23(g) and (23)(h) to read as follows:

Section 226.23—*Right of Rescission*

▶ 23(g) *Tolerances for accuracy*.

Paragraph 23(g)(2) *One percent tolerance*.

1. **New advance.** The phrase "new advance" has the same meaning as in comment 23(f)-4.

23(h) *Special Rules for Foreclosures*.

1. **Rescission.** Section 226.23(h) applies only to transactions that are subject to rescission under § 226.23(a)(1).

Paragraph 23(h)(1)(i).

1. **Mortgage broker fees.** A consumer may rescind a loan in foreclosure if a mortgage broker fee was omitted or understated, without regard to the dollar amount involved. For example, a consumer's right to rescind a loan in foreclosure is triggered by a \$10 understatement of a mortgage broker fee; an understatement of more than \$35 in other finance charges also triggers rescission. ◀

11. In Supplement I to Part 226, under Section 226.31—*General Rules*, under Paragraph 31(c)(1) paragraph 1. would be redesignated as paragraph 1. under 31(c), and paragraph 2., under Paragraph 31(c)(1) would be redesignated as paragraph 1.

12. In Supplement I to Part 226, under Section 226.32—*Requirements for Certain Closed-End Home Mortgages*, the following amendments would be made:

- Under Paragraph 32(b)(1)(i), paragraph 1. would be revised; and
- Under 32(c)(3), a new paragraph 2. would be added.

The revisions and additions would read as follows:

Section 226.32—*Requirements for Certain Closed-End Home Mortgages*

32(b) *Definitions*.

Paragraph 32(b)(1)(i).

▶ 1. **General.** Section 226.32(b)(1)(i) includes in the total "points and fees" items defined as finance charges under §§ 226.4(a) and 226.4(b). Items excluded from the finance charge under other provisions of § 226.4 are not included in the total "points and fees" under paragraph 32(b)(1)(i), but may be included in "points and fees" under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per diem interest, is excluded from "points and fees" under § 226.32(b)(1). ◀

32(c) *Disclosures*.

32(c)(3) *Regular payment*.

▶ 2. **Balloon payments.** If a loan with a term of five years or more provides for a balloon payment, the balloon payment must be disclosed. For a loan with a term of less than five years, a balloon payment is prohibited. ◀

13. In Supplement I to Part 226, under Section 226.33—*Requirements for Reverse Mortgages*, under Paragraph 33(a)(2), in paragraph 2., the third and fourth sentences would be revised and a new sentence would be added at the end of the paragraph to read as follows:

Section 226.33—*Requirements for Reverse Mortgages*

33(a) *Definition*.

Paragraph 33(a)(2).

2. **Definite term or maturity date.** Stating a definite maturity date or term of repayment in an obligation does not violate the definition of a reverse-mortgage transaction if the maturity date or term of repayment used would not [in no case] operate to cause maturity prior to the occurrence of any of the maturity events recognized in the regulation.

▶ For example, some reverse mortgage programs specify that the final maturity date is the borrower's 150th birthday; other programs include a shorter term but provide that the term is automatically extended for consecutive periods if none of the other maturity events has yet occurred. These programs would be permissible. [For example, a provision that allows a reverse-mortgage loan to become due and payable only after the consumer's death, transfer, or cessation of occupancy, or after a specified term, but which automatically extends the term for consecutive periods as long as none of the events specified in this section had yet occurred would be permissible.]

14. In Supplement I to Part 226, under APPENDICES G AND H—*OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES*, a new paragraph 2. would be added to read as follows:

Appendices G and H—*Open-End and Closed-End Model Forms and Clauses*

▶ 2. **Debt cancellation coverage.** The regulation does not authorize creditors to characterize debt cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation coverage whether or not the agreement is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. ◀

15. In Supplement I to Part 226, under Appendix H—*Closed-End Model Forms and Clauses*, a new sentence would be added to the end of paragraph 11. to read as follows:

Appendix H—*Closed-End Model Forms and Clauses*

11. **Models H-8 and H-9.** The prior version of model form H-9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms. ◀

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 14, 1996.

William W. Wiles,

Secretary of the Board

[FR Doc. 96-29639 Filed 11-26-96; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 96-78]

Community Support Requirements

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on community support requirements. The proposed rule replaces the existing review process with uniform community support standards all Federal Home Loan Bank (FHLBank) members must meet in order to maintain access to long-term FHLBank advances, and review criteria the Finance Board must apply when determining a member's compliance with the statutory and regulatory standards. Consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review, the proposed rule streamlines the regulatory requirements to reduce the time spent by FHLBank members to prepare and

submit, and the Finance Board to review and process, community support submissions.

DATES: The Finance Board will accept comments on this proposed rule in writing on or before January 27, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Penny S. Bates, Program Analyst, Community Support Program, Office of Supervision, 202/408-2574, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408-2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. See 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. See 12 U.S.C. 1430(g)(2). In accordance with section 10(g)(1) of the Bank Act, the Board of Directors of the Finance Board approved a final community support rule, which appears at part 936 of the Finance Board's regulations, in November 1991. See 56 FR 58639 (Nov. 21, 1991), codified at 12 CFR part 936. The current rule establishes a process under which an FHLBank member submits a community support statement, and in some cases, a community support action plan or amended action plan, first to the member's FHLBank and then to the Finance Board for review.

By its terms, the current rule applies to every FHLBank member, although in practice, the Finance Board has applied its requirements only to members that are subject to the CRA. In September 1993, the Finance Board sought public comments concerning application of the community support rule, particularly the CRA factor, to FHLBank members that are not subject to the CRA, that is, credit unions and insurance companies. See 58 FR 46569 (Sept. 2, 1993) (advance notice of proposed rulemaking). Notwithstanding that the

Finance Board received 31 comments in response to the advance notice of proposed rulemaking, it is again specifically seeking comments on how it may apply the CRA factor to FHLBank members that are not subject to the CRA. The Finance Board will consider all comments it receives before taking final action, including comments received in response to the advance notice of proposed rulemaking published in September 1993 and this notice of proposed rulemaking.

Although the Bank Act requires the Finance Board to develop community support standards, see 12 U.S.C. 1430(g)(1), the current rule provides neither definitive standards an FHLBank member must meet in order to maintain access to long-term advances, nor review criteria the Finance Board must apply to decide whether a member has satisfied the statutory or regulatory community support requirements. See 12 CFR part 936. Further, although the number of FHLBank members and community support submissions Finance Board staff must review has increased substantially (from approximately 2,970 to 6,000 members, and 370 to 750 submissions per calendar quarter), the number of Finance Board staff available to review those submissions has not changed. In order to provide appropriate standards and review criteria for determining compliance with section 10(g) of the Bank Act and to ensure adequate review by Finance Board staff, the Finance Board has decided to streamline the regulatory requirements by replacing the existing review process with uniform community support standards and review criteria, thereby reducing the time spent by FHLBank members to prepare and submit, and the Finance Board to review and process, community support submissions. In addition, consistent with section 10(g) of the Bank Act, the proposed community support rule will apply to every FHLBank member regardless of whether the member is subject to the CRA.

II. Analysis of the Proposed Rule

A. Community Support Requirement

Proposed § 936.2 establishes the basic requirement that a FHLBank member selected for community support review must submit a community support statement (statement) to the Finance Board. The Finance Board anticipates selecting a FHLBank member for community support review about once every two years. Consistent with current practice, the Finance Board will select approximately one-eighth of the